

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

JANUARY 16, 2019

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. Mr. Rabolli reminded all Members of the Board, Legal Counsel and Members of the Public that Board of Adjustment meetings are now being videoed and broadcast live.

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. Calijone Mr. Montroy
Mr. Jackson Mr. Rabolli
Mr. Kearney Mr. Whiteman

ABSENT: Mr. DeSilva Mr. Straffin
Mr. Larson

ATTORNEY: Mr. Ben Cascio, Esq.

PROFESSIONALS: Mr. M. Kelly, P.E., Boswell Engineering
Ms. Deborah Lawlor, PP, Maser Consulting

ADMINISTRATIVE OFFICER: Ms. Geraldine Entrup

I. APPROVAL OF BILLS:

12/5/18; 12/19/18	\$500.00	Ben R. Cascio, Esq. – Attendance, Two Meetings
12/5/18	\$200.00	Maser Consulting – Attendance, One Meeting

A motion to approve the bills was made by Mr. Kearney, seconded by Mr. Montroy. A roll call vote revealed 6 aye votes by M. Calijone, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

II. APPROVAL OF MINUTES:

None to present.

III. RESOLUTIONS AUTHORIZING CONTRACTS FOR PROFESSIONALS:

1. Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract to **Ben R. Cascio for Professional Legal Services** for the Year January 1, 2019 – December 31, 2019.
2. Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract to **Boswell Engineering for Professional Engineering Services** for the Year January 1, 2019 –December 31, 2019.
3. Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract to **Maser Consulting P.A. for Professional Planning Services** for the Year January 1, 2019 –December 31, 2019.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Montroy. A roll call vote revealed 6 aye votes by M. Calijone, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

IV. MEMORIALIZING RESOLUTIONS:

1. **DOCKET #1450-18 – PAUL AND MARGARET MEOLA
33 MAPLE ROAD, BLOCK 4, LOT 2**

Resolution of Approval for a “C” Variance to construct a one and a half story home on an undersized lot that does not have frontage on an improved or approved street.

A motion to approve was made by Mr. Montroy as the only eligible Board Member present.

V. OPEN TO THE PUBLIC:

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

VI. PUBLIC HEARING(S):

1. **DOCKET #1451-18 – DAVID & SUSAN WINTERS
153 STAG HILL ROAD, BLOCK 12, LOT 36**

Demolition of existing home, construction of a new home with related improvements on a street that is not approved or improved to Township Standards.

Mr. Cascio stated that the notice was in order.

Mr. Bruce Whitaker, Esq. of McDonnell & Whitaker, 45 East Main Street, Ramsey, NJ, approached on behalf of the Applicant. Mr. Whitaker stated that the property is located in the R-40 Zone and he gave an overview of the Application. The Applicant is proposing to construct a one-story single-family dwelling centrally located on the lot with an attached two-car garage. The existing non-conformities of side-yard setback and front-yard setback will be eliminated with the construction of the new home. There are no bulk requirements being sought. The Applicant is proposing to keep the existing non-conformities of lot area, 39,500 square feet where 40,000 square feet is required, and lot depth of 150 feet where 175 feet is required. The Applicant is seeking relief under NJSA 40:55D-36 to permit the construction of this home on a lot that fronts on Stag Hill Road, which is not approved or improved to Township standards. The construction of the new home will not create any problems from an accessibility standpoint or from a safety concern as there will be adequate access for emergency vehicles. An added safety aspect will be the asphalt driveway providing access to the garage and to the house. The construction of the home will not impinge on any future street layout shown on the Official Tax Map of the Master Plan.

At Mr. Rabolli's request, Mr. Whitaker described C Variance Relief as deviation from what the code requires; and the difference between C1 (hardship) and C2 (substantial benefit to the public that outweighs detriment). Mr. Whitaker stated that both would work in this scenario, however, the C2 would be stronger. Positive aspects are the elimination of two non-conformities, upgrading the site, a better home, a garage and an asphalt driveway.

Mr. Peter Kirch, Surveyor of 43 Spring Street, Ramsey, NJ, approached and was sworn in and recognized as an expert witness in Surveying by Mr. Rabolli. Questioned by Mr. Whitaker, Mr. Kirch described the conditions of the existing lot and the proposed changes to be done. A copy of the plan was presented on poster board for review. Mr. Kirch stated that the lot slopes from the South to the North. There is an existing non-conforming two-story framed dwelling at the left corner of the lot. The lot is at the corner of Eastview and Stag Hill Road. The access for emergency vehicles goes beyond this lot to service other homes. The roadway is approximately 30 feet wide and is paved. Confirming much of what Mr. Whitaker had stated previously, Mr. Kirch discussed the lot size, the proposal of a one-story single-family home with an attached garage to be centrally located on the property, and the cesspool being replaced by septic designed with current standards. The proposed plan is within setbacks; no new variances are being

requested. The two non-conformities are being eliminated. All standards pertaining to soil erosion control methods for purposes of development of the lot will be met.

Mr. Rabolli asked about the breezeway connecting the house to the garage, and how it would be interpreted as an attached garage vs. a detached garage. Mr. Whitaker responded that the breezeway is an enclosed part of the building that will have walls and be heated. Mr. Kelly added that the Township interprets it as attached; it is connected and not an accessory structure.

Mr. Kelly requested the schedule of the demolition to confirm that it would be done prior to the construction of the new home. Mr. Whitaker confirmed that the demolition would take place first. Mr. Kelly stated that the Applicant would be required to submit a Soil Movement Application.

Mr. Kearney asked if the garage was intended to be a garage only, no other use such as living space. Mr. Whitaker responded, yes.

Mr. Whitaker gave his closing statement and stated that he and Mr. Kirch have shown the reasons why the relief request is appropriate.

A motion was made by Mr. Montroy, seconded by Mr. Whiteman to go into Work Session. All voted in favor.

VII. WORK SESSION:

1. DOCKET #1451-18 – DAVID & SUSAN WINTERS 153 STAG HILL ROAD, BLOCK 12, LOT 36

Demolition of existing home, construction of a new home with related improvements on a street that is not approved or improved to Township Standards.

Mr. Kearney asked that the Resolution incorporate that the garage could not be converted to separate living space in the future. Mr. Whitaker commented that if a separate garage was put on the property in the future either by the Applicant or future homeowner, the attached garage could then be used as living space. Mr. Kelly agreed with Mr. Whitaker's statement.

Mr. Jackson questioned why the garage plan was not included with the house plan. Mr. Whitaker explained that since it is just a garage, not living space such as bedrooms and no interior is being shown, it does not have to be on the plan. Mr. Jackson asked for clarification that if a separate garage was built in the future, that the shed would have to be removed, as only one accessory is permitted. Mr. Whitaker confirmed.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Montroy. A roll call vote revealed 6 aye votes by Mr. Calijone, Mr. Jackson, Mr. Kearney, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

2. 2018 ANNUAL REPORT:

Mr. Cascio commented that the 2018 Annual Report had been provided to each Member of the Board to review and bring any comments or concerns to the meeting. A list of 2018 Applications and Analysis were included with the report. The recommendations to the Council were the same as last year's. Mr. Rabolli clarified for the new Members that during 2019 any issues that they might want to add for the Annual Report will be included in the 2019 Annual Report. Mr. Kelly stated that the Township is in the process of revising the Zoning Code, that he reviewed the Annual Report, and sees no reason to make any changes in the Resolution. Everyone was asked to look at the Resolution for discussion at the next Board of Adjustment Meeting. Discussion took place regarding revisions to Codes. Ms. Lawlor commented that both Boards are looking at possible revisions, and are actually doing a 10 year look back. Suggestions from the Public are being considered as well. While doing a cleanup, going beyond cleanup is also being considered.

3. OLD BUSINESS:

Mr. Whiteman asked if there was an update on the Litigation section of the Annual Report. Mr. Cascio replied that the Complaint was filed in October, 2018, Royle filed their answer on September 16, 2018. Mr. Cascio filed an answer on behalf of the Board of Adjustment on the same day. Notice was received that a Pre-trial Conference will be held in February 2019. Royle's Attorney filed a counter claim and a motion to dismiss Plaintiff's complaint and that will be heard on the papers in February, 2019.

4. NEW MEMBERS:

Mr. Rabolli gave the new Members, Mr. Calijone and Mr. Jackson, the opportunity to introduce themselves and give a little bit of their background to the rest of the Board Members.

VIII. ADJOURNMENT:

The meeting adjourned at 8:19 p.m. on a motion by Mr. Whiteman, seconded by Mr. Montroy.

Township of Mahwah
Board of Adjustment Meeting Minutes
January 16, 2019

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on March 1, 2019 for approval at the Regular Meeting to be held on March 6, 2019.