

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

AUGUST 15, 2018

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:30 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT: Mr. Almeda Mr. Kearney
 Mr. Dator (7:35 p.m.) Mr. Rabolli
 Mr. DeSilva Mr. Whiteman

ABSENT: Mr. Larson Mr. Straffin
 Mr. Montroy

ATTORNEY: Mr. Ben R. Cascio, Esq.

I. APPROVAL OF BILLS:

7/18/18 \$200.00 Maser Consulting P.A.
 Meeting Attendance

A motion to approve the bill was made by Mr. Whiteman, seconded by Mr. DeSilva. A roll call vote revealed 5 aye votes by Mr. Almeda, Mr. DeSilva, Mr. Kearney Mr. Rabolli and Mr. Whiteman.

7/4 & 7/18/18 \$500.00 Ben R. Cascio, Esq. – Attendance
 Two meetings

A motion to approve both bills was made by Mr. Kearney, seconded by Mr. DeSilva. A roll call vote revealed 5 aye votes by Mr. Almeda, Mr. DeSilva, Mr. Kearney Mr. Rabolli and Mr. Whiteman.

II. APPROVAL OF MINUTES: None to present.

III. MEMORIALIZING RESOLUTIONS:

**1. DOCKET #1443-18 – IOPPOLO, LLC
17 MILLER ROAD, BLOCK 71, LOT 16**

Resolution granting approval for a “D” Variance to allow a Personal Trainer Training Center.

A motion to approve was made by Mr. DeSilva, seconded by Mr. Whiteman. A roll call of eligible voters revealed 4 aye votes by Mr. Dator, Mr. DeSilva, Mr. Rabolli, and Mr. Whiteman.

**2. DOCKET #1440-18 – REAL DOG RESCUE, INC.
818 WYCKOFF AVENUE, BLOCK 179, LOTS 6-11**

Resolution granting approval for a D Variance to allow Commercial/ Business/ Professional Office use with conditions pertaining to signage.

A motion to approve was made by Mr. Whiteman, seconded by Mr. DeSilva. A roll call of eligible voters revealed 4 aye votes by Mr. Dator, Mr. DeSilva, Mr. Rabolli, and Mr. Whiteman.

**3. DOCKET #1413-16 – SEAN ROYLE
16 SKYTOP DRIVE, BLOCK 154, LOT 17**

Resolution granting approval of interpretation of the Zoning Ordinance and confirmation of existence of right-of-way.

Ms. Megan Charles of 10 Skytop Drive approached on behalf of all the neighbors to ask for a thirty (30) day extension before memorializing this Resolution. She stated that they were in negotiations for possible purchase of the land. She also informed the Board that the Applicant’s lawyer had resigned in the past week, and that the Objector’s lawyer and the Applicant’s lawyer needed ample time to speak. Mr. Cascio stated that a Resolution has to be published within 45 days and only the Applicant can grant an extension. Mr. Cascio informed the Board that Mr. Jaworski had submitted a written request for an extension, however the Applicant called, came in, and wrote a letter stating that she had discharged Mr. Jaworski and that she wanted the Resolution to be adopted. Only the Applicant can grant an extension and the Ordinance must be published within 45 days or it is an automatic approval. Mr. Rabolli stated that it was on record that an extension was requested a number of times and then not put on the agenda, which is why there is an amended agenda.

Mr. Rabolli commented that Ms. Charles and all the neighbors may have detrimentally relied on Mr. Jaworski's representation. Ms. Charles commented that of the six (6) members eligible to vote, two (2) recused themselves and two (2) were not at the previous meeting. Mr. Rabolli stated that voting on a Resolution only takes one (1) vote. Mr. Rabolli said he would hear the other Agenda items and requested that Ms. Charles return in thirty (30) minutes at 8:15 p.m. on this matter.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received.

When Ms. Charles returned to the meeting, Mr. Rabolli moved the meeting back into the Open to the Public Session of the meeting at 8:34 p.m. Ms. Megan Charles approached and stated that she would be speaking for her neighbors as well as for herself. Mr. Rabolli stated that, to put it in context, he was allowing Ms. Charles to speak in the Open Public Session of the meeting. Mr. Rabolli commented that normally with regard to voting on approval of a Resolution there is not a lot of dialogue, but as he had stated earlier the original agenda did not include the Royle matter, the amended one did, there was correspondence back and forth, so equitably in fairness, he would have Ms. Charles state her case. Mr. Rabolli stated that there was no one present from Royle as this was not a debatable issue. Ms. Charles asked the Board to please hold off on publishing the Resolution for another 30 days so that they might have the opportunity to speak with and try to negotiate with the new lawyer. Mr. Whiteman asked how the Resolution would affect that. Ms. Charles responded that it would start the clock; the 45 days to contest or appeal the Resolution. She stated that they were trying to exhaust every possibility to negotiate with the owners of the land locked lot to possibly purchase the lot. Mr. Whiteman commented that he did not understand how negotiations would change anything other than the fact that it is contended to be land locked and to be appraised as such in the negotiation and if this Resolution is approved, there would be street access which might change the valuation of the lot. Mr. Rabolli stated that the Resolution has been approved and is now being memorialized. Mr. Rabolli informed Ms. Charles that she may file an appeal in the State of New Jersey. Mr. Cascio advised the Board that if the Resolution is not adopted within 45 days of approval, which has been extended many times, and the Applicant is no longer giving an extension, the Applicant could go to Court and require the Board to adopt the Resolution and the Board would be fined for not doing so. Mr. Cascio stated that the Applicant directed the Board not to follow her Attorney's last instruction and said she did not authorize him to request an extension. Ms. Sophy Sedarat stated that the last valid 45 day extension would expire August 31, 2018. Mr. Kearney stated that only the Applicant is in control, not an objective third party, and although the concerns are understood and respected, the Laws and Ordinances are directed by State Law and have to be followed.

Mrs. Alexandra Cirtosimo (Ali Royle) joined the meeting and asked to be caught up. Mr. Rabolli, addressing Ms. Royle, stated that it is understood that Mr. Jaworski is no longer her Attorney, and that there was a recent letter from Mr. Jaworski seeking to carry the matter for 45 days because of negotiations that were ongoing, and that an e-mail was sent stating the matter not be carried further. Ms. Royle replied; that is correct. Mr. Rabolli commented that the Agenda was revised to put the Royle matter on for this evening. Mr. Rabolli explained that Ms. Charles had approached, stated that Ms. Royle was getting a new attorney, and requested time for the attorneys to negotiate. Ms. Royle stated that approval was given by unanimous vote on May 16, 2018. It had been extended many times in attempts to make a deal, which did not happen. Ms. Royle commented that enough time has been given and she wants the Resolution memorialized and published to start the 45 day appeal process timeframe. Mr. Whiteman asked Ms. Royle if she thought an additional 30 days would aid in the negotiations. Ms. Royle responded; “honestly, I doubt it”.

Mr. Rabolli summarized, stating negotiations have been ongoing between the Applicant and the neighbors. He said that the Agenda did not originally include this matter for this evening based upon a letter from the Applicant’s Counsel. The application might be in the name of Sean Royle rather than Ms Royle, but in either event, Ms. Royle wants the Resolution to be addressed. Mr. Jaworski’s previous letter, dated July 11, 2018 granted an extension to August 31, 2018. Mr. Rabolli stated that it would be approved at this meeting, but not published until August 31, 2018. This gives the objectors another two weeks to negotiate. It does no harm to the Applicant based on Mr. Jaworski still being the Attorney when the extension letter was submitted.

A motion to approve the Resolution be published on August 31, 2018 was made by Mr. Whiteman, seconded by Mr. Rabolli. A roll call of eligible voters revealed 2 aye votes by Mr. Rabolli and Mr. Whiteman.

V. PUBLIC HEARING(S):

**1. DOCKET #1442-18 – ANDREA TOMPOROWSKI, ESTATE OF
THADDEUS TOMPOROWSKI
90 RAMAPO VALLEY ROAD, BLOCK 40, LOTS 104 & 105**

Application for a Certificate of Non-Conformity to determine and permit the use of the property as a two-family residence.

Mr. Cascio stated that the notice was in order.

Ms. Andrea Tomporowski of 224 Arrow Way, Basking Ridge, NJ approached and was sworn in. Her sister, Claudia Tomporowski of 49 Foxtail Lane, Hamburg, NJ also

approached. Ms. Andrea Tomporowski stated that they are applying for a Certificate of Non-Conformity for a two-family home. She stated that taxes, water and sewer are all billed as a two-family dwelling; there are two electric meters, two gas meters and two front doors. Mr. Cascio asked if she had any knowledge of when it became a two-family. Ms. Andrea Tomporowski replied 1956 – one-family conversion with two separate entrances. Mr. Dator commented that Mr. Tomporowski ‘Ted, his Barber’ lived in the dwelling as a two-family and that other houses in that neighborhood are two-family dwellings. Mr. Dator also mentioned Chickey’s store, which was a convenience store at the time, being a two-family dwelling.

