

A motion to approve was made by Mr. Dator, seconded by Mr. Whiteman. A roll call of eligible voters revealed 6 aye votes by Mr. Almeda, Mr. Dator, Mr. DeSilva, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

**2. DOCKET #1437-18 – GEIGER ROAD CONSTRUCTION, LLC
PINE HILL ROAD, BLOCK 11, LOTS 5 & 6**

Resolution granting approval to build a single family house on a lot that does not have frontage on an approved street, slope waiver, soil moving approval, and bulk variances.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Straffin. A roll call of eligible voters revealed 5 aye votes by Mr. Almeda, Mr. Dator, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

IV. OPEN TO THE PUBLIC:

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

V. PUBLIC HEARING(S):

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

Application for a "C" Variance for the construction of a single-family home on vacant land without frontage upon a street.

Mr. Dator and Mr. DeSilva recused themselves from voting on this docket.

Mr. James Jaworski, Esq., of Wells, Jaworski & Liebman, LLP, Paramus, NJ approached on behalf of the Applicant.

Ms. Suzanne Driscoll of 25 Stone Fence Road approached on behalf of the neighboring public, not as an attorney.

Mr. Rabolli asked if any other neighboring property owners were present. The following replied:

Robert & Kim Condatore, 6 Skytop Drive
Eric Fein & Megan Charles, 10 Skytop Drive
Greg & Alexdandra Schutz, 14 Skytop Drive
Andrew Boruta & Suzanne Driscoll, 25 Stone Fence Road

Township of Mahwah
Board of Adjustment Meeting Minutes
May 2, 2018

Mr. Rabolli stated that this is not a D Variance where you need five affirmative votes. This is one that only requires a majority of the members present. Having five, there is a quorum. Mr. Rabolli announced that the following signed certifications were received for this application:

Mr. Almeda	November 1, 2017 Meeting Certification January 17, 2018 Meeting Certification
Mr. Straffin	November 1, 2017 Meeting Certification

Mr. Rabolli stated that Exhibits OV 1-33 have been marked into evidence and made part of the record. Mr. Jaworski entered three new exhibits into evidence which are all documents on public record within the County;

Exhibit A-15	Title Search - Robert & Kim Condatore, 6 Skytop Drive
Exhibit A-16	Title Search - Eric Fein & Megan Charles, 10 Skytop Drive
Exhibit A-17	Title Search - Greg & Alexandra Schutz, 14 Skytop Drive

Mr. Tibor Latincsis of Conklin Associates, 29 Church Street, Ramsey, NJ approached. He remains under Oath. Mr. Jaworski explained that a Title Search is a Historic Search of Deeds of Record such as filed maps, tax maps and other documents relating to a property. It is all public information; deeds may accessed, filed maps may be ordered. Mr. Latincsi then referred to Exhibit A-2, file map of White Birch Estates.

Mr. Rabolli asked if the Title Search presented as Exhibit A-15 differs from the homeowners Title Search at the time of purchase. Mr. Jaworski replied yes and confirmed that it was obtained from the Title Search company. Mr. Latincsi stated, in reference to Exhibit A-15, the Condatore property at 6 Skytop, that the first two pages are a summary of the chain of deeds from various property owners. The third page is the Municipal tax map. Page 4 is the original 1928 filed map. Pages 5 & 6 are a portion of Filed Map 5925, Exhibit A-2, which shows the varied properties in question. The 1963 Deed Developer was Charles Bier. The initial owners were Herbert & Francis Bush. There were a series of deeds; five pages from the end is Bush to Condatore. A discussion took place regarding the meets and bounds description which indicates that it is not part of the right-of-way. Page 2 of the deed also references November 7, 1962 as Filed Map 5925.

Referring to Exhibit A-16, the Fein & Charles property at 10 Skytop, the middle lot, Mr. Latincsi stated that pages are referenced again as in Exhibit A-15. Mr. Latincsi commented, in response to Mr. Jaworski's question, that the deed from Smith to Fein &

Charles dated August 14, 2014 states that the property is subject to easements and restrictions of record affecting the use, occupancy and maintenance of the property.

Page 2, Schedule A, is a legal description of the Filed Map 5925. This deed does not reference a specific survey. The prior deeds in the Chain of Title refer to the 1975 deed for Hagen to Martin which has a specific reference to a 50 foot right-of-way for access purposes as shown on a survey of Conklin Associates dated May 20, 1963, revised April 29, 1963. Mr. Whiteman questioned why the easement was in the 1975 deed but not in the 1987 deed. Mr. Latincsis responded that the question would have to be referred to an attorney. Mr. Kearny commented that, not having reviewed the three exhibits beforehand and with changes from deed to deed, he felt rushed and needed to be able to understand the root of where all of the material comes from and hear all aspects of it. Mr. Rabolli summarized the references.

