

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**FEBRUARY 19, 2020**

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 and a reminder that Board of Adjustment meetings are being videotaped 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. Rabolli  
Mr. Jackson Mr. Straffin

**ABSENT:** Mr. Cannava Mr. Montroy  
Mr. DeSilva Mr. Whiteman  
Mr. Kearney

**ATTORNEY:** Mr. Ben R. Cascio, Esq.

**PROFESSIONALS:** Mr. Michael J. Kelly, P.E., Township Engineer

**I. APPROVAL OF BILLS:**

None to present.

**II. APPROVAL OF MINUTES:**

**A. MINUTES OF JANUARY 15, 2020 – REORGANIZATION MEETING**

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

**B. MINUTES OF JANUARY 15, 2020 – REGULAR MEETING**

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

**C. MINUTES OF JANUARY 22, 2020**

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

**D. MINUTES OF FEBRUARY 5, 2020**

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

**III. MEMORIALIZING RESOLUTIONS:**

None to present.

**IV. OPEN TO THE PUBLIC:**

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public were present.

**V. PUBLIC HEARING(S):**

**1. DOCKET #1473-19 – MAHWAH SALES & SERVICE, INC.  
55 FRANKLIN TURNPIKE, BLOCK 70, LOT 3**

Application for Variances to make modifications to the building, façade and signage, as well as amended Site Plan approval for existing parking and the use thereof. Mr. Rabolli announced that, due to the Application being for a D Variance, seven (7) Members of the Board are requested; only five (5) Members of the Board were present. The Docket is being carried to the March 4, 2020 Board of Adjustment Meeting. No further notice is required.

**2. DOCKET #1457-19 – HENRY AND MARIBEL CORTES  
186 HALIFAX ROAD, BLOCK 1, LOT 126**

Carried from January 22, 2020. Application for “C” Variances/Waivers to construct a single-family home with retaining walls that are greater than 6 feet in height; side-yard setback of 48 feet where 50 feet is required, Soil Movement Permit Application with waiver to create slopes of 1V:3H; construction on a lot that does not have frontage upon an improved or approved street; construction on a roadway that is not improved or approved; construction on an existing undersized lot.

Mr. Bruce Whitaker, Esq. of McDonnell & Whitaker, 245 East Main Street, Ramsey, NJ approached on behalf of the Applicant and stated that at the December 4, 2019 meeting

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questions were raised by the Board Members pertaining to fire access to the lot and configuration of the dwelling. Mr. Whitaker informed the Board Members that he had met with Mr. Michael Roe, Township of Mahwah Fire Official, and that Mr. Roe is present at this meeting.

Mr. Roe approached, was sworn in by Mr. Robolli, and provided his qualifications as Mahwah Fire Chief, an inspector, fire fighter, his earned certifications and twenty (20) years of experience, as well as three (3) years of reviewing Plans and reporting on Fire Safety ingress and regress to a site. Asked by Mr. Rabolli if he felt comfortable rendering his opinion with regard to fire safety questions that are presented during this Application, Mr. Roe replied, yes.

Mr. Roe stated that his initial concern was with the grade of the driveway. Now that the grade has been lowered and the home will be furnished with a 13D Sprinkler System, the sprinkler system could possibly put a fire out before the Fire Department arrives, and/or assist fire fighters with putting out a fire, as well as allow additional time for the Applicant and his family to get out of the house. Due to the fact that the closest fire hydrant to the home would be almost 1,400 feet, there was concern about the pressure and how a fire would be fought. Mr. Roe stated that he had requested a flow test from the hydrant. The pressure is adequate. To boost the pressure up, a fire truck would be placed at some point in the middle of the driveway. With the change in the proposed grade, the turning access is a lot safer to manipulate the trucks up the driveway and back down safely rather than having to back all the way down the driveway as on the previously proposed 15% grade.

Mr. Roe commented that he has a level of comfort with the latest plans received of the photos indicating the turning radius, widening the driveway 110 feet, as well as the macadam turn-around area for the trucks to back in instead of backing all the way down the driveway.

Mr. Cascio requested that the Fire Truck Access Plan prepared by Mr. Robert Weissman, Godwin Engineering Company, 686 Godwin Avenue, Midland Park, NJ, dated January 30, 2020, be marked into evidence as **Exhibit B1**.

In response to Mr. Whitaker's questioning, Mr. Roe confirmed that the Plan was a culmination of using templates for the equipment that the Township of Mahwah has and that access is appropriate, the water pressure at the hydrant is sufficient with a pumper with a 135 PSI coming out of the hydrant, even with one of the well pumps being turned off, adequate pressure is provided.

Mr. Rabolli opened the hearing for questions and/or comments from Members of the Board. Mr. Calijone requested that a restriction be added that no semi or permanent structures be placed in the macadam turn-around area. Mr. Jackson requested confirmation of the rear stabilizer of a ladder or pumper truck being able to turn-around

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with the newly proposed 20 foot wide driveway at 110 feet back from the residence; Mr. Roe confirmed.

Discussion took place regarding a tank to pump water from the pool. Mr. Weismann stated that the pool would be secondary to the 13D Sprinkler System. Mr. Roe added that the 13D System has a tank.

Mr. Whitaker discussed the other items that were requested by the Board at the last meeting.

- 1) Updated consent from the Polo Club  
The Ramapo Hunt Polo Club Association consent dated January 21, 2020 was sent with a letter to the Board with Mr. Whitaker's cover letter dated January 24, 2020. The consent provides for a reference to the Plan and also confirms that the improvements proposed are approved; the drainage facilities on Halifax Road are on the Association property. This consent is more specific than the original. The consent was marked into evidence as **Exhibit A2**. (Please note that **Exhibit A2** was also previously marked as 'Revised Plan; 2 revisions dated October 18, 2019 and November 26, 2019' at the December 4, 2019 hearing).
- 2) Mr. Whitaker referenced his request that the Board grant a waiver from submitting an Environmental Impact Study (EIS), stating that he made the request based upon three (3) reasons:
  - a. Minimal development on an individual lot which was one time the subject of an EIS when the entire Polo Club subdivision was approved by the Township of Mahwah; confirmed by Mr. Montroy, former Construction Code Official.
  - b. Typically not required for a single-family home in a C200 Zone.
  - c. The Applicant was required to submit an Environmental Report to the NJ Department of Environmental Protection and has received four (4) permits pertaining to flood hazards, which is far more extensive than the EIS in Mahwah. A letter from Mr. Whitaker dated December 5, 2019 was e-mailed to Ms. Entrup to forward to Members of the Board. The report was marked into evidence as **Exhibit A3**, which comprises the following seven (7) documents:
    - i. ETI Report Prepared March 20, 2019
    - ii. State of New Jersey Letter dated May 22, 2018
    - iii. Highlands Exemption Determination Application
    - iv. ETI Report – Site Specific Maps
    - v. ETI – Environmental Photos
    - vi. Weissman Engineering Reports
    - vii. ETI Report – Compliance Statement for Fresh Water Wetlands General Permit

Mr. Whitaker added to the record that the four (4) permits issued by the NJDEP were previously submitted as part of the Application dated September 3, 2019.

The following stipulations were added to the record by Mr. Whitaker:

- 1) The Sprinkler System as described by Mr. Roe
- 2) The Retaining Walls will meet the engineering criteria of the February 13, 2020 Boswell Report, paragraphs 21-25
- 3) The height of the building will be conforming to the Mahwah Code
  
- 4) The guide rails and post installation will meet all engineering requirements set forth in the February 13, 2020 Boswell Report
- 5) Any approval granted will be subject to satisfactory percolation tests
- 6) All other requirements in the February 13, 2020 Boswell Report can be complied with

Mr. Whitaker called his witness; **Mr. Robert Weissman, Godwin Engineering Company, 686 Godwin Avenue, Midland Park, NJ** who had been previously sworn in as a Qualified Licensed Engineer, approached and remained under Oath. Mr. Weissman stated that the last round of revisions addresses the comments and requests from the Fire Official, Mr. Roe; i.e., the widening of the driveway and the turn-around turning radius. Also shown on the revised Plans are coverage around the pool, moving the house closer to compensate for widening of the driveway, height requirements, seepage pit configurations, storm water and the french drains along the driveway. The configuration of the house remains the same. Grading will be done in the front of the house to comply with height requirements. The quantity of soil movement is 3,214 cubic yards for total excavation, 3,667 cubic yards of fill, which includes seepage pit fill, the driveway and septic.

Mr. Weissman stated that the Variances requested were for the retaining wall height of 32 feet, where 6 feet is allowed; frontage on an unapproved road, submission of an EIS, slopes of 1V:3H to reduce the area of disturbance; 24.5% vs 22% allowed, actual disturbance is 43,460 feet to remain under an acre of disturbance. Without a retaining wall of 32 feet in height, the property is unbuildable. All bulk requirements will be met. The disturbance is necessitated by the driveway and topographic conditions for the dwelling. The slopes reduce the amount of disturbance. There is proper accessibility onto Halifax Road. Halifax Road was approved and kept as a private road as part of a subdivision by the Planning Board prior to today's standards. Further discussion took place regarding the road being approved by the Planning Board vs Section 36 requirements. Mr. Kelly commented that Halifax is considered an improved road and stated that it is a private road but does not currently meet Township standards. Mr. Rabolli added that the road was approved by the Planning Board under the original Resolution, however, under Section 36, the lot is not on a properly improved road, but will be granted, if the Application is approved.

Regarding removal of trees in the disturbed area; 121 trees are proposed to be removed, 35 replacement trees are proposed as per the ratio required. Mr. Jackson questioned the discrepancy between the number of trees being removed; 105 in the Boswell Report vs 121 on the Plan, and voiced concern regarding drainage during the retaining wall

construction. The Plan revision increased the number of trees to be removed to 121, 8 inches or larger in diameter. Mr. Kelly stated that the Applicant and the Developer have to ensure that no adverse conditions are created during construction and that drainage is maintained. Mr. Weissman stated that Soil Conservation will be monitoring the site during construction.

Mr. Weissman concluded that, as presented, this is the best design for construction of a single-family home on a difficult site due to slope, fire truck access, and development restrictions.

Mr. Kelly commented that all concerns in his February 13, 2020 Report have been addressed. The volume of soil to be moved has to be amended on the Soil Movement Permit Application.

The following conditions were stipulated by Mr. Kelly:

- The property owner is to maintain drainage within the right-of-way
- A pre-blast survey is to be conducted
- The sprinkler system is to be installed as noted
- There are to be no semi-permanent improvements in the fire vehicle turn-around area
- The Applicant and Developer are to maintain drainage during construction and no adverse drainage conditions created

It was noted that guard rails will be constructed and fencing around the house in the areas of the retaining walls.

There were no further questions by the Members of the Board or comments from Mr. Whitaker.

A motion to go into Work Session was made by Mr. Staffin, seconded by Mr. Calijone.

## **VI. WORK SESSION**

### **1. DOCKET #1457-19 – HENRY AND MARIBEL CORTES 186 HALIFAX ROAD, BLOCK 1, LOT 126**

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Mr. Rabolli summarized and stated that the Application had previously come before the Board, the plans have been revised, and various officials have been heard.

Accommodations are being made to the site to have the retaining walls installed. The Resolution will be drafted and itemized. It may be tweaked if needed. It will be a memorialization of all items taken into account.

A motion to approve was made by Mr. Straffin, seconded by Mr. Calijone. A roll call vote revealed 4 aye votes by Mr. Calijone, Mr. Jackson, Mr. Rabolli and Mr. Straffin.

## **2. NEW BUSINESS**

Mr. Rabolli informed the Board Members that he received a letter personally addressed to him in his capacity as Chairman of the Zoning Board, from concerned citizens; not a Land Use matter, more of a personnel matter, not involving himself or the Board. The letter is being forwarded to the Township Attorney for appropriate review and action.

## **3. 2019 ANNUAL REPORT**

Mr. Rabolli requested that rather than moving on to the Annual Report, the Members of the Board review the submission by Mr. Calijone, which will possibly be made an appendix to the Annual Report. Mr. Cascio commented that the purpose of the Annual Report is to take recommendations from the Board Members and to advise the Mayor and Council of what applications have come in and any issues. Mr. Calijone summarized the comments in his submission, many of which pertained more to the Planning Board, per Mr. Cascio. Mr. Cascio commended Mr. Calijone for the tremendous amount of work he put into his report. Mr. Rabolli also thanked Mr. Calijone for the time and effort he put into his report and suggested putting the Planning Board on the distribution list for the Annual Report with Mr. Calijone's report as a concurring opinion.

A motion to move out of Work Session and Adjourn was made by Mr. Straffin, seconded by Mr. Jackson. All voted in favor. The meeting adjourned at 8:36 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on April 9, 2020 for approval at the Regular Meeting to be held on April 15, 2020.