A motion was made by Mr. Whiteman, seconded by Mr. Almeda to close the Public Hearing of the meeting for this docket and move into Work Session. All voted in favor.

**2. DOCKET #1441-18 – JACOB & AMY BOGATCH
27 SPRUCE ROAD, BLOCK 6, LOTS 1 & 29**

Application to construct a single family dwelling that abuts a street that does not meet Township standards.

Mr. Cascio stated that the notice was in order.

Mr. Rabolli asked if there was anyone attending the meeting that would like to be heard on this Application.

Ms. Tracy Franco of 17 Maple Road, Mahwah, NJ approached and read from a letter that went to all homeowners within 200 feet of 27 Spruce Road. Ms. Franco stated that the notice detail sounded like the owners of the property could do whatever they wanted to do. Mr. Rabolli stated that there is a catchall phrase to deal with any modest issues that the Board can approve and that any major issues would cause the Application to be defective. Mr. Rabolli stated that the Application is meant to give notice to the Public. Mr. Rabolli informed Ms. Franco that the Engineer would present testimony and the Public would have a right to question the Engineer on the testimony given.

Ms. Barbara Infante of 51 Pine Hill Road approached and asked what would be considered a major issue. Mr. Rabolli responded that only what is approved by the Board may be done by the Applicant. Anything that is not included now, for example a detached garage, would require another variance approval to add it. Mr. Rabolli suggested that Ms. Franco and Ms. Infante stay for the testimony.

Mr. Bruce Whitaker of McDonnell & Whitaker, LLC, 245 East Main Street, Ramsey, NJ approached on behalf of the Applicants, Jacob & Amy Bogatch, that are proposing to construct a single-family home at 27 Spruce Road, known on the Tax Map as Block 6,

Lots 1 & 29. He stated that the Applicants are proposing to build one home on two combined lots. Mr. Whitaker also stated that the Applicants currently live in the vicinity and are looking to build this home for their son and his family to be close to them in proximity. The property is in the R-40 Zone on the corner of Pine Hill Road and Spruce Road and is 48,190 square feet, exceeding the required lot area in this zone. The Applicants are not seeking any variances. The Applicants are before the Board because the property is on a road that is not improved and approved to Township standards. According to Land Use Code, it has to be proven that the road can accommodate a single family home on the lot. No variance approvals are being sought. The proposed building will meet all of the Bulk requirements; front yard setback, rear yard setback and side yard setback. There are a series of homes in the vicinity already being adequately serviced by the road system that exists. Mr. Whitaker commented that many of the lots that were formulated years ago in this zone are deficient in area or are of an odd or irregular shape that required side yard setbacks or front yard setbacks, but not in this case. The purpose here is to show what is being proposed and to show that the roadway system will adequately accommodate the use from a safety aspect. In order to do the construction, and because of the topographic conditions on site, there will be slopes greater than four (4) feet horizontal to one (1) foot vertical. The slopes on the lot are three (3) feet horizontal to one (1) foot vertical, requiring a waiver, not a variance. This type of waiver is typically granted for many of the lots in the vicinity due to the topographical conditions. Mr. Rabolli asked Mr. Whitaker to reiterate the difference between a variance and a waiver for the members of the Public. Mr. Whitaker described a variance as having to show that there is an undue hardship in conforming to the Zoning Code. It is a Zoning aspect, which means it is something that cannot be met as far as a setback is concerned. The reference is Bulk requirement; the rear yard, side yard and front yard setbacks cannot be met when you do not have sufficient area (40,000 square feet). Mr. Whitaker gave an example using 25,000 square feet where a variance would be sought because that is as big as the lot is, showing that there is a hardship, or for what is being proposed, the benefit would outweigh the detriment. Mr. Whitaker described a waiver as showing that there is a standard, engineering wise, that needs to be relaxed. If relaxed, there is no showing of undue hardship and no showing of benefits outweighing the detriment. What is shown is that standard can be relaxed with no adverse effect on the property or the surrounding area. The only waiver being requested is for the vertical slope. Mr. Whitaker reiterated that no variances are being requested.

Mr. Robert Weissman of Weissman Engineering, 686 Godwin Avenue, Midland Park, NJ was sworn in and recognized as an expert in Civil Engineering. Mr. Whitaker referenced the property location and plans submitted and asked Mr. Weissman to confirm that he (Mr. Weissman) had prepared the plans and had opportunity to review Mr. Kelly's report dated July 26, 2018, and a more recent report of August 2, 2018. Mr. Weissman responded; correct. Mr. Weissman stated that the property was on a vacant lot with a mild slope, fully conforming in area, proposing to conform with setbacks and coverages.

Township of Mahwah
Board of Adjustment Meeting Minutes
August 15, 2018

There is a pool being proposed with a house, driveway and septic. The area is 48,190 square feet vs. 40,000 required. Installation of four seepage pits is being proposed. Forty-seven trees will be removed; 16 replaced. The slope is in a Northerly direction. The road system is adequate; Spruce Street and Pine Hill Road are well improved, a nicely developed area. Mr. Weissman described the property and structure of the house, including the pool, deck, septic area and the well. Mr. Weissman stated that the reason for the waiver request was for the three (3) foot to one (1) foot vs. the four (4) foot to one (1) foot slope. Mr. Whitaker referenced the Key Map (Tax Map) on the Plan and asked Mr. Weissman if it was correct to say that this lot is much larger than lots already developed on this roadway. Mr. Weissman responded yes. Mr. Whitaker asked if, from a safety standpoint, emergency vehicles; ambulances, fire trucks, etc. would have appropriate and safe access to this lot. Mr. Weissman replied that there would be access from frontage on two sides of the lot. Mr. Whitaker made reference to prior applications that Mr. Weissman had brought before the Board being approved in the past and stated that this Application meets all of the Bulk standards. Mr. Weissman concurred. Mr. Weissman added that of the 30% building and lot coverage allowed, this application is only at 14% with the development of the pool and patio included, not disturbing the entire lot. Mr. Whitaker asked if there were any adverse conditions being created by the slope issue. Mr. Weissman replied, not in his opinion. Discussion took place regarding soil erosion, safety, storm water and drainage. Mr. Weissman confirmed that all requirements for a lot of this size would be adhered to, including those of the Building Code. Additionally, test holes have been dug and the lot can be developed. Mr. Weissman stated that, in his opinion, no blasting will be required. Conditions on this lot are very similar to other lots in the area. Surface boulders found in this area do not incur additional site impact except for removal of the boulders, with no anticipation of encountering ledge rock. Additional test holes will be required as part of the Building process and the Board of Health and Septic process. Mr. Whitaker referenced the Statue, namely 40:55B-36, stating that there are two aspects to be proven; the first already testified to by Mr. Weissman, that from a safety aspect, Spruce Road and Pine Hill will adequately service the lot. The other aspect is that the proposed construction will not impinge on any future street layout shown on the official Tax Map. There will be no modification to the roads.

Mr. Whiteman questioned the location of the proposed pool, being on a corner lot, and asked if it was on the side yard or in the back yard. Mr. Rabolli commented that it would be behind the building from both Pine Hill Road and Spruce Street. There were no additional questions from the Board.

Mr. Michael Sporfera, owner of 51 Pine Hill Road approached. Mr. Sporfera stated that he had two concerns, the first being where the well is located. Mr. Weissman responded that 27 Spruce Road is 23 feet from the right-of-way, and Mr. Sporfera's house, being directly across the street, would be approximately 110 feet from the well at 27 Spruce

Road. Mr. Weissman stated that the Code requires zero separation well to well. Mr. Weissman also stated that the reason for the location of the well was to keep it 100 feet away from the septic and 100 feet away from the neighbor's septic. Mr. Whitaker asked Mr. Weissman if the distance between the wells and septic was Code conforming. Mr. Weissman replied that it is. Mr. Sporfera raised his second concern that once approved and if hammering starts and they find ledge rock, it would affect his house which is on a slab. Mr. Sporfera asked if the permit would have to be redone and made reference to blasting and hammering that was done when his house was built. Mr. Rabolli stated that he would have the Engineer answer this question as the Zoning Board deals with Zoning issues, and does not deal with construction issues. Mr. Weissman stated that, in his opinion, there would be no blasting or hammering; surface rock would be removed to level the lot. Mr. Weissman continued that he did not anticipate any hammering or blasting, but in the event blasting is needed, it would require a permit from the Town. No permit is required for hammering.

Ms. Barbara Infante of 51 Pine Hill approached. She asked if approved, when building would start. Mr. Rabolli replied that if approved at this meeting, the Resolution would be drafted by Mr. Cascio, be before the Board in two weeks, posted in the newspaper, and then a forty-five (45) day appeal process.

There were no further questions for the Engineer and no additional witnesses to be called.

A motion was made by Mr. Whiteman, seconded by Mr. DeSilva to close the Public Hearing of the meeting for this docket and move into Work Session. All voted in favor.

VI. WORK SESSION:

1. DOCKET #1442-18 – ANDREA TOMPOROWSKI, ESTATE OF THADDEUS TOMPOROWSKI 90 RAMAPO VALLEY ROAD, BLOCK 40, LOTS 104 & 105

Application for a Certificate of Non-Conformity to determine and permit the use of the property as a two-family residence.

Note: Work Session was held immediately after the Public Hearing for this docket.

Mr. Rabolli summarized and stated that the owner, Mr. Thaddeus Tomporowski, a resident of the Township of Mahwah since 1949 had passed away and the family is now selling the property. Mr. Rabolli stated that the Township of Mahwah had previously recognized the home as a two-family as shown in the Tax Records. Mr. Rabolli also commented that Ms. Andrea Tomporowski had set forth clearly that the dwelling is a two-family.

A motion to approve was made by Mr. DeSilva, seconded by Mr. Whiteman. A roll call vote revealed 6 aye votes by Mr. Almeda, Mr. Dator, Mr. DeSilva, Mr. Kearney, Mr. Rabolli and Mr. Whiteman.

Mr. Rabolli asked if there was anyone attending the meeting that would like to be heard on this Application.

Ms. Monica Varas of All State New Jersey Insurance Company, 190 Franklin Turnpike, Suite 1, Mahwah, NJ approached and asked if the 1st floor could be used for a Real Estate Agency Office. Mr. Rabolli stated that the Application was only for certification that it is a two-family dwelling and that's the only thing being voted on. Mr. Cascio responded that Ms. Vargas could go to the Zoning Department for determination if it is permitted and then put in a request for permits. Mr. Rabolli stated that it may be a B Code, but we cannot determine at this time if it can be converted into a business. Mr. Rabolli stated that the Resolution would be drafted by Mr. Cascio, be before the Board in two weeks, posted in the newspaper, and then a forty-five (45) day appeal process.

Ms. Andrea Tomporowski stated that the owners of the property of the United Way Housing next door had told her father that he would always have a driveway in the back that he could go up and down. There is a Deed of Easement, but it does not state in that Deed of Easement that it is joined to Lots 104 & 105, which is her father's property. Ms. Andrea Tomporowski asked where she could find that information. Mr. Cascio advised Ms. Tomporowski to speak with Mr. Mike Kelly, the Township Engineer. Mr. Whitaker referenced the Easement and also suggested that Ms. Tomporowski speak with Mr. Kelly. Mr. Kearney suggested that Ms. Tomporowski take pictures of where the driveway ties into the Easement for her meeting with Mr. Kelly. Mr. Cascio also counseled Ms. Tomporowski to confer with a Land Use Attorney to avoid putting herself in a situation where it is approved as a two-family house, sold for a business, thereby abandoning the use and then lose the benefit if anything should happen.

**2. DOCKET #1441-18 – JACOB & AMY BOGATCH
27 SPRUCE ROAD, BLOCK 6, LOTS 1 & 29**

Application to construct a single family dwelling that abuts a street that does not meet Township standards.

Note: Work Session was held immediately after the Public Hearing for this docket.

Mr. Rabolli summarized and stated that the Applicant is seeking to erect a home that has no Variance requests; it has a Waiver request with regard to slope. He stated that the Engineer has indicated that there is no detriment in changing slope from four (4) foot to one (1) foot, to three (3) foot to one (1) foot. The Code requires that when you are

building on an unapproved, unimproved road that you need to come before the Board. Mr. Rabolli stated that this issue is not a C Variance Standard of Hardship, or a D Variance Standard to Improve the Public good. It is simply a matter of is there adequate access for emergency vehicles and the Engineer has indicated that there would be no issue with regard to access by emergency vehicles.

Mr. Whitaker commented that the Soil Movement Application which indicates 883 cubic yards of excavation and 709 of fill, confirmed by the Engineer, should be reflected in the Resolution.

A motion to approve was made by Mr. Kearney, seconded by Mr. Whiteman. A roll call vote revealed 6 aye votes by Mr. Almeda, Mr. Dator, Mr. DeSilva, Mr. Kearney, Mr. Rabolli and Mr. Whiteman.

VII. ADJOURNMENT:

A motion to adjourn was made by Mr. Whiteman, seconded by Mr. DeSilva. All voted in favor.

The meeting adjourned at 9:02 pm.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on September 28, 2018 for approval at the Regular Meeting to be held on October 3, 2018.