Mr. Latincsis, referring to Exhibit A-17, the Schutz property at 14 Skytop Drive, stated that once again, the pages are referenced, i.e., summary of chain of title, copies of the tax map and various filed map. The deed from Hope to Schutz dated December 10, 2015 indicates that subject to easements and restrictions of records, if any, zoning ordinances and such facts an accurate survey may reveal, the property is subject to a 50 foot access right-of-way running over the easterly portion of the above described premises and as shown on Filed Map 5925. Additionally, it references a survey by Rigg Associates dated December 4, 2015. This deed provides the most information out of the three. Again referring to Exhibit A-2, Mr. Latincsis commented that the filed map is the starting point; prepared by a licensed surveyor, checked by the Township Engineer, reviewed by the County, signed by the Municipality, filed and given a number. Any surveyor could enter a subdivision and recreate the property lines. The filed map is very significant. Mr. Jaworksi asked if there was anything in any of the three exhibits that indicated that those right-of-ways no longer exist, have been vacated or otherwise been modified. Mr. Latincsis responded that there was nothing in the title searches. The filed map carries preference and every deed references the filed map.

Mr. Rabolli opened the discussion to the Board Members, allowing time for questioning Mr. Latincsis with regard to the three impacted properties, the deeds, the right-of way or the title search. Mr. Kearney asked for confirmation that there were no subsequent maps. Mr. Latincsis replied, yes and the filed map is required to be on the same scale as the tax map. Mr. Kelly commented that the current tax map depicts a 50 foot access right-of-way that coincides with the Filed Map 5925 filed November 7, 1962. A lengthy discussion took place regarding the difference between an access right-of-way and an easement. Mr. Kelly referred to the Moskowicz Book, the latest illustrated book of development recognitions, 2nd Edition, 2007 printing and read the definitions of both. Ms. Sedarat stated that a right-of-way is broader than an easement. A right-of way is public, an easement is specific. Mr. Kelly commented that the Township does have private right-of-ways, but this one is not specific and is not the Township's responsibility.

Mr. Rabolli added that this is not an exclusive right-of-way and would be accessible to the neighboring properties. It is not noted as a private access.

Mr. Rabolli opened the meeting to the Public regarding Title issues only. Ms. Megan Charles of 10 Skytop Drive approached. She stated that it is not clear; Titles are just one of many components. She continued that the language regarding the access right-of-way appears in some titles; 60's and 70's, gone in 81, back in the 90's and out in the 2000's, and questioned how there could be a definitive answer. Mr. Latincsics again referred to Filed Map 5925 which is the basis of land ownership. Ms. Charles commented that the map is fine, the definition of the right-of-way being in and out of Titles is what is hazy and stated that no judgement should be brought about based on a starting point. Mr. Jaworski responded that Attorneys have different methods of drafting deeds and that it is the responsibility of the Title Search Company. Further discussion took place.

Ms. Sue Driscoll of 25 Stone Fence Road approached and stated that no one is disputing that the right-of-way exists, they are disputing that it is specifically for Lot 17. She commented that this right-of-way is not specific and questioned if the standard legal wording was not just legalese. Ms. Driscoll made reference to the Ramsey Easement Deed that specifically details who is responsible for insurance, maintenance, etc. The Ramsey Deed was previously marked into evidence as Exhibit A-9.

There were no further questions from the Public for Mr. Latincsics. Mr. Straffin asked if the filed map had changed since the right-of-way and lot were created. Mr. Latincsics replied that there were no changes. Mr. Jaworski stated that this case was remanded back to the Board, but they are making their case that they are grandfathered and would not have to appear for a Variance. Mr. Jaworski also stated that the Applicant would be agreeable to a resolution adopted by the Board with reasonable conditions that specifies who is obligated to insure and maintain.

Mr. Jaworksi informed the Board that Part II of Mr. Latincsics' testimony referenced the concern brought up at a prior meeting regarding the impact to properties affected by the right-of-way in terms of coverage or variances. Mr. Jaworksi stated that the research found surveys, but did not find one for one of the properties. Mr. Latincsics gave detail of lot sizes, permitted coverages and style of homes for each of the neighboring properties and commented that no bulk variances are triggered. Mr. Rabolli clarified that assuming the right-of way is paved it does not cause a bulk problem in terms of improved lot coverage needing a variance when selling homes. Mr. Latincsics stated that the right-of-way and the paved area will increase the total improved lot coverage on each of the properties by 3-5%, which is substantially less than the permitted 40%.

Mr. Rabolli asked if any members of the Public had questions about the bulk issues.

Mr. Greg Schutz of 14 Skytop Drive approached and asked if in calculating the size of the lot, reducing the amount of the square footage of the right-of-way and recalculating the size of the lot, does it still conform with the buildable lot size in Mahwah for Lot 18? Mr. Latincics responded that he used the gross lot area because the right-of-way is still part of the lot area. For 10 Skytop (Lot 18), which is 22,743 square feet, it includes the access right-of-way. The area of the access right-of-way is still part of the lot and not excluded from the calculation. Ms. Driscoll stated that with the guard rails it becomes taking of property and not being able to get to the side of the property; doesn't that create a bulk deficiency. Mr. Latincics replied no, the land still exists. Ms. Driscoll commented that it is a problem because there is no easement. Mr. Rabolli stated that Ms. Driscoll's comments will be taken into advisement. Mr. Kelly asked Mr. Latincics, with respect to the gravel turn-around on Lot 18, was the turn-around included as lot coverage in the analysis. Mr. Latincics replied yes, that is how the range of 3-5% was determined. Mr. Kelly asked that the analysis be provided to the Board for review. There were no additional questions from Members of the Board or the Public for Mr. Latincics regarding bulk.

Mr. Jaworski presented, and marked into evidence as Exhibit A-18, the letter of January 4, 2018 where the Board asked him to address the issue of grandfathering. No additional documents were provided. There were no additional witnesses.

At this time Mr. Jaworski is asking for a vote on the two issues; grandfathering and the right-of-way. Mr. Jaworski stipulated that the Plot Plan would be submitted for review. He stated that based on the Board's determination regarding grandfathering, he would either come back to the Board for a C Variance for hardship relief, or they take the case further. Mr. Jaworski summarized what has been presented regarding grandfathering and stated that Lot 17 is not grandfathered with respect to the right-of-way, nor does it have to be. He made further reference to the filed maps in 1928 and the 1962 Filed Map of White Birch Estates where the right-of-way exists. All of the Title Searches show the right-of-way. Every property owner took title subject to that right-of-way.

Mr. Rabolli addressed Ms. Driscoll and stated that as a matter of law, the lot is grandfathered in, although undersized now, it was at some point properly sized. Mr. Rabolli also stated that the right-of-way has been demonstrated expressly by the filed map and the deeds for each property. The actual chain of title of Ms. Charles and Mr. Schutz is that if they went back far enough there was a 50 foot right-of-way. Ms. Driscoll responded by referring to her letter of February 9, 2018. Her property was subdivided into two lots in 1981. A discussion took place regarding buying additional property. Ms. Driscoll believes that if part of her property had been purchased, both bulk deficiencies would have been satisfied. She also argued that the Applicant cannot decide which is the front line of the property. Mr. Jaworski disagreed and stated that they have a right-of-way fronting the lot and are entitled to front the house on the right-of-way.

Mr. Rabolli asked Mr. Jaworski if the house was rotated would it now be in conformance. Mr. Jaworski replied that he would have to get a scale and do the dimensioning. Mr. Kelly stated that the definition for lot depth should be reviewed and read that the lot depth is the distance between the front lot line and the rear lot line. He then read the definitions of front lot line and rear lot line which are defined as follows: The front lot line shall mean the lot line separating the lot from street right-of-way also referred to as street line. Rear lot line shall mean the line opposite from the front lot line.

There were no additional witnesses for Mr. Jaworski.

Addressing Ms. Driscoll, Mr. Rabolli stated that the Applicant has rested and that she is entitled to present evidence or make a statement. Speaking to Mr. Jaworski, Mr. Rabolli instructed him to address Ms. Driscoll's argument that in 1976, the code for non-conforming lot states that since there was vacant land that could have satisfied the bulk deficiencies, then it is not a non-conforming lot. Mr. Jaworski stated that the Grandfathering Ordinance specifically speaks to the vacant land at the time of the ordinance which was 1976, and that they could have solved the lot width but not the lot depth.

Mr. Rabolli announced that the discussion would be carried to the next meeting on May 16, 2018 at 7:30 p.m. Mr. Montroy and Mr. Larson will receive copies of the CD recording from this meeting.

Mr. Jaworski consented to the extension of time to June 15, 2018 for purposes of action by the Board.

VII. ADJOURNMENT:

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

The meeting adjourned at 9:44 pm.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on July 13, 2018 for approval at the Regular Meeting to be held on July 18, 2018.