

# TOWNSHIP OF MARLBORO

## ZONING BOARD OF ADJUSTMENT

1979 TOWNSHIP DRIVE

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### Chairperson

Michael Shapiro

### Vice-Chairperson

Matthew Weilheimer

### Secretary

Alan Zwerin

### Members

Frank Yozzo

Ira Levin

Jennifer Bajar

Adrienne Spota

Ibrahim Naboulsi - Alt #1

Stacey DiGrande- Alt # 2

### Zoning Board Clerk

Yvonne Cautillo

### Attorney

Weiner Lesniak

Ronald D. Cucchiaro, Esq.

### Engineer

Birdsall Engineering

James Priolo, P.E.,

### Planner

T & M Associates

Richard Cramer, P.P.

### Traffic Engineer

French & Parrello

Mark Kataryniak, PE, PTOE

### Administrative Officer

### Zoning Officer

Sarah Paris

## MINUTES

### ZONING BOARD OF ADJUSTMENT

APRIL 26, 2011

8:00 p.m.

### SALUTE TO FLAG

### SUNSHINE LAW READ

**PRESENT:** Alan Zwerin, Matthew Weilheimer,  
Jennifer Bajar, Adrienne Spota,  
Ibrahim El-Nabousi, Stacey DiGrande

**ALSO PRESENT:** Ronald Cucchiaro, Esq. Board Attorney  
Sarah Paris, Administrative Officer  
James Priolo

**ABSENT:** Frank Yozzo, Michael Shapiro, Ira Levin

The minutes of the April 5th, 2011 meeting were approved:

Offered: Matthew Weilheimer Ayes: 4

Seconded: Alan Zwerin Nays: 0

Presentation to Keith Goff and Michael Mahon read into the record

### ZB 10-6395-Vladimir DeLevi

Continuation of a Public Hearing for a bulk variance to construct a single family dwelling having insufficient lot area, depth, front and rear yard setback for principal structure at 17 Hawkins Corner Road, Marlboro, NJ, Block 282, Lot 6, located in the R - 60 Residential Zone.

Additional exhibits entered:

- A - 33** Variance Application and Site Plan by INSITE Engineering, dated 5/26/10 with a revision date of 4/11/11.
- A - 34** Letter from Robert Freud, P. E. of INSITE Engineering dated April 11, 2011
- A - 35** Engineering report from Birdsall Services Group, Inc., prepared by James Priolo, P.E., P.P., C.M.E., dated April 25, 2011.
- A -36** Letter from Ronald Cucchiaro, Esq. to Board Members dated April 25, 2011 regarding res judicata

Kenneth Pape, Esq. on behalf of the applicant. This is a continuation of an application to build one single family residence on a property in a residential zone. By making the home smaller, the bulk variances that were originally requested, have been reduced. The footprint was is also smaller. The living area was originally 2,899 sq.ft., the proposed new proposed house has a 2,147 sq. ft. area.

Mr. Cucchiaro discussed his memo on res judicata and stated that the application was significantly different from the first..

They accept all of Mr. Priolo's "tweaks" of their new evidence that was submitted and agree with it.

Mr. Robert Freud previously sworn. Discussed the soil log information on sheet 2 of the revised plans. K-1 soil was the result. Ground water at 72"s. The separation between footing and water table will be more than adequate. **A – 37** Colored version of the April plan. Adjusted the steps leading up to the front door. Discussed the storm water conditions on the site. Roof leaders and runoff from swale and runoff from Hawkins corner Road will be captured and put in a different direction. The existing drainage pipe under Hawkins Road appears to be clogged. We are comfortable in our belief that it can be cleaned out and we accept the responsibility for jetting it out with permission from the Township Engineering Department. If necessary the applicant will replace the pipe if it is not pitched correctly. Retaining wall to be tied into berm to ensure the capture of the water. The wooded area will be taking care of its own runoff now and a little bit of the backyard. The wall is to be a permanent interceptor.

Public: Mr. Panone still under oath asked that the remaining property not be disturbed in the future. Is the conservation easement still o the table? After the property is approved a conservation easement will be offered to the governing body of all the rest of the land. This is an offer and a proof from the applicant that it is not heir intention to ask for more than they are asking for at this point.

Mr. Pape explained the reason that they came back before the Board to avoid inverse condemnation. They were responsive to the Board and it members and professionals.

Public Comments: Mr. Lou Panone – My concern was mostly the runoff problem. Would like the Board To accept the conservation easement. He asked, if the Board does accept it, could it go into the resolution as a condition. Mr. Cucchiaro explained that the parameters of the easement would be up to the governing body. Mr. Panone said that he appreciated the Board's respect to his concerns and also appreciated the applicant's cooperation.

Into Workshop - offered by Mr. Weilheimer and seconded by Ms. Bajar.

Mr. Cucchiaro reiterated his opinion on res judicata and stated that the applicant was applying under the C-2 flexible variance. The members were to consider the following: Have the rules of planning have

been promoted? Would granting this application create an aesthetic improvement to the surrounding area? Would it create a substantial detriment to the zone or zone plan?

Mr. Cucchiaro also complimented Mr. Panone regarding his persistence and drawing attention to the storm water runoff issues. Storm water and drainage plans were revised in order to address Mr. Panone's and the Board's concerns.

Mr. Priolo stated that the new plans and the revisions are in accordance with his letter. The applicant has addressed his concerns. He would like to know the approximate limits of the easement.

Ms Spota stated that this is a substantially different application. Hardship is off the table. Runoff is now being alleviated. The size and design of the house falls into a housing stock that is of a modest size. She would be in favor of granting.

Mr. El-Nabousi who earlier stated that he had read all of the reports and listened to all earlier testimony, I appreciated everything that this applicant has done. "I've review all of the files and tapes and can see that he is working with the Board and the Township". It's a very positive thing. In favor.

Mr. Zwerin agreed. Wants the easement. In favor of the application,

Ms. Bajar stated that she also saw the significant change. Applicant did due diligence to remedy situations on the property. Neighboring properties will also benefit from the cleanout of the pipe. Would like them to get an updated LOI from the DEP.

Ms. DiGrande, who did not review the previous testimony, stated that she saw no problem with the application as she heard it this evening.

Mr. Weilheimer stated that we've come a long way with this application. We've never see an objector like this. "You changed our thoughts in this application. Some of your comments were brilliant". He further stated that his issue was the runoff and the pipe. They are in agreement with the storm water management and proved the c-2 criteria. He would be in favor.

Out of Workshop – Offered – Mr. Weilheimer    Seconded: Ms. Bajar

Mr. Pape showed dark green area on the colored rendering A – 37, as the proposed area of conservation easement.

A proposal to grant the approval was made.

Offered: Matthew Weilheimer	Ayes; 4	Mr. Weilheimer, Ms. Spota, Mr. Zwerin, Ms. Bajar and Mr. El-Naboulsi
Seconded: Alan Zwerin	Nays: 0	

**ZB 11-6416 – Heidi & Frank Tamburrino**

Pubic Hearing for approval to construct an in-ground pool, a paver pool patio and a hot tub with insufficient rear yard setback and exceeding permitted lot coverage at 6 Yorktown Road, Morganville, Block 159, lot 10.05 in the R-80 (60/30) zone.

The Board took jurisdiction. The following evidence was entered:

- A – 1 Petition on Appeal
- A – 2 Letter of Denial by Zoning Officer
- A – 3 Indemnification and Hold Harmless Agreement
- A – 4 Disclosure Statement
- A – 5 W-9
- A – 6 Tax Collector's Certification
- A – 7 Notice To Adjoining Property Owners
- A – 8 List of Property Owners within 200 feet
- A – 9 Certified White Receipts and Green Cards
- A - 10 Affidavit of Publication
- A – 11 Affirmation of Local Pay to Play Ordinance
- A – 12 Affidavit of Service
- A – 13 Owners Affidavit of Authorization and Consent
- A – 14 Application Affidavit of Completeness
- A- 15 Location Survey map by W. D. Smith dated 1-15-07
- A -16 Pool Grading Plan by James E. Maccariella. Jr., dated 3-18-11
- A – 17 Lot Coverage Calculations last revised 3-21-11
- A – 18 Engineering report by Birdsall Services Group, Inc., prepared by James Priolo, P.E., P.P., C.M.E., dated April 25, 2011

Steven P. Sukel, Esq. on behalf of the applicant.

Rosemary Franco, salesperson and designer of pool, sworn. She stated that the placement makes the proposed pools visible right off the patio, for safety reasons. They went with the paver patio because of the 50% lot coverage as opposed to the 100% that would be used if they put in concrete. If they didn't get the variance for the setback, the patio around the pool would have to be smaller. Ms. Faranco stated that the applicants have told her of their issue with their 4 year old daughter who fell into a pool last year. The accident was due to the kids running around the narrow 3' walkway around the pool and she accidently got pushed in.

Board members expressed concerns with the lot coverage and suggested making the coverage less by removing the patio from the rear pool area. This would also break up the ability to run around the pool. It was also suggested that they possibly make the pool a little smaller. Mr. Sukel said that he was not authorized to agree to this.

Public: Mrs. Rose Maury of 4 Yorktown Road. She is the property owner next door. She is in the process of having a pool installed and understands her neighbor's problems with having to shrink down the pool and use pavers instead of the planned concrete. She herself had to scrap her original plans. She further stated that in the Zoning Officer's absence, the man who was doing her job gave out incorrect information relating to the setbacks and lot overage. **P-1** entered. Color photo of the backyard. Ms. Maury told the Board about the issue of water in the applicant's yard and was concerned that there would be too much runoff into the drain between their homes. As her fence is in an easement, she had to agree to the removal of it and the replacement of it, in case the easement needed to be accessed, being at her own expense. If they clog the drain, her fence might need to be removed for the township to get in there to work on it.

Mr. Sukel agreed to comply with the Engineer's letter relating to the drainage. Mr. Priolo said he needs some additional information regarding where the water is going in the rear.

Ms. Franco indicated they are going with a cartridge filter that doesn't require backwashing.

Mr. Sukel stated that if the Board needs additional information they would be willing to ask for an adjournment so they will be able to respond to the concerns head here tonight.

Workshop issues regarding the pitch of the patio and lot coverage. More information needed about the fence and the swing set. Wants the applicant to have a chance to speak. Look at the drainage. The tree line will affect the drainage and runoff if they stay where they are.

Adjourned to 5/17/11. No further notice. An extension of time was signed.

**ZB 11-6417 – John & Alisa Vitale**

Public Hearing for approval to construct a pool, paver patio, fence and gazebo which exceeds permitted lot coverage at 11 Saratoga Court, Block 159, Lot 10.17 in the R-80 (60/30) zone.

The Board took jurisdiction. The following exhibits were entered into evidence:

- A – 1 Petition on Appeal
- A – 2 Letter of Denial by Zoning Officer
- A – 3 Indemnification and Hold Harmless Agreement
- A – 4 Disclosure Statement
- A – 5 W-9
- A – 6 Tax Collector's Certification
- A – 7 Notice To Adjoining Property Owners
- A – 8 List of Property Owners within 200 feet
- A – 9 Certified White Receipts and Green Cards
- A - 10 Affidavit of Publication
- A – 11 Affirmation of Local Pay to Play Ordinance
- A – 12 Affidavit of Service
- A – 13 Owners Affidavit of Authorization and Consent
- A – 14 Application Affidavit of Completeness
- A - 15 Location Survey map by W. D. Smith dated 1-15-07
- A - 16 Pool Permit Plan/Existing Features/Location Map by MESKO Engineering, last revised 3/30/11
- A – 17 Engineering report from Birdsall Services Group, Inc., prepared by James Priolo, P.E., P. P., C.M.E., dated April 25, 2011

Steven P. Sukel, Esq. on behalf of the applicant.

Dominic Vicesare, General Manager for Pool Company, sworn. Mr. Vicesare described the pool to the Board.

Mr. John and Mrs. Alisa Vitale were sworn in. Mrs. Vitale explained the pool's design. She has a partial disability called distonia. She has seizures and her condition gets exacerbated with the heat. She has muscle contortions. She wanted an area from which she can watch her children in the pool. She needs a large safe area to accommodate her specific physical needs. The gazebo provides shelter from the sun and heat.

No public questions or comments. Mr. Priolo had no issues with the drainage.

ZO was asked for an explanation of how this development came to be built. She explained the use/density variance granted to the developer who was permitted to cluster from R-80 to R-60/30. The lot coverage was 20%. The developer asked for a variance for lot coverage but was denied.

A positive resolution was offered.

Offered: Matthew Weilheimer

Ayes: 6 Mr. Weilheimer, Ms Spota, Mr. Zwerin, Ms. Bajar,  
Mr. El-Naboulsi and Ms DiGrande

Seconded: Alan Zwerin

Nays: 0

## MEMORIALIZATIONS

### ZB 11-6413 – Berlaga, Eleanor/Finkel, Arkady

Memorialization of a resolution granting approval to construct a tennis court with associated lighting and fencing and to construct an in ground pool with paver patio exceeding total permitted lot coverage at 1 Embry Farm Road, Marlboro Block 157, Lot 3.01, located in the LC Cluster zone.

Offered: Mr. Weilheimer

Ayes: 4

Seconded: Mr. Zwerin

Nays: 0

### ZB 11-6414– Champagne, Richard and Carol

Memorialization of a resolution granting preliminary and final site plan approval for medical office at 480 Route 79, Morganville, NJ, Block 126, Lot 332, located in the R-30/20 Residential Zone.

Offered: Mr. Weilheimer

Ayes: 3

Seconded: Mr. Zwerin

Nays: 0

### ZB10-6415 – Berger, Judy

Memorialization of a resolution granting approval to keep an existing shed having insufficient rear yard setback, insufficient distance between structures, and exceeding permitted lot coverage at 221 Tracy Drive, Morganville, NJ, Block 311, Lot 4, located in the R-20 Zone.

Offered: Mr. Weilheimer

Ayes: 4

Seconded: Ms. Bajar

Nays: 0

### Corrected Resolution

#### ZB 11-6212 – Robert Maiman – Puppyz

Memorialization of a resolution granting approval to add to the height of an existing Pylon sign and an additional sign on the side of the building located at 14 Route 9, Morganville, NJ, Block 176, Lot 12, located in the C-4 Regional Commercial Regional Zone.

Offered:

Ayes:

Seconded:

Nays: Weilheimer

THE BOARD MEMBERS HAVEN'T HAD TIME TO REVIEW THIS RESOLUTION, SO THEY WILL HOLD IT FOR THE NEXT MEETING FOR THE VOTE.

Meeting Adjourned 10:45 p.m.

Respectfully,

Sarah Paris, Administrative Officer