

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
May 26, 2009
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:42p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance

Roll Call

Present: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Vivienne Erk and Robert Brady

Also Present: Stephen Glatt, Board Attorney, William Drew, Board Planner, Robert Kirkpatrick, Substitute Planner Richard McFadden and Tonya Cubby, Board Secretary

Absent: Arthur McQuaid , James Olivo, and Gian Severini

Mr. Brady asked Vivienne Erk to sit in for Mr. McQuaid who is not in attendance for the meeting Ms. Erk has heard all of the testimony from the carried application. Mr. Brady told all in attendance that there was a six member Board and explained the Board of Adjustment and the Open Meeting Act; he also introduced the Board Attorney, Stephen Glatt and explained the agenda.

MEMORIALIZATIONS

RESOLUTION NO. 7-2009
Approval of the Annual Report for 2008

Motion by Ada Erik to memorialize Resolution No. 7-2009

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Vivienne Erk and Robert Brady

No: None

YOUR HOME TEAM, LLC
BULK VARIANCE #0830-0822

Block 2312; Lot 16
Papscoe Road, LR Zone

The application was opened to the public to start the meeting, which is where the meeting ended last month.

Mr. Glatt swore in Carl Heinig who resides at 152 Papscoe Road. Mr. Heinig hopes the Board takes the application at its merits since it went off on tangents. The property size is smaller than what it says. He fears it will set a precedent if it is passed. Since there will be a raised septic please require paving.

Ada Erik after seeing nobody additional for or against the application moved to close the public portion.

Barry Wieser second

All in favor to close the public portion

Opposed: none

John Barbarula is present on behalf of Drew Murray and his office Mr. Murray had a death in his family.

Mr. Somers on behalf of Mr. & Mrs. DeMaio. Mr. Somers confirmed that the Board members were in receipt of the letter from the Health Department regarding the rescinding of the septic permit.

Mr. Barbarula interjected that the issues of well and septic do not have anything to do with this Board approving the application only with the Building Department. It is not appropriate to bring up this document during the summation. Mr. Brady told Mr. Somers that it was not this Board's purview. Mr. Somer's wanted the record to be complete and he was assured that the Board new about the letter from the Health Department.

Mr. Glatt asked Mr. Somers' if he received his email about the cases that he sited during the previous meeting because he wasn't able to find them. Mr. Somers said he did not receive any emails during the course of these proceedings from Mr. Glatt.

Mr. Somers said there are two elements to the application; one is if the applicant warrants a variance, seven required variances. He explained each variance as he read from Mr. Kirkpatrick's report. He also read from Mr. Kirkpatrick's memo that the lot is one of the smallest in the area. The applicant needs to show negative and positive criteria. The negative criteria would need to show that the application would not substantially out weigh any detriment and is consistent with the zone plan. The Governing body encourages larger lots or upgrading the lots because of the problems with the water and sewer. He respects that the issues of water, sewer and septic are not in the purview of the Board but feels it comes within the zoning ordinance. He also discussed the character of the neighborhood and on Papscoe Road the homes have 1 garage if not 2, have front lawns and none of them have mounted septic systems and certainly not in the front yard. The house if approved would not be consistent with the Zoning and not consistent with the zone plan. He doesn't feel that the project satisfies the negative criteria because it is self induced and if completed as proposed would enlarge or exacerbate the needed or requested variances. Their position is that the application doesn't deserve or merit the approvals they are seeking and also the property is even more constrained than what he said it was.

He needs to make an effort to acquire additional property to rectify the problem. They submitted an appraisal regarding the adjacent lot and offered an appraisal for \$45,000.00. The applicant's offer was for \$25,000.00 and he has not met the standard. He is asking for the Board to seriously consider if the applicant has met the particular merits. Also, they presented two professional witnesses who testified to their work and studies. The applicant has not brought the surveyor who did the plans only someone who reviewed the plans and that should be troubling. There were inaccuracies and misrepresentations on the plans and that should have some bearing whether it is the Health Department or the Board of Adjustment's decision that is made.

Mr. Barbarula made a point that Mr. Somer's clients never testified and Mr. Glatt affirmed that statement. The next item was the applicant's expert who prepared the plans, questioning the integrity of the people and the reliability of the expert. Mr. McKittrick was sworn and qualified as a planner and engineer. Mr. Barbarula also pointed out if they were licensed they can make comments about prepared plans and it is done all of the time and done in accordance with the State Law and ordinance. Mr. Barbarula refers to the plan that the opposing council's planner colored in. The Board is aware of how the LR Zone was developed first with small vacation homes and then people converting their vacation home into all season homes. Mr. Barbarula referred to them as practical imposition and not self-imposed hardships. Further saying a 2-bedroom home is the absolute minimum in terms of viability. It bothers him that the summation of the opposing council contained information about the Health Department. The statutory requirements have been met and he believes that people should be able to develop their property for some use. Common sense needs to be interjected and decide if the approval will be detrimental to the zoning plan and he submits that it is not detrimental based on the information submitted. The lot across the street is almost the

same size. Mr. Barbarula continues to refer to the exhibit photos and specifics regarding the same. The purpose is to have clean, consistent intelligent property to promote development. He refers to subsequent requirements for further negotiations or requirements to have the applicant forced to purchase the properties. Mr. Barbarula has been a Planning Board Attorney for 28 years also to the appellate level, and there is nothing in the Land Use Act or in the statute that says that approval is condition on subsequent further negotiations and attempts to purchase or a requirement that you purchase an adjoining piece of property there is not a law. The comparatives in the appraisal were rather old and did not consider the current conditions such as the economy. The negotiations or lack there of and the responses were not brought forth. There was an adjournment and therefore a delay for that purpose of getting a fair market value. There is no requirement that states it must result in a purchase only a good faith attempt. Mr. Barbarula said he submitted to the Board that his client did make the attempt. He agreed that there are pre-existing nonconformities that are a natural result of the shape, which is part of the Land Use Act that allows the granting of the variances. The other three variances are required to make a minimally viable project viable by a living standpoint so a family could purchase it as a first time home. Positives outweigh the negatives. There was sufficient information provided by the applicant and the experts. There is nothing in the record that would impinge Mr. McKittrick's truthfulness or his presentation and the mere fact that he was not the preparer of the plan, should not have any negative references and asks that variances are approved. He thanked the Board and also thanked the Board for Mr. Murray.

Mr. Brady asked if there was any discussion for the Board Members or perhaps a motion. Mr. Glatt wanted Mr. Barbarula to know that he had ruled in the beginning of the proceedings on the expert situation that Mr. Barbarula mentioned in his summation.

Mr. Hannan mentioned that because of a loophole in the Highlands legislation that these lots are still available to purchase but with regret, **Mr. Hannan made a motion** to approve Bulk Variance #0830-0822, Your Home Team, LLC, Block 2312; 16, Papscoe Road, LR Zone, Bulk Variance relief requested for minimum lot area where 20,000sf is required and 7500sf exists, minimum lot frontage where 120 feet is required and 75 feet exists, minimum lot width where 120 feet is required and 75 exists, minimum lot depth where 150 is required and 100 exists, minimum side yard setback where 30 feet is required and 16 and 31 feet exist, minimum rear yard setback where 60 feet is required and 20.3 feet exists, maximum building coverage where 10 % is required and 10.5 % exists for construction of a 2 bedroom, 2 story 28 X 28 dwelling.

Unfortunately, we are bound by Municipal Land Use Law and case law to not zone the lots into inutility and the applicant has shown that this project is one of the smallest most viable projects that you could put on this particular property through the testimony of his experts and also in the LR Zone which historically originally, the lots were 100 X 25 and this is not an unusual type of situation for that zone and area. Mr. Kirkpatrick refers to this in his report and Mr. Hannan read that passage. Unfortunately, the objector testimony was outside the area of expertise of the zoning aspect and was related to conditions that are not for this Board to decide. Mr. Hannan immediately spoke when the appraiser spoke because of how old the comparable sales were in a market reportedly deteriorating. Mr. Hannan asked the appraiser what the range was and he said between \$30,000 and \$45,000 and it is kind of arbitrary to assign a value of \$45,000 for the lot. The lot may be worth what Mr. Leonescu offered no one knows. The experts have shown that it is in compliance with the Master Plan and the similar zone.

Ada Erik Second

Mr. Brady added that the case was handled poorly by the applicant and also the objectors, could have been handled much more succinctly from the beginning had the offers been made other than in the foyer, through the attorneys. There was little evidence in our purview that the Board could take and use to not approve the application. The Highlands Act is tricky that way as well as not allowing a property to be zoned into inutility.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Vivienne Erk, Robert Brady

No: none

Mr. Barbarula once again thanked the Board and left.

Mr. Kirkpatrick has left the meeting and Mr. Drew will now be recognized as the Planner.

