

**MINUTES OF REGULAR ZONING BOARD OF ADJUSTMENT
MEETING HELD ON TUESDAY, OCTOBER 11, 2016**

Chairman Byrne called to order the regular meeting of the Board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by notice dated October 4, 2016 sent to the Daily Record, Suburban Trends and posted on the bulletin board and website at Borough hall.

PRESENT: BYRNE, ERICKSON, KUBISKY, ZAPF AND ZALEWSKI (ALT. 2)

ALSO PRESENT: BOORADY, ENGINEER

**ABSENT: BRACCHITTA, FOREMAN, WOLFSON AND DUBOWSKY (ALT. 1)
AND LORBER, ATTORNEY**

Chairman Byrne mentioned the first order of business is the approval of minutes from the September 13th, 2016 meeting. Any corrections?

Mr. Zapf stated no.

Ms. Ward stated what?

Chairman Byrne stated fantastic.

Ms. Ward mentioned no corrections how did I manage that?

Chairman Byrne stated it was a short meeting not a lot of action at that meeting.

Mr. Zapf stated actually there was more in there than you would think.

Ms. Ward mentioned the minutes were kind of lengthy.

Mr. Zapf stated that was a lot of pages. No corrections I'm move them.

Ms. Ward stated okay.

Mr. Zapf mentioned no Chairman Boorady this month or anything.

Ms. Ward stated I told Tom what I did last month.

Mr. Boorady stated if you are going to upgrade me I want to be king.

(Laughter)

Mr. Zapf mentioned your boss was here so we could tell him that you got promoted so he can give you a raise.

Chairman Byrne stated there you go.

Ms. Ward mentioned oh that phrase that was Charlie. I listen to the CD again and that was Charlie.

Mr. Zapf stated okay.

Ms. Ward mentioned I corrected Chairman Boorady and I put in Chairman Byrne. Okay is there a second on this?

Mr. Erickson seconds.

Ms. Ward mentioned you moved it and John seconds okay.

Roll call:

Yes: Zapf, Erickson, Byrne Kubisky and Zalewski (Alt. #2)

No: None

Abstain: None

Ms. Ward stated okay that's it the minutes are approved.

Chairman Byrne stated the next order of business is Variance Application #2016-03 (a bulk application) by Dorothy Ippolito, on property known as Block 46.4, Lot 269.1 on the municipal tax map also known as 242 Pine Brook Road. This is a consideration of the resolution.

Ms. Kubisky recused herself.

Ms. Ward mentioned this is a memorialization resolution and the members that can vote are Byrne, Erickson and Zapf.

Mr. Zapf asked is that enough.

Ms. Ward stated yes, even if I have one or two it doesn't matter because it is a memorialization.

LINCOLN PARK BOARD OF ADJUSTMENT

RESOLUTION

Variance Application #2016-03

Zoning Permit #2016-28Z

WHEREAS, Dorothy Ippolito (the "Applicants") has filed an application before the Lincoln Park Zoning Board of Adjustment (the "Board") with regard to property known as 242 Pine Brook Road, Lincoln Park, New Jersey, also identified as Block 46.4, Lot 269.1 on the official tax maps (the "Property"); and

WHEREAS, all persons located within 200 feet of the Property have been notified according to law and a public hearing was held before the Board on September 13, 2016; and

WHEREAS, based on the hearing and a review of all the testimony and documents submitted in conjunction with the application, the Board makes the following findings of facts:

1. The Property is located in the R-20 zone and is approximately 22,319 square feet. The Property is currently improved with a bi-level house and garage. The Applicant has requested after-the-fact approvals (1) to convert the garage to common living floor space area, and (2) to ratify the use of the Property for an extended family dwelling unit.

2. The Applicant submitted to the Board for its review the following material:

- i. Standard Development Application;
- ii. Checklist for General Information;
- iii. Checklist for Variance Applications;
- iv. Copy of Deed for the Property dated November 23, 2015;
- v. A copy of zoning permit #2016-28Z, including a copy of the floor plan, dated April 14, 2016, revised July 21, 2016;
- vi. A key map showing the prevailing front yard setbacks of adjoining properties;

- vii. Survey prepared by William F. Zimmerly, P.L.S., consisting of one page, dated March 11, 1987;
- viii. Copy of plan, entitled “Minor Subdivision for Olivio and Dorothy Ippolito,” prepared by Frederick W. Herrmann, Jr., P.E. and Elmo J. Bodrato, P.L.S., consisting of one sheet, dated March 1991, bearing no revisions.

