

# Borough of West Long Branch

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## ZONING BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 25, 2015

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Contact:

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Category: ZONING BOARD MEETINGS

FOR IMMEDIATE RELEASE West Long Branch, NJ - September 2, 2015

### ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF WEST LONG BRANCH

June 25, 2015

The Regular Meeting of the Zoning Board of Adjustment of the Borough of West Long Branch was held on June 25, 2015 at 7:30 PM in Borough Hall.

The Board secretary verified that adequate notice of the meeting was published and posted in accordance with the Senator Byron M. Baer Public Meetings Act (N.J.S.A. 10:4-6) known as the Open Public Meetings Law.

#### ATTENDANCE

Members Present: Mr. John Penta

Mr. Robert Venezia

Mr. Michael Schulz

Mr. Scott LaMarca

Mrs. Pamela Hughes

Mr. Michael Habeck

Mr. Paul Giglio

Members Absent: Mr. Jared Murphy

Mr. Paul Santorelli, Jr.

Also Present: Michael Irene, Jr., Esq.

Bonnie L. Heard, P.E.

Lisa Norman, C.S.R.

Chairman Penta called the meeting to order at 7:30PM.

#### MINUTES:

The Board reviewed the minutes for May 28, 2015. Mr. Schulz pointed out that the third page regarding Monmouth University should be changed to read "no security guard during the day", in the last line of the second paragraph. Mrs. Hughes made a motion to approve the minutes with the change, which was seconded by Mr. Venezia and approved by the following roll call vote:

AYES: Mr. LaMarca, Mr. Venezia, Mrs. Hughes, and Mr. Schulz.

NAYES: None

NOT POLLED: Mr. Penta, Mr. Habeck, and Mr. Giglio.

## MATTERS BEFORE THE BOARD

### APPLICATIONS:

New Application  
ZB 2014-12 Mizrahi  
Block 42, Lot 2

Michael Habeck excused himself from the application, citing a conflict of interest, and stepped down from the dais. Bonnie Heard was sworn. Mr. Irene advised the Board that the application was carried to this date, but was required to renote. He found the notice proofs in order with no objections, and advised the Board had jurisdiction to hear the matter.

John Sarto, Esq., was present representing the applicants, Marshall and Gene Mizrahi, who were not present. Maxwell Colby, Esq. was present representing adjacent property owners, Mr. and Mrs. Luria, of 7 Pleasant Drive, Lot 9. No testimony was heard on the application at prior meetings, therefore all present members were eligible to vote.

Mr. Sarto stated that the applicants, owners of 32 Palmer Avenue, were requesting relief in order to install a basketball court in their rear yard. Due to existing conditions on the lot, the applicant requires a lot coverage variance. The applicants purchased the property 2 ½ years ago, and are not full time tenants, they live at the site 2 ½ months out of the year.

#### Exhibits

A-1, Plot Plan, dated 10/02/14, revised through 1/12/15, prepared by Jason Fichter, P.E.  
A-2 An Aerial photograph, same dates, prepared by Jason Fichter, P.E.  
A3 Colored rendering of the plot plan indicating the existing and proposed conditions on the lot.  
A-4, A-5, A-6 – Photographs of views from the site.

Mr. Sarto stated, that the property was previously owned by a Mr. Blumenkrantz, who received approvals in the late 70's to rebuild an existing barn into the pool house that exists today, as well as the existing tennis court. He testified that there was previously a question about the use of the pool house as a residence, and upon obtaining the resolution of the approval it was determined that the pool house was not to be used as a residence of any kind, and was to be deed restricted. The deed restriction was never recorded. He testified that the applicant agrees to this condition, and agrees to deed restrict it as previously required. Mr. Irene explained to the Board that there was a notation on the plans that this structure was a "guest house" which why this was questioned. Mr. Colby also stated that according to the architectural plans on the structure this building is laid out like a residence, and he respectfully requests that any constructed improvements in the structure, which would make it a "dwelling unit" should be removed. Mr. Irene suggested that the Board may consider asking the Zoning Officer to inspect the building and determine if it meets the definition of a "dwelling unit" and if so have the applicant make the required changes. Otherwise, the applicant would also need a "d" variance to approve a second dwelling unit on the lot.

Jason Fichter, P.E., P.P, was sworn and accepted as an expert witness, in engineering and planning. Mr. Fichter testified that he prepared the exhibits and is familiar with the site. He testified as to the conditions on the site. He testified that the lot is 2.3 acres and exceeds the lot size required for the zone. He testified that the lot contains a residence, pool house, and tennis courts, which along with the driveways and other surfaces exceeds the lot coverage maximum for the zone. He advised that it is his understanding that the existing conditions preceded the adoption of a lot coverage maximum, so therefore is a pre-existing non-conforming condition. He testified that the applicant is not proposing to light the new basketball court. He testified that he has met with the adjoining owner and their lawyer and they have agreed to move the court in further if the Board required it, even though the requirement is only 10 feet and the proposed is 20 feet from the property line. He testified that since the applicant is requesting an impervious coverage variance, the applicant has agreed to install stormwater remediation structures shown on the plan to help address any additional stormwater runoff. He advised that not all of the surfaces counted in the lot coverage calculation are impervious, much of the calculation is pervious surfaces, such as landscape gravel. Mrs. Hughes asked about the numerous driveways indicated on both sides of the lot, and whether or not some of these surfaces could be removed, and not necessary. Mr. Fichter stated that he might be able to remove some of the surfaces if his clients agree, however, they have proposed the drainage structures as mitigation to the impervious variance. Mr. Irene stated that the applicant needs a variance, and in order to meet the positive criteria, which is why can't they conform, why not remove to

some degree some of the driveway areas. The witness was asked how old the children were in the house and he stated he didn't know. Mr. Fichter went on to testify about the additional arbor vitae that were already installed on the site along the property line (shown in photo). He further testified that there are substantial existing mature trees in the rear yard. Mr. Fichter described the three photos as examples of the existing buffers. He testified that there would be no lighting and the buffer was double the requirement. The Board and the witness discussed the possible areas to reduce the lot coverage percentage. Mr. Fichter stated that there were no police or fire objections to the proposal. Mr. Fichter testified as to the positive and negative criteria, whereas the proposal advances the purposes of the Municipal Land Use Law (MLUL), in that they are mitigating the drainage; the proposal preserves the environment by leaving more open lawn area in the location it is in; provides for recreational uses; preserves property values; and finally that the proposed increase in impervious coverage is not a substantial detriment to the public good or the zone plan. Mr. Sarto summarized the proposal, mitigation, and agreed to move the court and provide additional buffer trees if the Board required it.

The Board asked if any members of the public wished to be heard on the matter. Maxwell Colby, Esq., stepped up and addressed the applicant and the Board. He stated that his client's object most about the proposal because of the location in the rear yard adjacent to their property. He asked why the court could not be moved over into the yard closer to the tennis court and away from his client's yard. Mr. Sarto stated that his clients would prefer to separate the two and leave the lawn open in the middle. Mr. Colby stated he believed that the proposal was a self created hardship, which could be eliminated.

The Board continued to question the applicant's witnesses regarding ways to mitigate the impacts on the neighbors. Mr. Penta asked if the decibel level of the bouncing of the balls on the court were measured. He was told it was not. Mr. Sarto stated that the applicant was willing to increase the planted buffer on Lot 9, and Mr. Penta said "why not Lot 10 also"? Mrs. Hughes pointed out that what this applicant has indicated in regard to using the court does not continue with the property, only the variances do. She indicated that the Board must consider the impacts with any owner of the property, on the neighboring properties. She stated that by her own experience both tennis courts and basketball courts can be noisy. Mr. Penta asked what Mr. Colby's clients concerns were. Mr. Colby stated the location and the hours and days of use.

The matter was adjourned to give the applicant's experts a chance to speak with their clients on the phone.

New Application  
ZB 2015-04 Thompson  
Block 10, Lot 19

Mr. Irene reminded the Board that the Thompson application for 63 Victor Avenue, was scheduled in May, but there was a problem with the notice. He reviewed the new notice materials and finds them in order. Ms. Heard was sworn. Sharon Thompson and J. Pollifrone, AIA, were sworn.

Ms. Thompson testified to the Board that she purchased the home six years ago, and it was a small cape with a railroad layout, which means you have to walk from one room into another. She stated it is her intention to raise the roof in the eaves so that she can make more room for her two step sons, and add a bathroom, there is presently only one bathroom.

Exhibits:

A-1 Survey prepared by William Zieman, PLS, dated 6/25/14.

A-2 Set of architectural plans, prepared by James Pollifrone, AIA, consisting of 12 sheets.

A-3 3D model of the proposed home.

Mr. Pollifrone, stated his credentials and was accepted as an expert witness. Mr. Pollifrone presented for the Board's understanding a 3D model of the proposed new home. He asked that he not have to leave the model and the Board agreed it would be left in his custody until the appeal period was over. He testified as to existing 1/1/2 story single family home, which, he has designed into a two story home. He testified regarding the proposal, which will extend the existing footprint on the second floor by cantilevering the second floor two feet both to the front and back. He described the existing ½ story area, with knee walls and sloped attic ceilings. He also described the proposal to extend the front porch by 5 feet, so that it can have an open porch and roof. He described the side entrance where a shed roof is proposed, to protect from the weather. Mr. Pollifrone described the variances required, which were for existing conditions except for the extension of the front porch by 5 feet, further reducing the front yard setback. The existing lot is 8,000 SF where 10,000 is required. The existing front yard setback is 21.4 feet, which will become 16.4 feet, where 35 feet is required. The existing side setbacks are 6.1 and 13.9 feet, which will not change. The required combined side yard setbacks are 30 feet, where 20 feet exists.

Mr. Schulz asked how far the new porch will be from the sidewalk. Mr. Pollifrone explained that the front yard setback will be 16.4 feet with the porch, but there is another 2' to the sidewalk and another 9' or so to the curb, so the actual setback to the street is approximately 25 feet. Mr. Pollifrone explained that he thought that the front porch would add some more curb appeal to the home. Mrs. Hughes stated that she thought the new design was really nice, but she was concerned about the existing shed so close to the property line. Mr. Pollifrone explained that the shed is on the property line, but the rear property line abuts a commercial bakery. Mr. Habeck asked if the existing front stoop already extended 4 feet from the home. Mr. Pollifrone agreed and stated that the new "porch" would only extend another foot toward the street, but would also go over to the existing side setback. Mr. Venezia asked if there would be any shrubs removed for the front porch. He was told that any shrubs that were removed would be replaced at the end of construction. Mr. Schulz stated that he thought the proposal and presentation was well done. There were no public questions or comments.

Mr. Habeck made a motion to approve the variances as proposed. Mrs. Hughes seconded the motion, which was approved by the following roll call vote.

AYES: Mr. Penta, Mr. LaMarca, Mr. Venezia, Mrs. Hughes, Mr. Schulz, and Mr. Habeck, and Mr. Giglio.

NAYES: None

ABSTAINED: None

RESOLUTIONS: None

New Application  
ZB 2014-12 Mizrahi  
Block 42, Lot 2  
Resumed at 9:20PM

Mr. Sarto advised the Board that he has found out that the Mizrahi children are 7 and 9 years old. He stated that he spoke to his clients and they are willing to reduce the driveways so that the impervious coverage is reduced by 1,000 SF. As far as the location of the court, they want to keep it separate from the tennis court, in its present proposed location.

Maxwell Colby asked if his clients could speak. Joyce Luria and Dr. Martin Luria were sworn in. Mr. and Mrs. Luria testified as to the quiet enjoyment of their home for the last 30 years. They stated that the location of their kitchen and family room, as well as their bedroom is at the back of their home, which will be adjacent to the proposed location of the basketball court. Their bedroom looks down on the area where the court will be. Mrs. Luria testified that she did not even notice the arbor vitae that were planted. She asked that the court be located closer to the tennis court and further away from her property. She testified that her husband works late and she would like him to get his rest. She is concerned that there will be groups of children playing on the court. She stated that she has observed people on the property more than 2 months out of the year.

Mr. Penta stated that he has tennis courts close to his home and he hears the play on the courts. But, to him, this is a positive thing that children or young people are playing this way. He asked if they put in supplemental trees, would this help buffer the noise. Mr. Venezia asked if the trees could be 8-10 high feet when planted. Mr. Colby stated that it was the location that was a concern, and they would not be concerned if it was closer to the tennis court.

Mrs. Luria stated that she has seen lights on in the "pool house" at night. She is not positive there is someone living there, but it does seem to be occupied at night. She stated she has seen standing water in the rear yard in recent years. Mr. Sarto asked if she spends much time in the Master bedroom during the day, when the court would be used. She stated she did not, but sometimes her husband would want to rest. She stated that there is one large tree, but otherwise she can see through to the yard.

Mr. Sarto stated to the Board that the use is permitted, but they would agree to moving the court to 25 feet from the property line. He stated that they agree to reduce the driveway.

Mr. Irene clarified the agreement of terms. They will move the court to 25' from the common property line. They will extend supplemental plantings to the front corner of the pool house. They will plant 8-10 foot high fast growing evergreens. They will remove the reference to "guest house" on the plans. They will deed restrict the use of the pool house. They agree to have the zoning officer determine that the structure is not a "dwelling unit". They will reduce the impervious coverage to 41.4%. There will be no lighting of the court, and it will not otherwise be lighted by exterior lights.

Mrs. Hughes made a motion to approve the variance with the above conditions. Mr. Venezia seconded the motion, which was approved by the following roll call vote.

AYES: Mr. Penta, Mr. LaMarca, Mr. Venezia, Mrs. Hughes, Mr. Schulz, and Mr. Habeck, and Mr. Giglio.

NAYES: None

ABSTAINED: None.

Mr. Schulz stated that he went to the Home Depot and there were still items piled in the back. The secretary advised the Board that Mr. Miller advised her that the Home Depot has moved the outdoor sales area to the location on the plans. Mr. Schulz asked about the Monmouth University issue, and was advised that Mr. Miller said he has contacted the University and they are going to have a security officer on site whenever there are classes. Mr. Schulz stated that he has visited the gas station on Monmouth Road and does not believe they have cleaned it up as promised. The secretary asked that he contact Mr. Miller regarding any other outstanding issues, as she was advised the sites were visited and are in compliance. Mr. Schulz also wanted to know why the MAC center at the University was not contacting the police when they have large events, as they were required. Ms. Heard advised that it was her understanding of the approvals, that the University was required to contact the police to get a determination when there were large events over a certain number, but she was not sure that additional police were always required. Mr. Schulz was advised to contact the Business Administrator regarding the events at the MAC.

There being no further business the meeting was adjourned, at 10:20 PM.

Respectfully submitted,  
Anna R. Wainright  
Recording Secretary