JIM & PATRICIA GOBLE
BULK VARIANCE #0830-0805

Block 14113, Lot 47, LR Zone
Apple Lane

Mr. Glatt swore in Patricia Goble of 290 Morsetown Road and Michael Goble 290 Morsetown Road. Mr. Glatt wanted to speak to Mrs. Goble regarding the noticing because the majority was noticed by hand and not by certified mail and that he told the secretary that Mrs. Goble needed to submit an affidavit. Mr. Glatt said that he would then have to go over each name to see how they were served. They were served on April 25, 2009 and May 6, 2009. Mr. Glatt asked if all were served before May 16, 2009 and Mrs. Goble said yes. Mr. Glatt said there was one-person last name Cieloch and dated 6/10/09. She received either a signature or initials at every address. Mr. Glatt said the notice done by Mrs. Goble was satisfactory even though it wasn't done by certified mail. It was done by hand delivery which is allowed under the statute. A representative or the property owner signed for the notice. The date of 6/10/09 is incorrect the other notices O&R Utilities and PSE&G were served via certified mail.

The Chairman asked Mrs. Goble about the items that she wanted to discuss and her son spoke on her behalf. This variance was already approved. There were items that needed to be changed on the resolution because of an easement that the Township was requiring. The plans show the house shifted a little because of the easement or the Right of Way that the Township is requiring that did not exist before.

Mr. McFadden said the Resolution does not require an easement, and that at the meeting it was agreed that the rock wall that was proposed for the septic was to be shifted so that in the future if the Town needed to pipe that, then there would be a ten foot clear path. When Mr. McFadden received the plans to review after the resolution of approval, their engineer proposed to pipe it rather than put the swale in and an easement. It was not a condition of the resolution. If he can install that swale and stabilize it for the outflow of the pipe on Germantown Road that's really all that would need to be done. That was not the information submitted in response to the resolution. The Engineer will have to submit the plans with the swale and not the piping.

Mr. Glatt said that, when he heard about an issue, that Mr. Barbarula was advised that you would need to come back and discuss what was just discussed. An attempt was made to contact him on at least two if not three occasions, the Board Secretary reminded the Board Attorney that their matter was still out there and needed clarification. This Board is done with this and it is between their Engineer, the Township Engineer and the Goble's. They have their approvals there is nothing else that this Board can do. Mr. McFadden said that early on in discussion that he said that if an easement were granted to the Township the applicant could request that the Township supplies the materials and they could install it as part of the construction but as the application process went on the Board agreed to not require that and not require an easement just to move the rock wall which was done to allow the 10 foot path. Their Engineer told Rich McFadden that it was too expensive to put in the swale and were proposing to pipe it then they have to provide an easement. It was not a condition of the resolution. Mrs. Goble said that her realtor went to Engineering and spoke with someone named Eric and he said no problem; build your two-bedroom house. She

wonders why she has to be responsible for the water on Germantown Road. Mr. Brady said the options are to pipe it away or swale it away. Engineering has to be satisfied. The Board Engineer said the plans submitted did not follow the guidelines of the Resolution. Have the Engineer redraw the plans to show the swale. The Applicant's Engineer needs to design it with regard to the drainage, Mr. McFadden can't tell him what he needs. They want the ability to build the house since the issues don't have anything to do with the actual building of the house. Mr. Hannan said that Claud Ballester's plan is wrong, the swale is not big enough and also if they go with the pipe it will cost more and they will have an easement on the property. Have Mr. Ballester redesign the swale if there were mistakes made then they need to take it up with Mr. Ballester. Mr. Glatt read the resolution regarding the swale detail and calculations. Mr. McFadden explained about the catch basin, the Town had a suit with Forest Hill Park to deal with storm water flow and that inlet was put in to intercept the flow that comes off of Germantown Road it is in front of the Goble property. It was done in November 2008. The decision was prior to their coming to the Board. Mr. Goble asked if he could go ahead and were told no they need to decide whether they are going over land or under land. Mr. Goble was told that Mr. McFadden had the say whether something was valid or not. Mr. Goble said he would go to the Engineering Department could he get his permits, Mr. McFadden said no, Mr. Ballester could call him and discuss the correct detail. The plan showing the swale that this Board has received is not correct the rock wall is in wrong spot and within the 10 feet. Mr. Goble asked again if the plan was brought in if it would be all right so he could start and Mr. McFadden said as long as it is a swale yes. The Goble's thanked the Board and left. Mr. Goble returned and asked questions and Mr. McFadden said that their Engineer needs to supply the information and the figures, but would be glad to speak with Claud Ballester about this.