3. The following exhibits were marked into evidence at the hearing:

Exhibit A-1: Floor plan of the extended family dwelling unit
(prepared by Mr. Herrmann)

Exhibit A-2: Photograph of the front of the house

4. The Applicant has requested a variance pursuant to Section 28-42.B.3 of the Borough Code, which requires two off-street parking spaces, at least one of which shall be covered in either a carport or garage. The extended family dwelling unit also requires one parking space, for a total of three required parking spaces for the Property. However, the existing garage cannot be used for parking vehicles as it has been converted to common living space and there is no carport. The Applicant proposes to satisfy the on-site parking requirements by parking the vehicles on the driveway.

5. James Bryce, Esq. represented the Applicant at the hearing. The Applicant and Frederick Herrmann, a licensed professional engineer, testified at the hearing. The Applicant is under contract to sell the Property and represented to the Board that the contract purchaser is aware of this application. The Applicant testified that when she purchased the Property in 1970, the extended family dwelling unit had already been built. The Applicant’s son moved into that unit in 1995 and lived there for approximately seven years. No one else has resided in that unit. Other than replacing the range and some appliances, the Applicant has not performed any work to the unit. The floor configuration of the unit has not changed since the Applicant has purchased the Property.

6. The Applicant has satisfied the criteria set forth in Section 28-40.2 of the Borough Code with respect to an extended family dwelling unit. The Applicant confirmed the floor area for the unit is approximately 523 square feet (as confirmed by Exhibit A-1), that it is accessible by common and unseparated entrances and exits, and that the utilities are shared with the principal dwelling (there is one meter for each utility). Also, the Applicant confirmed that the dwelling is not a two family house and there will not be any home occupations or professional offices in the extended family dwelling unit.

7. With respect to the garage, the Applicant testified that her former husband erected a wall and baseboard heating inside the garage about twenty five years ago. The garage has always been used for storage. Although the exterior garage doors remain, they are not operational and the garage has never been

used to park vehicles. According to both the Applicant and Mr. Herrmann, the driveway is large enough to accommodate five or six vehicles. The Applicant acknowledged that the garage cannot be converted to or used as a bedroom and that no one may reside in the garage. The Applicant also acknowledged that she must comply with any permit and inspection requirements imposed by Borough's Construction Official with respect to the work performed to the garage.

8. No members of the public testified during the public portion of the hearing.

9. The Board concluded after reviewing all of the testimony, exhibits submitted and documents included with the application, that by reason of the exceptional narrowness, slope and/or configuration of the Property, the strict enforcement of the provisions of the ordinances would result in exceptional and undue hardship upon the Applicant. Further, pursuant to N.J.S.A. 40:55D-70(c)(2), the benefits of the deviations from the zoning ordinances outweigh any detriments. The Board also concluded that this approval will not substantially impair the appropriate use or development of any property and will not pose a threat to the public health, safety and general welfare.

10. The application is consistent with the intent and plan of the zoning ordinances of the Borough of Lincoln Park and will not adversely impact the neighborhood or surrounding properties.

NOW, THEREFORE, BE IT RESOLVED, that based upon the testimony and facts as found above, the Lincoln Park Zoning Board of Adjustment does hereby grant the application and the requested variances on the following terms and conditions:

1. This Resolution is subject to any comments offered by the Borough's Engineer and Construction Official on the application and the plans. The Applicant shall comply with any requirements imposed by the Borough's Engineer and Construction Official with respect to this application or the plans.

2. The Property may not be used as a two family dwelling. No home occupations or professional offices are permitted in the extended family dwelling unit.

3. The garage cannot be converted to or used as a bedroom, and no one may reside in the garage. The garage shall remain common living floor space accessible at all times to all primary and extended family members.

4. Before a Certificate of Occupancy may be issued, the Applicant shall record a deed with the Morris County Clerk's Office which shall include a restrictive covenant prohibiting occupancy of the Property by two families unrelated by blood or marriage and incorporating the criteria set forth in Section 28-40.2 of the Borough Code. The deed shall reference the application number and attach this Resolution

as an exhibit. The deed shall be subject to the Board's attorney review and approval.

5. Before a Certificate of Occupancy may be issued, the Applicant must submit a copy of the Borough's Project Completion Report, signed and sealed by the Applicant's engineer. Any remaining balance in the Applicant's escrow account will not be returned until the Project Completion Report has been properly submitted. The Applicant must submit to the Board Secretary a status report from the Borough Finance Officer confirming that all Borough fees for the Property and this application are current.

6. All other rules and regulations of any governmental agency having jurisdiction over the Property shall be complied with, including but not limited to the payment of all taxes, water and sewer charges and application fees and/or charges. No alteration of any construction plans submitted with this application and on file with the Board shall be permitted without the Board's prior written approval.

Mr. Zapf stated I'll make the motion.

Ms. Ward asked is there a second.

Mr. Erickson seconds.

Roll call:

Yes: Zapf, Erickson and Byrne

No: None

Abstain: None

Ms. Ward mentioned the resolution is approved.

Chairman Byrne stated the next order of business is correspondence from Judith A. Fairweather, Esq., of Pinilis Halpern, LLP, requesting a two year time extension with reference to Preliminary & Final Major Site Plan Application #353, Use and Bulk Variance Application #2014-01 and Flood Plain Encroachment Application #FPE 14-01 by New Cingular Wireless PCS, LLC (AT & T), on property known as Block 22, Lot 318 on the municipal tax map also known as 370 George Cobb Lane. The application was approved by the Board by resolution of memorialization adopted on October 14th, 2014. Do we need to read that into the record?

Ms. Ward stated no. They are asking for a time extension with reference to the project they are ready to go. I spoke with Charlie and he said you can grant a year or a two year time extension. Charlie mentioned he will prepare a resolution and it will be scheduled for next month's meeting.

Before Judith Fairweather leaves we need to discuss our November meeting date because it falls on Election Day and we may have a problem with parking. I have two dates that are available; one is Wednesday, November 9th and the other is Monday, November 14th.

Chairman Byrne mentioned we can do this later.

Ms. Ward mentioned I know but the date is going to affect this application.

Chairman Byrne stated okay.

Ms. Ward mentioned on November 9th the following members are available; Charlie, Bruce, Ken and Steve. Lester and Tom are not available.

Chairman Byrne stated I can make it.

Mr. Erickson stated I can make it on the 9th.

Mrs. Kubisky stated I can make it as well.

Mr. Zapf mentioned I'll be at the Brownstone with nine guests the same as last year.

Ms. Ward mentioned Tom you can make it on Wednesday.

Mr. Boorady stated the 9th is fine. The 14th could work but I would prefer it on the 9th.

Ms. Ward stated okay. Monday, the 14th Charlie, Bruce, Tom and Steve can make that meeting. Lester and Ken no for that date.

Chairman Byrne mentioned it looks like the 9th.

Mr. Erickson mentioned you wouldn't have a quorum on the 14th.

Mrs. Kubisky stated I can do either day.

Ms. Ward stated okay. I have five members so if all five of you come on the 9th we'll be in good shape.

Mr. Erickson asked on the 9th.

Ms. Ward stated yes on the 9th so we'll do it on the 9th.

Chairman Byrne stated yes but you can't do it.

Mr. Zapf mentioned it's the same dinner as last year but we didn't have a meeting.

Ms. Ward mentioned I didn't hear from Bob so I don't know about him on the 9th. We'll do it on the 9th and cancel the 8th.

Ms. Fairweather thanked the Board I appreciate that.

We are asking for a two year time extension because we received approval on October 14th, 2014 and it said that we had to apply for a building permit within a year which was October 2015 and we didn't do it and I can explain why. So if you only give me one year that only gives me until October 14th, 2016 and my guys aren't that good, especially if you are not going to meet until November to allow it so that is why I'm asking for two years that gives my guys a year.

Now the reason we didn't built right away is AT & T put all their sites on hold for two years across the country and they've just released the sites and got the funding for it. It is a municipal site and we won the bid and your municipal attorney knows all about it.

Mr. Zapf mentioned we hashed this thing to death at the time and I'll make a motion that we give the two years.

Ms. Fairweather stated yeah.

Mr. Erickson seconds.

Chairman Byrne stated I don't think we have a choice really because one year is almost up.

Ms. Fairweather stated one year you won't adopt the resolution.

Ms. Ward stated that's why Charlie mentioned two years.

Ms. Fairweather stated Charlie and I laughed about it and said it had to be two.

Chairman Byrne stated I have no problem with it.

Ms. Ward mentioned okay.

Roll call:

Yes: Zapf, Erickson, Byrne, Kubisky and Zalewski (Alt. #2)

No: None

Abstain: None

Ms. Fairweather stated this is one of the easiest nights I have ever had. Thank you very much.

Mr. Boorady mentioned come back next month.

Ms. Ward stated this will be a memorialization of the action is that okay?

Mr. Zapf stated yes.

Chairman Byrne stated we've already discussed the next order of business the November 8th meeting which will be switched to the 9th.

Mr. Boorady stated have a good night.

Chairman Byrne mentioned have a good night.

Ms. Fairweather thanked the Board.

Chairman Byrne asked is there any other business we need to discuss.

Ms. Ward stated no. It is silly to have the meeting on the 8th because Borough hall may be packed and parking will be at a premium because of voting maybe?

Mr. Boorady mentioned I don't think anybody wants to vote.

(Laughter)

Mr. Zapf stated no kidding.

Chairman Byrne asked for a motion to close the meeting.

Mr. Zapf made the motion to close the meeting.

Mrs. Kubisky seconds.

Meeting adjourned 7:25 P.M.

Respectfully submitted:

Joan Ward, Secretary

Patrick Byrne, Chairman