

ZONING BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
October 16, 2008

Kevin Martin opened the meeting at 8:00 p.m. by reading the Open Public Meetings Law Statement:

This is a Regular Meeting of the Zoning Board of Adjustment. In compliance with the Open Public Meetings Law, notification of this meeting has been sent to all officially appointed Township newspapers & notice is posted at River Vale Municipal Offices.

<u>ROLL CALL:</u>	Kevin Martin	Chairman	Present
	Lorraine de Stefan		Absent
	Melvina Fakazis		Absent
	David Rice		Present
	Thomas Pospisil	Vice-Chairman	Present
	Robert Adamo		Present
	Joseph Massin	Alternate # 2	Present
	Robert Fortsch	Alternate # 1	Present
	John Donovan		Present

<u>ALSO PRESENT:</u>	Michael Gannaio for Brian Giblin -Board Attorney	Present
	Michael Kelly for Elliott Sachs, Board Engineer	Present
	Damian Gil Land Use Administrator	Present

Robert Adamo and John Donovan arrived after roll call.

MINUTES:

A motion by Thomas Pospisil, seconded by David Rice to approve the minutes of September 18, 2008; on roll call vote, all in favor, the motion carried.

VOUCHERS:

A motion by Chairman Martin, seconded by Robert Fortsch to approve vouchers as submitted and reviewed, on roll call vote, all in favor, the motion carried.

APPLICATIONS

Rasekhi, 607 Orangeburgh Road, Block 601, Lot 8
Violation of 142-248

Matthew Rogers of Huntington Bailey, L.L.P., and applicant's attorney described the application regarding placement of a non-conforming structure fence. The client replaced the fence that was partially destroyed by trees from a wooded vacant lot next door. Mr. Rogers cited case law on partially destroyed structures being replaced. He offered to prepare a legal memorandum to the affect that his

client has the right to rebuild.

Gunz Rasekhi was sworn in by Michael Gannaio. Mr. Rasekhi testified that he has lived in the house with his wife and children since 1989. He advised that he replaced a damaged fence with a white vinyl fence that is the same width, height and length. He stated that the destroyed fence was a 6 ft. high wood fence that extended over the front yard to the street.

Exhibits were marked: Application Notification Binder as A-1
Building Approval as A-2 Binder as A-2
Application to the Board Binder as A-3
Exhibit E to I Photographs Binder as A-4

Mr. Rogers commented that G of Exhibit A-4 shows the original fence taken around 1998. Mr. Rogers asked Mr. Rasekhi to describe what happened to the fence. Mr. Rasekhi reported that the original fence was partially destroyed by large trees from a wooded vacant lot next door. E of Exhibit A-4 shows the lot next door. He testified that 4 times, a tree hit his garage, house and damaged a rent-a-car. He advised that he lost his homeowner's insurance and was insured under an assigned risk policy. The vacant lot is not maintained. It was not known as to who owns the vacant lot.

Using an easel, Mr. Rasekhi referred to 4 enlarged photographs that were taken by him 2 days ago. The photographs were described and marked as Exhibits A-5, A-6, A-7 and A-8.

Kevin Martin advised that notices can be sent to the owner of the vacant property regarding maintenance, weeds can be killed and the original fence may have been a temporary structure. He advised that a fence can be replaced but Mr. Rasekhi did not seek a permit to do so which created this situation. There seems to be no record of when the original fence was placed. Mr. Rogers advised that the fence was there when his client purchased the house in 1989. The only difference is the color and his client did not seek a variance. Mr. Rogers claimed that this is an appeal of the denial of a permit stating that this type of fence is not allowed. Mr. Rogers added that the fence does not obstruct vision.

Mr. Gannaio cited statute 142-248F. He would like Mr. Giblin to read through the legal memorandum that Mr. Rogers will be preparing on this matter and case law that Mr. Rogers is citing. The memorandum will be prepared and forwarded according to Mr. Rogers.

Mr. Martin opened the meeting to the public and so carried.

No Public Comment

The meeting was closed to the public.

David Rice inquired how much of the fence was damaged. Mr. Rasekhi reported that different sections of the fence were damaged at different times. Mr. Rice is concerned with safety while backing out of the driveway.

Mr. Fortsch commented on line of sight. He felt that in 1989, there was less traffic on Orangeburgh Road and in the future there may be more traffic. He suggested the fence be placed on an angle and that

the owner's of the vacant property be noticed to clean up the lot.

Mr. Pospisil asked how long ago was the fence replaced by Mr. Rasekhi and if trees were removed to install it. Mr. Rasekhi responded that he installed the vinyl fence about 1 year ago and he did not remove any trees to do so. Mr. Pospisil inquired if the vinyl fence would prevent trees from falling on the house. Mr. Rasekhi responded "no" but he fence is maintenance free. Mr. Fortsch recommended getting an opinion from the Police Department.

Mr. Donovan inquired if the vacant property were to be developed would the vinyl fence be brought to conformance. Mr. Rogers replied yes.

Mr. Adamo inquired if other alternatives were explored. Mr. Rasekhi replied that the original fence that was placed served a purpose and it was just replaced with a maintenance free interlocking vinyl fence.

The application is scheduled to continue November 13.

The Board took a 5 minute recess

RESOLUTIONS

Thomas Pospisil served as Chairman for the resolutions – Kevin Martin Chairman was absent at the September 18, 2008 meeting when the applications were reviewed and approved.

Demeo, 701 Westwood Avenue, Block 2101, Lot 4

A motion by John Donovan, seconded by David Rice to adopt the resolution, on roll call vote, all those eligible voted yes; the motion carried.

Knigin, 316 Spring Street, Block 1501.01, Lot 46
Violation of 142-263

A motion by Robert Fortsch, seconded by Joseph Massin to adopt the resolution, on roll call vote, all those eligible voted yes; the motion carried.

Catanese, 601 Piermont Avenue, Block 1301, Lot 18

Violation of 142-263

A motion by David Rice, seconded by Robert Fortsch to adopt the resolution, on roll call vote, all those eligible voted yes; the motion carried.

APPLICATIONS (continued)

Talukdar, Orangeburgh Road, Block 601, Lot 10

Violation of 142-263

Steven Ross, Attorney representing the applicant and Steven Koestner, Professional Engineer for the

applicant.

Michael Kelley, Board's Engineer that the jurisdiction issue of whether or not the application should be before the Planning Board needed to be determined before proceeding. Mr. Ross advised that this part is a soil moving application which is not a site plan and asked if testimony can be started.

After discussion by professionals, it was determined that the applicant could be heard.

Levina Talukdar, applicant residing in Douglaston, New York was sworn in by Mr. Gannaio, substitute Board Attorney. Ms. Talukdar referred to Boswell Engineering's review letter item No. 5 and commented. Mr. Ross commented on the deed. Mr. Kelly advised that the LOI will expire in August, 2009.

Ms. Talukdar reviewed the variances she is seeking to build a house on a vacant lot. She and her family will reside in the house. Ms. Talukdar reviewed photographs marked as Exhibits A-1, A-2, A-3, A-4 and A-5. Ms. Talukdar testified that she is familiar with the photographs and the area. She described proposed location of the house on the vacant lot as shown on the plans marked as Exhibit A-6.

Steve Koestner, Professional Engineer was sworn in by Michael Gannaio, substitute Board Attorney. Mr. Koestner testified that he visited the property and spoke with Ms. Talukdar on many occasions. He referred to Exhibit A-6 and advised that he prepared the survey. Mr. Koestner described the property location and the proposed location of the house on the vacant wooded lot. Mr. Koestner reviewed the unique features of the property. A brook runs through the adjacent property owned by United Water which is not developable. Mr. Ross inquired if there was any detriment to the zoning plan or public good. Mr. Koestner responded "no", the benefits outweigh any detriments. According to Mr. Koestner, there are no negative criteria.

Mr. Adamo, Board member discussed the proposed location of the house on the lot relative to the distance off the main road. He asked if there would be consideration to minimize to the required variance. Mr. Koestner reported that the property is approximately 48,000 sq. ft. and approximately 6,500 sq. ft. would be used to place the house. Mr. Martin commented that by making the house smaller, an 11 ft. variance would not be required. The application should be reconfigured so there is no 3.5 ft. side yard off the property line, which is small. Mr. Adamo felt the house should be modified. Ms. Talukdar explained why she would rather not modify the house and why it needed to be designed as it is.

Mr. Martin felt that the 3.5 ft. side yard should be modified even though the adjacent property could not be developed. Mr. Adamo commented that the design should be changed or a better explanation should be provided as to why it should not be modified. He added that an 88 ft. wide house can be 82 ft. wide. Mr. Adamo recommended that the applicant have an architect explain the proposed design of the home since the applicant is requesting such an aggressive variance for both the side yard and height.

Mr. Donovan inquired what the width of the property was. Mr. Koestner responded 110 ft. at the narrowest point.

Mr. Kelly request revised plans to depict the wet land buffer area.

The applicant will continue on November 13.

DISCUSSION

League of Municipalities update by John Donovan.

Kevin Martin provided an update on COAH meetings.

Robert Fortsch announced that tonight's meeting was Land Use Administrator; Damian Gill's last meeting with the Board. Mr. Gill will be leaving the Borough's employ. The Board members wished him well in his future endeavors.

ADJOURMENT:

Upon motion seconded and carried, the meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Sylvia Kokowski, Recording Secretary