**CLAUDINE CHIARMONTE & KAREN KEMP
BULK VARIANCE NO. 0930-0824**

Block 10808; Lot 13
22 Seymour Drive, LR Zone

Mr. Glatt swore in Claudine Chiarmonte and Karen Kemp of 22 Seymour Drive. Mr. Brady brought up that Ms. Chiarmonte was a past student of his and he will remain objective. Mr. Glatt said there were only 6 members present for the meeting and since it is a bulk variance they only need four affirmative votes. If there is a tie they would lose.

They would like to start speaking about their variances and the first is the front yard for a portico. Their front yard setback is not the 40 feet needed but they have 37.67 feet. They did work on their front steps but realized that the ice build up was dangerous. They need it for safety purposes. The whole exhibit of photographs is going to be called A-1 which they will refer to during their testimony. There are photos of the front of the house the portico will partially cover the second step as shown on the photograph it will not be enclosed total will be six feet, two feet already existing. Only covering the front steps.

The rear yard setback is 60 feet, which they do not meet, they have 33.67 feet and they are asking for two feet off for 31.67 feet. They want to complete the full second story on their house. It will remain a one-bedroom house. There are no doorways in the existing second story of the house. It will add dimension to the house from the rear. They would like their home to have a better roofline and finish off their house. They have submitted photos to show the other homes have made improvements and additions and keeping up with the projects in their areas. Mr. Hannan confirmed that they were asking for 4 feet and 2 feet. There were no other surrounding properties to purchase. The memo from the Health Department is that it is a one bedroom home. There is no heat in the main storage area only where it says utility and laundry. There is no doorway on the bedroom. The other room will be an office. The septic is new and they will not be changing the septic.

Mr. Brady asked the applicants to take a seat and opened the meeting to the public.

Motion by Ada Erik to close the public portion since no one was present for or against the application.

Second by Barry Wieser

Motion by Francis Hannan to approve Bulk Variance #0930-0824, the applicant has shown is in sync with the area including those contiguous to the property and that it will improve the community and enhance our Master Plan and Zoning. The amount of space they are looking for is very deminimus also the Health Department indicated it is a one bedroom septic and that the applicants testified it would remain a one bedroom house.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Vivienne Erk, Robert Brady

No: none

It was explained to the applicants the people have 45 days after the resolution is memorialized to contest the decision.

There was a motion and a second to take a break at 9:15 pm

The Board of Adjustment returned from break at 9:32pm and Mr. McQuaid arrived.

There is now a 7 member Board for the remaining applications.

**PATRICIA NICHOLSON
MINOR SITE PLAN #0820-0313
BULK VARIANCE #0830-0799**

Block 15803; Lot 4

4 Oak Ridge Road, CC Zone

Mr. Otto Blazsek is the attorney for Ms. Nicholson. Patricia Nicholson was sworn in she lives at 10 Upper Lake Road, Oak Ridge, NJ and Douglas McKittrick 2024 Macopin Road, West Milford, NJ was sworn in is the Engineer, licensed in NJ since 1982, a licensed planner since 1983. He has appeared before the Board a couple of hundred times and the Planning Board also qualified on Passaic County and Sussex Count Boards. Qualified as expert in Passaic and Bergen County Superior Courts and several others.

Mr. Blazsek called Patricia Nicholson. She is the owner of 4 Oak Ridge Road and has been the owner since December 2005. There are two buildings; Mr. Blazsek asked what they are occupied by and Ms. Nicholson said #8 building at 8 Oak Ridge Road at the time of the purchase was occupied by a motorcycle shop, which occupied two stores and four apartments in the rear and one on the top for a total of four apartments. The #4 Building at 4 Oak Ridge Road was occupied by what she though was a therapy place and two apartments upstairs, she did not realize that it was a massage parlor. Mr. Blazsek asked if Ms. Nicholson did anything about the tenancy in #4 and she said that she evicted them approximately April 1, 2006. The commercial square foot was approximately 1200 square feet. She attempted to re-rent the space and applied for a CCO, Continued Certificate of Occupancy and she didn't get it. She was told to apply for a variance. Mr. Blazsek asked if there were any problems with the septic before she evicted the tenants and she said before she evicted them they were overflowing her septic system. Mr. Blazsek asked if she contacted Mr. McKittrick at that time and she said yes in February or March of 2006. The conclusion was that because of the massage parlor there was a large shower and two washing machines in constant use. The occupant was pumping the septic system on his own. Once they moved out she did not have any additional problems, however, at the time of the overflow she went to the massage parlor and inspected the unit that also had a second bathroom in use, which she was unaware of and she discovered the washing machines and a large shower. Presently, the store is vacant because she is unable to obtain the CCO. #8 had a motorcycle shop, which is no longer there, this occupied two stores. Ms. Nicholson asked them to leave because it was dirty and sloppy and it was a hangout. She didn't

want that type of business. This is now rented to a yoga studio and a gift shop, and both are nice places.

Mr. Blazsek asked what she would like the Board to do this evening and she would like to be able to rent #4 the previous massage parlor to a nice store, low intensity store and possibly get an income from this building which she has been deprived of for the last few years. The cost of permits, variances, applications, engineer's fees are costly and she is running out of funds. Mr. Blazsek was finished. The Chairman asked if the Board Members had any questions.

Mr. Wieser asked if the upstairs of #4 was rented and she said yes two apartments rented to residents. Also there are four electric meters on #4 what is the need. There is an electric meter for each apartment, which would have two for that and there is an electric meter for the front of the store and one for the back but she isn't sure if there were two separate or three separate stores. So it will be a store and two units. Mr. Brady asked if there were any additional questions and there were not.

Mr. Blazsek called Mr. McKittrick who confirmed that he prepared the minor site plan, which Mr. Blazsek submitted to the Board. Mr. McKittrick explained the location of the property, located at the southwest corner of Route 23 and Oak Ridge Road. It is only a little over ½ acre of property, community commercial zone, 2 existing structures, #4 and #8 # 4 is closer to the intersection and #8 is further to the south west. Both buildings were preexisting lawful uses with Certificates of Occupancy that had a variety of uses in it. Mr. McKittrick said he has seen diversified uses in the buildings. It is as developed as it can be there are constraints to it. There is a slope easement to the northern boundary line. He believes the state was granted an easement to maintain the slope to facilitate the original construction of the highway. The site has a number of parking spaces which are not necessarily clearly delineated. One of the purposes of the site plan, he believes is to identify where the parking spaces truly are or truly will be to enable the Board to make a decision on this they have tried to identify the parking spaces on the plan and show the existing spaces and where they propose to construct new spaces and how they will delineate them to show where they are. The access to the site is off an existing driveway on Oak Ridge Road, it is an egress ingress driveway at the same time and there is an existing traffic pattern and are facing Building #8 and they take a right turn and go between the buildings and park or to the rear of the building and park and then they swing around in counter clockwise direction along a narrow, one lane driveway that is existing and exit the site. The site has a couple of septic systems. Now there are septic tanks with seepage pits and also a cesspool on site. Ms. Nicholson told him about the previous tenant and the problem seems to be alleviated since the high water usage has been evicted from the site. He feels the Board is sensitive to the massage parlor issue. The septic system designed by Mr. Ballester was approved by the Board of Health but was never installed because the massage parlor was evicted and there were not other problems with the septic system.

Mr. McKittrick said the soil in that area is basically sand which is good for these septic systems and cesspools. Mr. McKittrick discussed the Health Department's issues with the application. He also discussed the plans. First sheet is the site plan with the building layout with the dimensions and the uses and approximate square feet of the buildings. Building #1 which is #8 Oak Ridge Road has a gift shop which is approximately 800 square feet, the yoga studio has approximately 400 square feet, these are on the first floor, there is also a single bedroom apartment and a two bedroom apartment on the first floor. The second floor has a one bedroom apartment and another two bedroom apartment for a total of four apartments. Building #2, which is 4 Oak Ridge Road has 1255 square feet of commercial space, which is empty and has attached to it 387 feet of storage space which is not part of the store it is where store merchandise was stored to be sold. There is a total of six apartments on the second floor, Mr. McQuaid asked for total apartments in both buildings. Building #2, 4 Oak Ridge Road has two one-bedroom apartments in Building 1, 8 Oak Ridge Road has two one-bedroom apartments and two two-bedroom apartments. Ms. Nicholson is not proposing to do any additions to the building in terms of square footage, simply trying to get her certification of occupancy to reoccupy the remainder of Building #2 which is 4

Oak Ridge Road. She appeared before the Planning Board and was granted a site plan waiver and a certificate of occupancy for building #8 and was instructed to come back with plans for building #4 and she did and was then requested to come in for a minor site plan, then a jurisdiction change required it to come before this Board. There is no new construction proposed to the site, also no changes to the septic system at this time.

The parking was the next topic the parking spaces are undefined there are no delineated spaces per se. There are areas where parking occurs which is between the two buildings and an area on the easterly side of the site which is partially located on the Nicholson property and partially on State DOT property or County property, however they are not sure at this time. They are seeking permission of the owners of that property and this is not on plans until permission is granted. The parking plan that the Board has is for a total of 16 spaces and there was a clarification that only 16 spaces are proposed not 17 spaces. The total of 8 spaces are proposed to be located to the north of 8 Oak Ridge Road which will be gravel spaces and a dumpster pad to be located just to the immediate north of Oak Ridge Road for trash from both buildings. They are proposing to have 5 spaces located on a diagonal from 4 Oak Ridge Road and 3 additional parallel parking spaces located along the property line of Oak Ridge and partially extending into the County property. Currently, some of the property is paved, the driveway coming in is paved, the area between the two buildings is paved and the roadway behind #8 and returning to Oak Ridge Road is paved. There is no plan to do additional paving, there is not room on this site for drainage facilities at all. The storm water at this point drains by sheet flow over the parking lot into the inlet located at the southwest corner of the property and goes into a county drainage system on Oak Ridge Road. If the impervious coverage is increased then drainage would need to be increased and there is no room to put anything on the site due to location of septic systems and wells. He can't even put in groundwater recharge mount devices.

There are no changes proposed to the entrance so the sight distance will not change and the profiles are shown on sheet number two. There is excellent site distance down Oak Ridge Road toward Jefferson is about 300 feet however in the other direction it is limited because of the steep hill and it is a controlled intersection because of the traffic lights.

Mr. McKittrick is now addressing the Health comments and Engineering. A report from Health questions the sewer alteration, which was submitted by Mr. Ballester, he did not have an accurate definition of what went on inside the building. They went through the building along with Ms. Barth from the tax assessors office went to the sight and confirmed what was on the plan is what is there. That is the discrepancy. Required submission to the DEP was done and they have a letter stating that it was deemed administratively complete, it hasn't been acted on as of yet. He submitted it to the Board and Steve marked it into evidence as A-1. The next item is regarding a well that may or may not be there. There is not indication of a well existing in the Township records. If the Board approves the application he will determine if there is a well in the location specified. Mr. McKittrick is not sure if the Health Department has the right to ask for the type of business is going in there. They will be consistent with their permit. The next question had to do with the septic system that was not installed and he said if the septic is required to be replaced or upgraded that most likely, there will be a new septic plan provided. There are devices called infiltrator systems that allow you to drive on top of the septic system.

A letter from Mr. McFadden was the next to be addressed. (comments pasted from Mr. McFadden's report)

1. Parking layout shall include striping of 8' wide access aisle and signage for the accessible parking stall. Sign detail shall be added to plans. No Objection spaces 14,15,16 –employee parking only
2. Note on Minor Site Plan sheet states parking spaces 14, 15, 16 and 17 are for employee parking only. Parking space no. 17 is not identified on plan. Number 17 is an error
3. Parking spaces 14 and 15 and three others are partially in the right-of-way of Oak Ridge Road and Route 23 and will require Passaic County and NJDOT approval. Applicant to discuss. Made the submission already, Mr. Blazsek came before the Passaic County

Board on 5/20/09 and spoke with Mrs. Newton on Friday and was told that conditional approval was granted. He requested a faxed copy but had not received it. The County would approve spaces 14 & 15 none are to be paved.

4. Applicant to discuss the location of the three additional spaces subject to NJDOT approval as opposed to parking perpendicular to the building as they do now, which would require NJDOT approval for a portion of two spaces. None are to be paved requesting approval. The spaces were not included because they haven't been approved yet some regarding needed possibly.
5. A loading area is not shown on the plans. Applicant to discuss. This site does not lend itself to any large trucks, no delivery for the yoga studio, there would be ups trucks for the gift shop as well, except for the rare furniture delivery.
6. Proposed grading of the parking area to be shown. Addressed on plan shows small retaining wall and proposed grading.
7. Proposed limits of paving to be shown. no proposed paving and request a waiver from paving.
8. The pavement detail shall be revised to a 2" thick surface course. This is no problem but they would prefer not to pave it unless this pavement fails.
9. A waiver should be requested for any parking areas that are not proposed to be paved. Applicant to discuss. The spaces they do not want to pave are numbered 1-8 and the potential three spaces that could come from the DOT.
10. A waiver should be requested for substandard driveway and aisle widths. Driveway and aisle widths to be shown on plans. Applicant to discuss. The aisle widths are shown, the aisle width is about 8 ½ feet coming off of the site coming onto the site about 24 feet and going up to proposed DOT spaces is about 33 feet and the width of the aisle between the parking spaces between the buildings and building 8 is shown as 18 ½ feet. The aisle widths are not all shown and that is the point that Mr. McFadden referred to. The 8 ½ feet is substandard.
11. An easement is required for the driveway encroachment on block 15803, lot 4. That is a legal issue that the attorney will need to discuss, he will look into it.
12. The sight distance profiles provided for the existing driveway do not indicate height of driver's eye, height of object, existing sight distance and sight distance required. He will revise the plans to show this but the eye height was 3 ½ and the object height was one foot and he will label, no objection.
13. The dumpster pad detail shall be revised to show 6" of concrete. They do not object to doing that but wants it known that this and one other site along Oak Ridge Road are the only ones that have a concrete pad.
14. Dumpster pad should be large enough to provide sufficient room for a recycling dumpster or other recycling containers. Applicant to discuss. He doesn't know who does the collection but thinks it is a private hauler. He feels it is commingled and take everything. Mr. McFadden said it is required to recycle. He will address it.
15. Applicant should request a waiver for providing granite block curbing if none is proposed. They would prefer not to expand the paving presently not there would prefer not to put it in. They would like a waiver.
16. Applicant to provide testimony regarding existing and/or proposed lighting. There are not freestanding lights on the site. There are architectural lights on the building. The lights are as follows: #4 Oak Ridge Road front facing Oak Ridge Road there are two 200 watt floodlights located in each corner of the building. Also by cesspool there is a 200 watt security motion activated along westerly side another security motion activated light. On building #8 on either corner facing Oak Ridge Road there are 150 watt flood lights between the two stores in the center of the façade there is a 100 watt light and then along the easterly side there are two 150 watt flood lights at each end. It seems to be adequate and they don't propose any additional lighting. Prefer to leave lighting the way it is.

Mr. Brady asked about the parking spaces 1-8 and confirmed it would remain gravel. The signs will remain the same unless it is deteriorated she would prefer not to replace it.

Mr. McKittrick explained that it is a difficult site, she purchased it with the understanding that she could occupy it. His plan makes sense of an unorganized site. It is not the greatest solution but there is no great solution. It is a step above for safety and improving it. Mr. Brady asked for questions.

Mr. Hannan asked about Mr. Drew's comments. Mr. McKittrick began discussing the Residential occupancy or the RSIS standards for parking. The parking could be allocated different ways; there were no issues previously. The Township requirements of one space per 200 square feet of commercial retail. The RSIS requires 1.8 space for each garden unit which would be the one bedroom and 2 spaces for each two bedroom unit and analysis says building #1 requires 11.6 spaces and building #2 requires 10.6 spaces which you round and 22 spaces would be required

and they want 16 spaces. So they need to decide if the Board wants them to request a variance for the commercial use of the RSIS. They have been directed to request a *deminimus* exception from the RSIS on this part of the application. The parking at night would be mostly residences, as the businesses will close. They are not open at night. They will be sharing the parking. Mr. McKittrick said the yoga facility is not open late at night so there shouldn't be a conflict with residential uses. The CO goes back to 1972. It is believed that the pre-existing, non-conforming use is regarding the apartments on main floor and not above the shops. Mr. McQuaid asked about Building #4 and if they had previously had a C.O. She believes so and it was also confirmed by the Tax Assessor.

Mr. Blazsek said that Ms. Barth in the Tax Assessor's Office said that there were Certificates of Occupancy issued for this property for commercial and residential uses for the last forty or fifty years. Ms. Nicholson wanted the Board to know that in the #4 Building which is the one which she would like to be able to occupy she has since evicting the massage parlor removed the shower, connection to the washers and also removed an additional bathroom to cut down on the septic use.

Mr. McQuaid asked Mr. McKittrick if the septic that is there presently is sufficient for the apartments which are currently there. Mr. McKittrick said the apartments are occupied and the septic is not failing. It is not up to code but it is a legal septic system and it is not failing. If it needs to be replaced it would need more square footage for the disposal area. Mr. McKittrick supplied the letter of Gale Barth's where she describes the building. #8 originally had three retail areas on the first floor, two were combined and renovated in 2007, each as ½ bath. The use and information of both buildings is consistent with the original information on the record card. The discrepancies were from the Ballester Plan and the Health Department.

Mr. Drew commented that there isn't any proposal to expand the pavement area is there any information on delineation of spaces 1-8. Mr. McKittrick said either through signage or the possibility of putting concrete wheel stops at the end one for each space, spaced appropriately might be the best way to do that. He also asked if there are reservations for apartment parking and Ms. Nicholson said 1-8 is for apartment parking. The apartment parking is not generally utilized during the day because of employment. The stores are not open at night so there is that parking.

Mr. McFadden asked that the waivers discussed, if the application is approved, be made part of the resolution. Mr. Glatt added that he has documented that the waivers being requested are for #5, the loading area, #6 shown on plan. #9, #10, #11 is a legal issue, #12 will be done, #13 will be done. #15 would be a waiver request, #16, waiver. There is a *deminimus* exception for the RSIS for the parking standards. Mr. Drew said the *deminimus* exception could now be part of the resolution as long as there are specific findings for just that.

Mr. Blazsek said he submits. Mr. Brady opened the meeting to the public.
Ada Erik moved to close the public portion after seeing no one for or against the application.
Arthur McQuaid second
All in Favor to close the public portion of the meeting.
Opposed: none.

Mr. Blazsek said Ms. Nicholson bought the building and the headaches along with it. There are a lot of things squeezed into the two buildings such as easements. Some things cannot be changed, she has shown good will, Doug McKittrick did a great job, thanked the Board for their time. Mr. Brady asked Mr. Blazsek to have a seat.

Mr. Brady asked the next applicant to come forward and said that because of the time, 10:29 p.m., they will need to come to the next meeting and the Board would hear the application. They would keep their spot no need to re-advertise. They would be first. Mr. Hart said that the Board had soul discretion and could hear the matter. Mr. Brady explained why that could not be done. Mr. Glatt clarified why they are unable to go past the time limit.

Mr. McQuaid commented that he didn't understand why buildings in existence for so long suddenly end up here. Ms. Erik said she utilizes the area as well. Ms. Erik agreed that she doesn't understand why it came before this Board either since it is just a reoccupation. Mr. McQuaid said that he appreciates the applicant coming forward and hiring the professionals and the willingness to update the properties. Mr. Brady also agrees with Mr. McQuaid and Ms. Erik and appreciates the Board's diligence in hearing these types of applications.

Motion by Arthur McQuaid to grant minor site plan #0820-0313 and bulk variance #0830-0799 Block 15803; Lot 4, Oak Ridge Road, CC Zone. Some of the reasons are the topography,

it is a small lot, no additional drainage, septic systems are not failing, sandy soil allows septic systems to work properly, the business using excessive amounts of water has been removed, the washing machines and bathroom using excessive water has been removed. There was testimony regarding Mr. McFadden's waiver requests, no place to put a large truck, testimony from the applicant and her professionals. Testimony regarding the C.O.s from years and years ago that the buildings have been in use as residential and commercial joining. For these reasons, applications should be passed. Mr. Hannan added about the deminimus exception the RSIS standards and also Mr. McFadden's list to be added and also what is to be waived. Mr. Glatt said from Mr. McFadden's report of April 29 that the applicant is asking for a waiver of #5, #6, #9, #10, #15 & #16. Mr. McQuaid is included all in his Motion. The RSIS exception for parking also included.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Vivienne Erk and Robert Brady

No: none

Motion by Francis Hannan to approve invoices for Stephen Glatt

Second by Barry Wieser

All in Favor to approve invoices

Motion by Ada Erik to approve invoices for William H. Drew

Second by Barry Wieser

All in favor to approve invoices

Motion by Ada Erik to approve invoices for Robert C. Kirkpatrick

Second by Barry Wieser

All in favor to approve invoices

Motion by Ada Erik to approve the minutes for the May 26, 2009 meeting

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Vivienne Erk

No: none

Ada Erik commented that there was an error in Mr. McFadden's memo for one of the applications, which Mr. McFadden was planning on correcting tomorrow.

Motion by Ada Erik to adjourn the meeting

Second by Barry Wieser

All in favor

Opposed: none

Meeting adjourned at 10:42 p.m.

Adopted: June 23, 2009

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment