

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

JANUARY 17, 2018

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:40 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. Kearney Mr. Rabolli
 Mr. Larson Mr. Straffin
 Mr. Montroy Mr. Whiteman

ABSENT: Mr. Almeda Mr. DeSilva
 Mr. Dator

ATTORNEY: Ms. Sophy Sedarat, Esq. covering for Mr. Ben R. Cascio

I. APPROVAL OF BILLS:

12/06/17; 12/20/17	\$500.00	Ben R. Cascio, Esq. – Attendance Two meetings
12/21/17	\$577.50	Ben R. Cascio, Esq. – Preparation of Annual Report

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

II. APPROVAL OF MINUTES:

A. MINUTES OF OCTOBER 18, 2017

A motion to approve was made by Mr. Straffin, seconded by Mr. Whiteman. All eligible members voted in favor.

B. MINUTES OF NOVEMBER 1, 2017

A motion to approve was made by Mr. Kearney, seconded by Mr. Larson. All eligible members voted in favor.

C. MINUTES OF DECEMBER 6, 2017

A motion to approve was made by Mr. Whiteman, seconded by Mr. Larson. All eligible members voted in favor.

III. RESOLUTIONS AUTHORIZING CONTRACTS FOR PROFESSIONALS:

A. Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract for Professional Legal Services to Ben R. Cascio, Esq. for the Year January 1, 2018 – December 31, 2018.

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

B. Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract for Engineering Services to Boswell Engineering for the Year January 1, 2018 – December 31, 2018.

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

C. Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract for Planning Services to Maser Consulting, PA for the Year January 1, 2018 – December 31, 2018.

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

IV. MEMORIALIZATION OF RESOLUTIONS:

**1. DOCKET #1432-17 – MICHAEL AND AIDA BERGBAUER
127 LAKEVIEW DRIVE, BLOCK 18, Lot 9**

Resolution granting the approval to build a single family home on a lot with deficient lot area and width.

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

V. OPEN TO THE PUBLIC:

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

VI. PUBLIC HEARING:

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

Application for a “C” Variance to construct a single family home on vacant land without frontage upon a street, continued from November 1, 2017.

Mr. James Jaworski, Esq., of Wells, Jaworski & Liebman, LLP, approached on behalf of the Applicant. He referred to the brief he submitted and provided a revised Exhibit List. Exhibits A1 – A13 were marked into evidence.

Mr. Rabolli announced that the following certifications were received for this application:

Mr. G. Montroy	November 1, 2017 Meeting Certification
Mr. W. Straffin	November 1, 2017 Meeting Certification

The following three exhibits were marked into evidence:

Exhibit BOA – 1	Correspondence from Boswell Engineering dated 10/26/17
Exhibit BOA – 2	Correspondence from Maser Consulting P.A., dated 9/27/17
Exhibit BOA – 3	Department Head Reports Package

Mr. Jaworski brought up grandfathering and stated that he had submitted several OPRA requests to the Township for information. A lengthy discussion took place regarding the 1975 Mahwah Code and when lots were created; 1963 and 1964. There is no available vacant land and Lot 17 has a lot depth issue. Adding property from either Lot 16 or 18 would satisfy the criteria of lot depth. Mr. Jaworski stated that the lot was created in

1963 as a conforming lot with 11,250 square feet with access to Skytop Road by means of a right- of-way.

The discussion continued regarding language within the Municipal Land Use Law (MLUL) as well as the Township Zoning Code relative to lot area, lot depth, lot width and the term right-of-way. Several sections were cited and read into the record (MLUL 40:55D-36 Appeals and Township Zoning Code Section 24-5.1 Lot Regulations). Mr. Kelly questioned lot frontage requirements in 1975. Mr. Jaworski believes the grandfather argument is very strong. Ms. Sedarat does not see language within the codes that a right-of-way should be grandfathered.

Ms. Sue Driscoll, of 25 Stone Fence Road, approached and referred to the Mahwah Township Ordinance #163, dated June 24, 1954, reading Section 3 into the record referencing street frontage. The discussion continued as to the right-of-way. Mr. Jaworski does not believe there are any specifics on who can or cannot utilize the right-of-way. Upon questioning by Mr. Whiteman, Mr. Jaworski indicated that the liability and maintenance of the right-of-way are the responsibility of the right-of-way owner.

There are two separate issues regarding the application. It can be qualified under grandfathering or a hardship case. Mr. Jaworski would like to continue and conclude his grandfathering arguments and then let the objectors present their case. Mr. Kelly questioned if this should be heard before the Planning Board. Mr. Jaworski stated that the courts remanded the Applicant come back to the Board of Adjustment. There was a long discussion on the prior application, the Applicant's current appearance before the Board of Adjustment and the Judge's decision.

Mr. Jaworski called Mr. Tibor Latincsics of Conklin Associates, 29 Church Street, Ramsey, NJ. Mr. Latincsics was reminded he remains under Oath. He presented a new exhibit which is a consolidation of previously marked Exhibits A-1, A-2 and A-3, all superimposed on an existing conditioned survey of the property.

Upon questioning by Mr. Larson, Mr. Jaworski confirmed the original application was presented as a hardship case to the Board of Adjustment in 1985, denied, and then overturned by Judge DeCordova and remanded back to the Board.

Ms. Sue Driscoll, of 25 Stone Fence Road, approached on behalf of the area neighbors. Mr. Kelly's October 26, 2017 report was referred to. The following was discussed in detail: street frontage, lot depth, lot width, adjacent vacant land, and street lot lines. Mr. Kelly read the definitions of lot width and lot depth into the record.

After referencing the Filed Map #5925, Exception #27, Mr. Latincsics believes the intent of the right-of-way was to give the lot access to Skytop Drive. Mr. Whiteman

commented that he believes it is obvious that the lot was meant to be buildable and the right-of-way is to grant access. Arguments ensued regarding the placement, the benefit, and the creation of the right-of-way.

Ms. Alexandra Schutz, of 14 Skytop Drive approached. She questioned the guardrail along the driveway and the retaining wall; how would they be able to get to the back of their property? She is concerned with losing access to a large portion of her property. Mr. Latincsics indicated a gate and a potential ramp will be provided.

Mr. Greg Schutz, of 14 Skytop Drive approached. He asked if a gate could be installed within the guardrail. Mr. Latincsics replied it can be done. Mr. Schutz questioned sanitary service, stormwater runoff, the location of emergency turnaround, coverage calculations, distance to nearest hydrant, soil management, and retaining wall, all of which were discussed in detail.

In regards to the permit process for retaining walls, walls over three feet require Building Department and Engineering review.

Mr. Eric Fein, of 10 Skytop Drive approached. He questioned the impervious coverage that is being created on his property and will that additional coverage impact impervious coverage calculations for any future plans for his property. Mr. Latincsics indicated Mr. Fein's property is encumbered by the access right-of-way. The existence of a chainlink fence as well as adverse possession were also questioned by Mr. Fein. Mr. Latincsics indicated that the Applicant is aware of both.

Ms. Megan Charles, of 10 Skytop Drive approached. Ms. Charles questioned the 1985 Charles Blessing plan as being approved as compared to conceptual. Mr. Jaworski indicated the application incorrectly shows the plans as being approved and will be amended. Ms. Charles also questioned the location of the emergency turnaround on her property and that she believes it should be located on the Applicant's property. Mr. Latincsics replied that the Applicant has the benefit of the right-of-way.

Ms. Charles stated that the use of the emergency turnaround will result in her lot being non-conforming. She mentioned that approximately one third of her property will be unusable. There was discussion on the zoning of Ms. Charles' lot as well as coverage options going forward. Ms. Charles also questioned access to her property beyond the guardrail. A discussion took place regarding the installation of a gate, grading and slopes. What is permitted in the right-of-way was questioned. Mr. Rabolli commented that planning testimony may be needed to address the gate, slope, and any detriment to neighboring properties. Mr. Rabolli addressed Mr. Jaworski indicating they may need testimony in regards to a hardship.

Township of Mahwah
Board of Adjustment Meeting Minutes
January 17, 2018

Mr. Rabolli called a recess at 9:36 pm.

The meeting reconvened at 9:44 pm.

Mr. Robert Condatore, of 6 Skytop Drive approached. He referred to Master Plan Goals #5, #6 and #8. He questioned the number and diameter of trees to be removed, the recharge area, fragmenting, the greenbelt, flag lots, the deed presented by Ms. Driscoll, and easements. Mr. Whiteman questioned the deed that was presented. Arguments ensued regarding the deeds, easements, and the right-of-way.

Ms. Kim Condatore, of 6 Skytop Drive approached and questioned the environmental impact of the number of trees to be removed. She counted a total of 44 trees with 40 to be removed. She questioned tree replacement quantity and location. Mr. Kelly indicated the 40 trees proposed to be removed are on Lot 17 and within the right-of-way.

Mr. Andrew Boruta, of 25 Stone Fence Road approached. He noted that Lot 17 is very complex and questioned safety. He described the area by his home as having a steep slope that contains a retaining wall with two tiers. Mr. Boruta encouraged all Board Members to visit the area. A lengthy discussion took place between Mr. Latincsics and Mr. Boruta regarding the retaining wall capabilities during construction of the proposed home. Mr. Latincsics indicated he has not assessed the retaining wall. Mr. Boruta is very concerned about the possibility of the retaining wall failing. He is also concerned with the potential of mature trees being damaged during or as a result of construction.

Mr. Kelly questioned emergency services access and garbage pick-up. He asked if an interlocal agreement with Ramsey will be necessary. Mr. Kelly recommends that there be adequate signage visible to locate the property. A Soil Movement Permit Application will be required for Lots 17, 18, 19 and 20, requiring the consent of all property owners. Mr. Kelly also indicated drainage calculations will need to be provided.

At this time there were no further questions from the Board or the Public for Mr. Latincsics.

After a brief discussion on scheduling, Mr. Rabolli announced the Sean Royle application is carried to the February 21, 2018 meeting and no further notice is required. Mr. Jaworski will provide an extension of time letter to the Board.

VI. WORK SESSION:

Mr. Rabolli indicated the 2017 Annual Report will be discussed at the next meeting.

VII. ADJOURNMENT:

The meeting adjourned at 10:10 pm on a motion by Mr. Whiteman, seconded by Mr. Montroy.

Township of Mahwah
Board of Adjustment Meeting Minutes
January 17, 2018

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on March 29, 2018 for approval at the Regular Meeting to be held on April 4, 2018.