

HILLSBOROUGH TOWNSHIP BOARD OF ADJUSTMENT
PUBLIC MEETING MINUTES
February 5, 2014

Chairman Helen Haines calls the Board of Adjustment Meeting of February 5, 2014 to order at 7:30 p.m. All stand for the Pledge of Allegiance. The meeting takes place in the Courtroom at the Municipal Building.

Notice of Meeting

Chairman Haines announces the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975.

Roll Call:

Frank Herbert – Present	Frank Valcheck – Present
John Stamler – Absent	Shawn Lipani – Present
Helen Haines, <i>Chairman</i> – Present	Kenneth Hesthag (Alt. 1)- Present
Curtis Suraci, <i>Vice Chairman</i> – Present	Fred Gladstone (Alt. 2) – Present
Walter Dietz, III – Present	Steve Monte (Alt. 3) – Present
	Sally Becorena (Alt. 4) - Present

Also in attendance: Mark Anderson, Esq., Board Attorney (Woolson Sutphen Anderson, P.A); David Kois, Deputy Planning Director/Zoning Official and Board of Adjustment Administrative Officer/Secretary; and Lucille Grozinski, CCR.

Oath of Office

Chairman Haines acknowledges Fred Gladstone (Seat Alt. #2) has signed the Oath of Office. Chairman Haines welcomes him to the Board.

Acceptance of Minutes

None

Acceptance of Resolutions

None

Board of Adjustment Business

Chairman Haines announces the HIGH BRANCH LAND, INC., application, File #BA-13-13 has been withdrawn.

Business from the Floor

None

Public Hearing-Applications

Constance GACEK – File #BA-13-18 – Block 174, Lot 39.03 – 317 East Mountain Road

Mr. Kois introduces the application.

Robert Foley, Esq., representing the Applicant, makes a short opening statement explaining the background of the application. He states he would like to proceed with a bifurcated application.

Mark Anderson, Esq., notes that the tax reports and smoke detector inspections do not determine legal use, only actual and current use. How the house was taxed is irrelevant in deciding a legal non-conforming use.

Mr. Anderson says in 1998, the Applicant certified to the Township and Planning Board that this was a single family use, which is what creates the current dilemma. The subdivision granted by the Planning Board was not lawfully granted if it was, in fact, a two-family use.

Mr. Foley and Mr. Anderson discuss the concept *nunc pro tunc* and how it may or may not apply to this case. Mr. Foley would like to be granted a certificate of non-conformity that would be applied retroactively to the Planning Board approval.

In summation, Mr. Anderson feels *nunc pro tunc* is not applicable in this case.

Mr. Anderson feels the Board cannot ignore the results of the Planning Board subdivision because it is part of the township records.

Mr. Anderson's states his opinion, being that the Applicant has two choices: apply to the Board of Adjustment for a subdivision and then subsequently apply for certificate of non-conforming use. Or, instead, apply for use variances.

Chairman Haines indicates to remind Mr. Foley that the Applicant signed an application in 1998 that indicates it was single family house.

Mr. Foley clarifies that Constance Gacek signed a statement that acknowledges only the application was submitted but did not prepare the application that says single family use.

Mr. Foley reminds the Board that if a certificate of non-conformity is approved today, it is retroactive.

Mr. Anderson argues that a certificate of non-conformity is effective only when active, not retroactively so *nunc pro tunc* cannot apply here.

Mr. Anderson reaffirms that the only options to the Board remain: either review the lot for subdivision and certification of non-conforming use OR 'c' and 'd' variances.

A Board Member suggests a 5 minute break for Mr. Foley to discuss the options with his client.

Mr. Foley restates that he requests the Board consider an application for certificate of non-conformity with the *nunc pro tunc* effect.

Chairman Haines asks how the Board can vote if they have not heard any testimony.

Mr. Dietz clarifies that Mr. Foley would like the Board to decide if it is legal for the Board of Adjustment to apply *nunc pro tunc*.

Mr. Anderson does not see how *nunc pro tunc* applies.

Mr. Dietz says he is not making a motion, just clarifying on what is being asked. He asks for more information.

Mr. Dietz does not know how the Board of Adjustment can change what the applicant originally agreed to with the County [in the original 1998 subdivision]. If the Applicant said it was a one family house and the Planning Board legally determined it could be subdivided, how can the Board of Adjustment go back and change it? The applicant agreed to those conditions in 1998.

Chairman Haines notes the application from 1998 specifically states single family dwelling twice, as both the existing and proposed use, inferring there is no way it was a mistake or typo.

Mr. Dietz motions to deny Mr. Foley's request for applying *nunc pro tunc*.

Mr. Herbert wants to know if in any case law in NJ, is this concept being applied to property law.

Mr. Anderson is certain it is not; not as it is being made here. Mr. Anderson gives examples of how it can be applied.

Mr. Hesthag seconds the motion.

Roll Call: Mr. Valcheck – yes, Mr. Lipani – yes, Mr. Herbert – yes, Mr. Dietz – yes, Mr. Hesthag – yes, Vice Chairman Suraci – yes, Chairman Haines –yes. Motion carries.

Chairman Haines asks if Mr. Foley is prepared to proceed with a use variance application.

After a brief break to discuss with his client, Mr. Foley states he would like to proceed with a use variance.

Constance Gacek, the Applicant is called as a witness and sworn in.

Ms. Gacek responds to Mr. Foley's questions, indicating she has always lived on or near the property. She describes a second floor tenant from when she was a child. She further explains how she came to own this property.

Ms. Gacek says she did not realize it was an illegal use until she attempted to sell the property.

Chairman Haines asks if the members of the Board have any questions.

Mr. Dietz asks if Ms. Gacek read the original Planning Board application that she signed.

Ms. Gacek says no, because she thought she was doing a good thing for the County.

**Board of Adjustment Meeting
February 5, 2014**

Mr. Dietz asks if the house has been continuously rented or used as a two-family house since 1942 until the present.

Ms. Gacek says each apartment was not always rented.

Mr. Dietz clarifies that he wants to know if she abandoned the use or if it was always a two-family even when one apartment was not rented.

Ms. Gacek clarifies yes; it was always a two-family.

Chairman Haines asks in which house Ms. Gacek lived in 1998 during the Planning Board application.

Ms. Gacek says she lived at the other end of East Mountain Road.

Chairman Haines asks if, to Ms. Gacek's knowledge, it was being rented during that time [1998].

Ms. Gacek said there was always someone in there until this past year.

A Board Member asks if Ms. Gacek ever had tenants she had to certify to the County as to it being a two-family house, perhaps because the tenant was on welfare or something similar.

Ms. Gacek testifies no.

Chairman Haines again asks for questions.

Mr. Kois states for the record how long he has become involved in this application.

Mr. Kois asks Ms. Gacek to clarify all structures on the property and their uses.

Mrs. Gacek says there are no other structures, only the house.

Ms. Gacek, Mr. Kois and the Board go over the aerial view of the property and come to the conclusion there are no other structures on the current property other than the house.

Mr. Kois asks about the septic system installed on the property. He asks for clarification as to whether there is only one septic system that is sized for a two-family rather than two separate septic systems.

Ms. Gacek agrees it is one septic system and testifies it was routinely inspected.

A Board Member asks why Ms. Gacek wants to keep this as a two-family use.

Ms. Gacek indicates for monetary purposes.

No public questions.

Mr. Foley calls David Stires, P.E., P.P. who is sworn in and begins his testimony.

Chairman Haines accepts his qualifications as a Planner.

Mr. Stires testifies that before the 1998 subdivision, the lot had an existing two-family house.

He continues that the undersized lot is an existing condition because 5 acres was allowed in the MZ zone in 1998 when the subdivision was approved.

Mr. Stires, according to his expertise, believes this subdivision does not impact the Zone Plan or the Master Plan of the Township of Hillsborough

Mr. Anderson asks Mr. Stires to testify about the 'd' use variance.

Mr. Stires testifies the subdivision is an expansion of a non-conforming use but because the subdivided lot is open space, the nonconformity is really not expanded. There is no development or possible future development.

Mr. Anderson restates that this only applies to the lot size, 'c' variance, and asks again about the positive criteria for the 'd' variance. He reminds the witness this is a current request to change a property zoned for single family use to two-family use.

Mr. Stires asks for a moment.

Mr. Stires states, in his opinion, this property is suitable for the two-family dwelling because it is an existing non-conforming use.

Mr. Anderson reminds the witness that the Board is not hearing an application on an existing non-conforming use. He asks Mr. Stires to explain in what respect the property is particularly suitable for the use.

Mr. Stires says the structure is not historical but it does date back to the 1800's.

Chairman Haines asks for confirmation that it is not on the local and/or state historical register.

Ms. Gacek tells the Board that the house had to be repaired because of the old material it was made from. No one was interested in registering it as historic, to her knowledge.

Mr. Anderson asks Mr. Foley to clarify a statement from Mr. Stires. His understanding of the testimony is that in 1998, the uses on the retained property were limited by that application.

Mr. Foley says the Resolution does not indicate any use limitations.

Mr. Anderson agrees but was wondering if there was some other knowledge of limitations.

Mr. Foley supposes Mr. Stires meant the property is not large enough to re-develop or further subdivide.

Mr. Stires clarifies that the 5.5 acres is limiting for future development because the zone was 5 acres and the other subdivision is part of the Sourland Mountains Preserve so there will be no future development.

Chairman Haines asks for clarification on how the use does not impact the zoning ordinance.

Mr. Stires again mentions the pre-existing non-conforming dwelling. He is reminded that that is not the application the Board is hearing and they move on.

Mr. Foley asks for another short adjournment to do some impervious coverage calculation, which is granted.

Mr. Stires addresses the ample parking spaces and states that preserving the character of the 200 year-old house would be a positive move.

Mr. Stires goes on to testify that any detrimental effects of this two-family house are negligible.

Chairman Haines brings up fire safety concerns. She wants to know how occupants in the second floor apartment are to exit during a fire.

Ms. Gacek testifies that the second floor apartment has been approved by the Fire Safety Officials.

The Board and Mr. Foley discuss possible current fire exits including a stairway, larger windows, and the roof of the porch.

Chairman Haines is not convinced the current exits are sufficient in the case of fire.

Mr. Gladstone asks if the house was converted from a single family house.

Ms. Gacek testifies no, for her entire life, it was a two-family house.

The Board discusses what makes a two-family dwelling and how it is different than having one large family in a single family dwelling.

Mr. Kois discusses the zoning perspective of dwelling units.

Mr. Foley admits a mistake in impervious coverage calculation and asks Mr. Stires in his experience as an engineer, if the combined driveway and house area is less than allowed for the maximum impervious coverage. Mr. Stires indicates yes.

No questions from the public.

Chairman Haines asks for motion to close the public portion. Motioned and seconded. All in favor – aye. None opposed.

Mr. Anderson reminds the Board that if there are negative criteria, those and conditions can be discussed now.

The Board sees no negative impacts to granting this use.

Mr. Dietz motions to approve, seconded by Mr. Hesthag.

Mr. Dietz adds to the motion that it has to conform to building and fire codes. Chairman Haines agrees, specifically regarding the exit arrangements.

Roll Call: Mr. Valcheck – yes, Mr. Lipani – yes, Mr. Herbert – yes, Mr. Dietz – yes, Mr. Hesthag – yes, Vice Chairman Suraci – yes, Chairman Haines –yes. Motion carries.

**Board of Adjustment Meeting
February 5, 2014**

Mr. Kois introduces the application.

Applicants, Shawn Pierson and Amanda Pratt are sworn in.

Ms. Pratt describes her request and how the approximate three percent reduction of impervious coverage would occur.

Chairman Haines asks how the property got so far over the allowed impervious.

The Board and Applicants discuss possible scenarios such as previous owners paving the driveway without a permit and compare the Applicants' property to those of their neighbors.

A Board Member asks if Applicants contacted neighbors to buy land.

Applicants testify that no neighbors are willing or able to sell.

Applicants clarify that both the walkway in the back of the house and the circular driveway will be removed.

Ms. Pratt discusses the 18"x36" stepping stones that were left off of the impervious coverage calculation.

Mr. Kois clarifies that according to Township policy swimming pools do not count against impervious coverage.

Mr. Dietz asks Mr. Kois about the proposed stepping stones and if they should be considered at less than 100% impervious because water can filter under them.

Mr. Kois restates he can only speak about Township policy and that the Township considers pavers as 100% impervious.

The Board does the math and adding the stepping stones, the impervious coverage they are requesting increases.

A Board Member thinks this is a good application because the applicant is reducing the current impervious coverage.

It is suggested to the Applicants that they ask for a little more impervious coverage than the amount they requested.

Chairman Haines states for the record there is no public in the room so there will be no questions from the public.

Mr. Kois asks the Applicants to explain how the calculations were done for the irregularly shaped impervious coverage items, such as the pool walkway.

Mr. Pierson explains they visited other pools and talked with their landscaper.

Mr. Anderson clarifies to the Applicants whatever amount of impervious coverage the Board approves will be the maximum, so if they made a mistake calculating, that will be a problem.

Ms. Pratt clarifies that they are asking for 18.5% impervious coverage.

A motion to approve with 18.5% impervious coverage is made and seconded.

Roll Call: Mr. Valcheck – yes, Mr. Lipani – yes, Mr. Herbert – yes, Mr. Dietz – yes, Mr. Hesthag – yes, Vice Chairman Suraci – yes, Chairman Haines –yes. Motion carries.

Correspondence

None

Board of Adjustment Meeting Schedule

Chairman Haines makes a motion to cancel the next Board of Adjustment Meeting scheduled for February 19, 2014, which was seconded and unanimously approved by all members.

Adjournment

The meeting adjourned at 9:02 p.m.

Submitted by:

*Caitlin Davis
Planning and Zoning Clerk*

*Reviewed by:
Debora Padgett
Administrative Assistant
Planning Board/Board of Adjustment Clerk*