

**TOWNSHIP OF WALL
ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
HELD IN THE MUNICIPAL MEETING ROOM
NOVEMBER 4, 2009**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Chairwoman DeSarno at 7:30 P.M. Members present were Ray Slocum, Kevin Orender, Robert Morris, Nance-ellen Draper, first alternate Mary L. Burne, second alternate Mark Margadonna, Attorney Cramer, Planning Secretary Roberta Lang, Recording Secretary Betty Schinestuhl, Engineer Gerken, Planner Bergailo and Reporter Arnone.

SALUTE TO THE FLAG

Attorney Cramer announced that all requirements under the Open Public Meetings Act had been complied with for this meeting and read the purposes of the Board of Adjustment.

Mrs. Burne announced the McCarthy application will be carried to February 17, 2010. They must re-notice and re-advertise. The Grace Tabernacle application will be carried to February 17, 2010.

NEW APPLICATION

#BOA20-2009 – Date application complete: September 2, 2009

APPLICANT: JAMES FOGLIO

PROPERTY: 1608 Bass Point road, Block 880, Lot 27, R-30 zone

RELIEF REQUESTED: Bulk

Attorney Cramer reviewed the file and stated the Board had jurisdiction to proceed.

Timothy B. Middleton, Esq. appeared for the applicant.

Entered into evidence:

- A-1 Jurisdictional Items
- A-2 Survey prepared by William Kurtz dated July 7, 2009
- A-3 Large picture board
- A-4 Small picture board

BOA-1 Engineering plan review prepared by Glenn Gerken dated September 28, 2009

BOA-2 Planning plan review prepared by John Hoffmann dated October 22, 2009

Sworn by Reporter Arnone:

James Foglio
Richard Graham
Glenn Gerken
Cheryl Bergailo

Mr. Foglio said he took pictures of different fences and gates from different areas. The gate is a commercial gate because of the span of the driveway. The high side is because of the posts then it gets lower in the middle. He explained the fence. He showed pictures of other houses and how they looked.

Attorney Middleton said only a portion is over 4'. Mr. Foglio said just the ends.

Attorney Middleton asked why he needs the fence. Mr. Foglio said because he has a small child.

Mr. Slocum said it is already up. Mr. Foglio said he was not aware that it was an issue. The fence is 4' it's the gate that is over 5'. He explained they applied for a fence permit and backyard pool. He said he did not know the posts were an issue.

Mr. Gerken explained he got a permit for the fence. That is ok. As part of that he decided to put in a gate the ends are over 4'.

Attorney Middleton asked about the air conditioning units. Mr. Foglio said you can see the unit right next to the garage it is an eyesore. I was requesting to move those two behind the garage. Nobody will be able to see it. It will be away from my child.

Attorney Middleton asked if his neighbors have air conditioners and where are they located. How far from you? Mr. Foglio said they are fairly close, maybe 6'. He said the units are high efficiency and very quiet.

Mrs. Burne asked how many. Mr. Foglio said two. He said there is nothing in the garage.

Mrs. Burne said they will be the same BTU's. Mr. Foglio said he is just moving the ones that are there.

Mr. Slocum asked none of these service the garage. Mr. Foglio said correct. He said the garage holds the cars and the upper level is for storage only.

Sherrri O'Berg, 1606 Bass Point Drive, said Mr. Foglio said our air conditioners are 6' from the property lines. They are about 16' from the fence. They were placed there because that was an empty lot.

Richard Graham gave his credentials which were accepted by the Board.

Mr. Graham said he is the design architect. He said he did not design the AC units. He said the reasons for putting them in the side yards are: safety, they may be in the way of emergency vehicles; sound; and visibility. They want to re-locate the condensers. We are proposing to put them to the side of the garage and put them between the back of the garage. I don't see a problem in terms of safety. These locations are better because now they are a little more open. It would buffer the sound between the garage and fence. Visually it is much better.

Attorney Middleton asked if he visited the site recently. Mr. Graham said yes.

Attorney Middleton asked where the AC units are on the O'Berg property. Mr. Graham said on the side yard. I did not measure them but they appear to be about 5' off the building and 15' to the property line, 25' – 30' from the Foglio property.

Entered into evidence:

A-5 Photos of O'Berg's AC unit

Mr. Graham said he took this photo. It shows where the AC units are on the O'Berg property.

Attorney Middleton asked if it will be aesthetically pleasing. Mr. Graham said yes.

Attorney Middleton said the O'Berg fence is taller. Mr. Graham said yes.

Entered into evidence:

A-6 Photo of O'Berg fence

Attorney Middleton said we are just here tonight to modify the one condition in the resolution.

Mr. Orender asked what the distance you are moving it is. Mr. Foglio said barely 2'. Mr. Orender said within 5' of where it is now. Mr. Foglio said yes. Attorney Middleton said it is being moved from 6' to 3' from the property line.

Ms. O'Berg asked is it 6' or 5' from the property line. Mr. Foglio said 6'. Ms. O'Berg said her understanding is it is 5'. You are requesting a variance or resolution? Attorney Middleton explained the applicant is requesting an amendment to one of the conditions of the resolution. Ms. O'Berg asked if Attorney Middleton had the resolution. Attorney Middleton said yes the resolution was memorialized on March 7, 2001.

Ms. O'Berg said an air conditioning unit is defined as a structure and he says it is not. This resolution was actually not in the package when we went to town hall. We were not given the resolution. We were told we had to come to the meeting. The notice stated all documents would be at town hall. She said because of the size of the units they will be 1' from the property line.

Attorney Cramer said the notice states they will be moved from the west side to the rear of the garage. Attorney Middleton said the notice is very clear stating where they were going to be located, behind the garage is very clear.

Ms. O'Berg read a statement. She said they do not have objections to the gate changing the AC units we object. This is a custom built home. It was pre planned. Moving the units is for aesthetics not hardship. They will be placed right outside our bedroom, family room and outdoor patio. There will be two units between our fence and their garage. They will be 1' from the property line. This creates a noise level which we cannot control. AC units are accessory structures. It is in the ordinance. There is space on the south side to put these units. Our AC units were placed there 30 years ago. It was placed on the north side because there were no neighbors on that side.

Attorney Middleton said the AC units are not structures. There will be no impact to the O'Bergs for two AC units 10' – 12' from their house. The Foglio units are only being moved 3' that will not have a negative impact on the O'Berg's. Moving them closer to the fence would muffle the noise. This will have no negative impact on the O'Berg's.

Mrs. Burne said Attorney Middleton stated there is going to be a 3' difference and there is not going to be a negative impact, is that true? Will the sound be so minimal that it will be almost the same? Mr. Graham said there will be no change in the sound coming from the units. It may get quieter because they are not out in the open they are going to be nestled.

Mr. Slocum said he has to agree with Attorney Middleton. He said it is his thinking the move is so minimal he doesn't see any detriment.

The application was closed to the public.

Mr. Orender moved to approve the application as applied for. Mr. Slocum seconded the motion, which was unanimously approved by a roll call vote. (Messrs. Orender, Slocum, Mrs. Draper, Messrs. Margadonna, Morris and Mrs. Burne voted yes.)

RESOLUTION TO BE MEMORIALIZED:

TREE WILLY - #BOA19-2009

Block 270, Lot 29

Slocum/Orender

There being no further business to come before the Board, a motion was made, seconded, and unanimously approved to adjourn the meeting at 8:20 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary