

A regular meeting of the Board of Adjustment of the Township of Roxbury was held on Thursday, October 13, 2011 at 7:00 p.m. with Chairman Edward Data presiding. After a salute to the flag, Mr. Data read the Open Public Meetings Act and also acknowledged that Roxbury was named one of the nations 100 Best Communities for young people. The award was presented by Americas Promise Alliance, the nonprofit organization founded by General Colin Powell, carries with it a \$2,500 grant and the prestige of being a nationally recognized community.

BOARD MEMBERS PRESENT:

Ms. Darling, Ms. Dargel, Ms. Robortaccio, Mr. Crowley, Mr. Data

BOARD MEMBERS ABSENT:

Mr. Grossman, Mr. Damato, Mr. Giardina, Ms. Kinback.

PROFESSIONAL STAFF:

Mr. John Hansen, P.E. - Excused

Mr. Russell Stern, P.P.

Mr. Larry Wiener, Esq.

Mr. Erik Brachman, Zoning Officer

Minutes of 09/12/11

Ms. Dargel made a motion to approve the minutes of September 12, 2011,

Ms. Robortaccio seconded.

Roll call: Ms. Dargel, yes; Ms. Robortaccio, yes; Ms. Darling, yes; Mr. Crowley, yes; Mr. Data, yes.

RESOLUTION:

ZBA-10-014 Vogel, Bulk Variance for property located at 4 Will Lane, Wharton, Block 12901, Lot 44, in an R-1 zone.

In the matter of Jillian & Robert Vogel

Case No. ZBA-11-014

RESOLUTION OF FINDINGS AND CONCLUSIONS

BOARD OF ADJUSTMENT

TOWNSHIP OF ROXBURY

RESOLUTION

Approved: September 12, 2011

Memorialized: October 13, 2011

WHEREAS, Jillian & Robert Vogel have applied to the Board of Adjustment, Township of Roxbury for permission to construct an accessory structure requiring variance relief for premises located at 4 Will Lane and known as Block 12901, Lot 44 on the Tax Map of the Township of Roxbury which premises are in a "R-1" Zone; said proposal required relief from Section 13-7.1001D8 and 13-7.905A of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicants are the owners and occupants of the single-family home on site.
2. The applicants were proposing to construct a detached accessory structure. The proposed structure was depicted on the plans submitted with the application. It would be located adjoining the existing garage side of the existing home. The proposed structure would be 14'x28'.

Board of Adjustment 10/13/2011

3. Applicant received a letter of denial dated 8/3/11 and another revised to 8/17/11 from Erik Brachman, the Zoning Officer.
4. As noted in Mr. Brachman's letter of denial, the applicant needs variance relief for lot coverage - 20% permitted, 21.3% existing, 23% proposed/requested and noncompliance with the setback requirement of a distance from the principal structure to an accessory structure - 10' required, 3' proposed.
5. The applicant stated the accessory structure would afford an opportunity to store the applicant's boat and/or vehicle. After a discussion with the Board, the applicant indicated that the accessory structure would be constructed as a possible garage with a noncombustible concrete floor.
6. The applicant stated that their problem needing coverage was a result of the house and lot being essentially an R-2 lot located in an R-1 zone. In addition, approximately 10% of the lot coverage was due to the cartway of Will Lane being located on the property (this was also noted in Mr. Brachman's letter of denial). The applicants also stated that the 3' wide strip between the accessory structure and the house would be graveled and maintained by them. They also noted the property was a corner property and the location of the garage would not have a significant impact on any other property.

WHEREAS, the Board has determined that the relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board finds the size of the applicant's property together with the location of Will Lane to be hardships peculiar to the property. The requested relief is an increment of just under 2% additional lot coverage which will have minimal impact.
2. The proposed structure will be aesthetically compatible with the existing home (see condition below) and afford the applicant an opportunity to utilize indoor storage of vehicles, boats, etc.
3. The distance between the accessory structure and the existing home is not an issue in this particular case. The lot configuration lends itself to locating an accessory garage in the area depicted by the applicant. It will also allow a shorter driveway and less impervious coverage.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 12th day of September, 2011 that the approval of the within application be granted subject, however, to the following conditions:

1. Applicant shall construct the garage with a noncombustible floor. Construction official shall review all plans to ensure that the construction was done in a way so as to address any issues of combustibility with the accessory structure being located at 3' from the existing structure.
2. The color and construction of the garage is to be compatible with the existing architectural and color detail of the home. Construction official shall review the plans to ensure same.

Ms. Robortaccio made a motion to approve the resolution, Ms. Dargel, seconded.
Roll call: Ms. Robortaccio, yes; Ms. Dargel, yes; Ms. Darling, yes; Mr. Crowley, yes;
Mr. Data, yes.

APPLICATIONS:

ZBA-10-010 LaRoy, Use Variance & Site Plan Approval for property located at Ledgewood Landing Shipping Port Road, Landing, Block 10101, Lot 18, 19 & 20, in a B-1A zone. Applicant requested to be carried to December 12, 2011 with no further notice. *Carried to December 12, 2011 with no further notice.*

ZBA-11-015 Logan, Bulk Variance for property located at 54 Laurie Road, Landing Block 11311, Lot 8, in an R-3 zone.

Attorney, Paul Foreman of Foreman & Gray LLC, 760 Route 10 West, Suite 204, Whippany, NJ 07981 represented the applicant Mrs. Diane Logan. Mr. Foreman explained that due to illness and a death in the family, Mrs. Diane Logan was unable to attend the meeting this evening her daughter Ms. Bonnie Logan of 10 Hudson Court, Franklin Park, NJ Ms. Bonnie Logan was living in the house at the time when the sunroom was added. She was sworn in. Ms. Logan explained that as the sunroom was being built the Township Inspector had stopped by the house and spoke with her mother whom assumed that because the Inspector seen what was being done and had said that everything looked okay and had no objections, she thought that meant it was okay with the Township. She did not understand or misunderstood that she needed to file both a zoning and construction permit to be processed. That was five years ago. No permits were processed and the work was completed also in that time span when the sewer lines where added their driveway was repaved and expanded an additional two feet which brought the side yard setback to three feet, not the required five feet. The allowed impervious coverage for this zone is 25%. This property is currently at 32.75% with the improvements; the lot size is 50' by 150' square feet. Their property is on the market to be sold and they will be unable to proceed until the permits are processed this is an ex post facto. There was a discussion on when the Township added the impervious coverage limit. Mr. Wiener explained that this is a legal procedure; zoning and construction permits will need to be processed and the construction official will need to inspect and approve the work that was done.

Open to the public: No one stepped forward. Closed to the public.

Mr. Crowley made a motion to approve this application; the applicant will need to apply for the permits needed. Ms. Robortaccio seconded.

Roll call: Mr. Crowley, yes; Ms. Robortaccio, yes; Ms. Darling, yes; Ms. Dargel, yes; Mr. Data, yes.

ZBA-11-016 American Christian School, Variance Relief, non conforming use for property located at 126 South Hillside Avenue, Succasunna, Block 4601, Lot 13 in an R-1 zone. There was a discussion on the number of Board members present and the number of votes needed for a D-3 Variance to be approved. Ms. Kristen Brennan, Headmaster of American Christian School, 126 South Hillside Avenue, Succasunna and Peter Bogaard, Esq., 127 Main Street, Suite 1, Chester NJ 07930 were sworn in, Mr. Bogaard explained that he was retained today for this application The American Christian School has three buildings on the property, two school buildings and one house. The house has recently been used as a residence by a teacher of the American Christian School and they are now asking for permission to utilize the building for pre-school classrooms. The school has an existing three and four year old pre-school

program located in one of the school buildings on the campus. This has always been an issue because the pre-school age children share the same building as the older students. By moving the two pre-school classes into the house this will create an environment solely focused on pre-school age children. The house will require no structural changes to move the pre-school program. Cosmetic and maintenance improvements will be made to the building; a wood ramp will be added along with all fire and electrical systems being brought up to code. Ms. Kristen Brennan explained that she has been with the school for the past seven years as a parent, has worked three years as Director of Development and eight months ago became the Headmaster / Head of School.

In review of Mr. Sterns letter dated October 12, 2011, American Christian School asks to convert the existing dwelling previously used as a teachers residence to a three and four year old per-school on the first floor and teacher offices on the second floor. No exterior improvements are proposed and the dwelling will retain its residential appearance. Operations will remain the same including enrollment, traffic patterns and the amount of staff. There are presently eighteen children enrolled now as pre- k students. The class size has never gone over fifteen, the children attend different times and different days. There was a discussion on the state license and the maximum number of students allowed per class. The hours for grade school are 8:15 a.m. to 3:00 p.m. the pre-school time schedule is 8:30 a.m. to 3:30 p.m. Only half of the children attend a full day, there is also an after school day care.

The school driveway has one main entrance and a separate exit. American Christian School has been at this location for forty seven years. New entrance and exit signs will be posted, driveway entrances along Hillside Avenue will be posted with One Way signs and the internal drive to the dwelling will be posted with a Do Not Enter – Authorized Vehicles Only sign to keep a consistent traffic flow. There was a discussion on children not being in the front of the building, pre-school is very controlled. There should be no confusion with the traffic flow nothing really changes. Parking stalls, handicap parking and associated signage will be provided as directed by the Township Construction Official and the Township Engineer. The building has not been well maintained through out the years so the plan is to make repairs and clean it up. There was a discussion as to how the pre-school children are walked up to the front of the house and onto the ramp so they are able to enter on the side of the building. The roof of the building has recently been replaced. Structurally the interior is not changing, the floors are being refinished and rooms are being painted. New exterior lighting is being installed to ensure the safety of the children. Any interior work to be done needs to be inspected by township officials and will be approved by the Township Construction Official and Township Planner. The site does have a dumpster for garbage and recyclables. There was discussion on the removal of the oil tank, one of the buildings on the property was converted to gas and the oil tank will be taken away from the property within sixty days. The shrubs by the driveway have been pruned back and the soil mound has been removed. Fencing will be placed on the property for the safety of the children. The ramp will be positioned so that the children will not have to walk in front of the building this will also make the walk shorter for the children and safer.

Open to the public:

Mr. John Shannon, 128 South Hillside Avenue, one house south of the school, noted that the school is a good neighbor and was at this location before his house was built although this is a residential area. He would like to see that they have better control of the garbage area. The dumpster needs to be kept closed and their garbage pick up is at 5:30 a.m. and would like it to be a little later. Although the pine trees do some buffering it seems that the lighting goes on at dusk and off in the morning. There was a discussion on the lighting at the school. Before any lighting is installed it will need to be approved thru the zoning and building departments.

Ms. Bettina Stukenbroeker, 19 Helen Street, Succasunna, voiced her concern with the number of children allowed in the school and that the school follows State rules. Closed to the public.

Ms. Dargel made a motion to approve the application with all county, state and government approvals, lighting plans will be approved by the Township Construction Official, the ramp will be rebuilt at a 180 degree cut back towards the back of the property, everything else that was stipulated to on the record incorporated, including the points in Mr. Sterns report, signage will be installed, and if the student grade level was to change in this building the school would have to come back before the Board, parking is to be revised. Mr. Crowley seconded.

Roll call: Ms. Dargel, yes; Mr. Crowley, yes; Ms. Darling, yes; Ms. Robertaccio, yes; Mr. Data, yes.

ZBA-11-017 Zoino, Bulk Variance for property located at 30 Paul Drive, Succasunna, Block 1606, Lot 7 in an R-3 zone.

Mr. Nino Anthony Zoino and his son Nicholas Zoino, both residing at 30 Paul Drive, Succasunna, were sworn in. Mr. Nino Zoino explained that what he has done on his property is replace an existing wood fence, which has been on the property approximately thirteen years (since 1998) with a vinyl fence. Thirteen years back when he applied for a variance he believed at that time it was approved for what was put up. Mr. Wiener stated that in a denial letter Mr. Zoino had received, the fence was to be lower. Mr. Zoino stated that the denial letter was based on a five foot set back so it was more a set back issue than a height issue; the denial was because the fence was too close to the road right of way. There was a discussion on the permits needed and how Mr. Wilson let Mr. Zoino know the day that the fence was finished being installed that the fence was too close to the road and a neighbor had made a complaint about it. Mr. Zoino stated that he applied for a variance, went before the Board and was denied at that time because the fence was five feet from the curb and it needed to be ten feet from the curb. Mr. Zoino property is a corner lot; he received a letter dated January 26, 1999 in reference to set back and height of the fence. Mr. Zoino was asked why he did not comply. There was a discussion as to the height never being questioned and the fence always exceeding the allowed height. Mr. Zoino stated that the height of the fence was six feet; he did cut it down to five feet; even though he was instructed to comply with the allowed height of four feet. Mr. Zoino presented Exhibit A-1, forty photos of the fence as it was and is now. The fence installed now is five feet, eight inches high. Mr. Wiener explained that the strict reading of the Township Ordinance states that a variance is needed for that height of a fence. Mr. Zoino is before the Board seeking

approval for a fence that has already been installed which is higher than the allowed height. There was a discussion on Mr. Zoino's original application that was before the Board in December, 1998 and was denied without prejudice, stated that the applicant must obtain approval from the governing body for any improvements located in the right of way and that the Board was concerned about adequate sight lines for adjacent properties. The fence was never brought into conformity as to the fence height. The new fence height is five feet, eight and a half inches, and that does not conform with the Township Ordinance so what is needed now is relief to have a five foot, eight inch fence.

The Board needs to know what is so exceptional about the property or what hardship Mr. Zoino has that would allow and encourage this Board to deviate from the standards of the Township Ordinance. Mr. Zoino explained the hardship is his property is a corner lot and he is also before the Board because of impervious coverage issues. Mr. Zoino presented Exhibit A-2 an enlarged survey of his lot in which the surveyor shows his R-3, corner property size as 10,781 square feet with the dwelling situated diagonally. The minimum lot size for an R-3 zone is 15,000 square feet. There was a discussion on the paver patios and sheds that were on the property. There was a discussion as to the fence being six foot high in 1998 and never being corrected. No permit was issued for the new fence. Mr. Zoino stated his reason to have a fence at five feet, eight inches is due to Exhibit A-3, nine photos which show his neighbors of three years, their house on 11 Helen Street and the cameras in their back yard that face his property, he has a new puppy that would be able to jump over a four foot fence along with the deer. Open to the Public:

Mrs. Kimberley Adonis and Mr. David Lurachy of 11 Helen Street were sworn in and object to the fence at a height of 5 feet 8 ½ as inches it blocks the view when trying to pull out of our driveway along with a pine tree. They are unable to see oncoming traffic and are worried about safety. There is no reason to have a fence this high and the fence is located on some of their property, the fence was put up when Mr. Lurachy was at work, and the new fence is being moved out closer to the roadway. Mr. Lurachy presented photos Exhibit 0-1, 0-2, 0-3, to show the added height of the fence and how the fence is being extended further out to the roadway. The Board took a five minute break.

Ms. Bettina Stukenbroeker, 19 Helen Street, Succasunna, still under oath from the previous application, stated that the Zoino family has lived at this location for a long time, the pine tree has been at this location since she can remember and can understand the pine tree being a concern blocking their view but not the fence. There was a discussion on the size of the fence, what is permitted and allowed. A five foot eight inch fence is permitted in the back of the yard. The issue being a corner lot, Mr. Zoino has two front yards and a six foot fence is not permitted in a front yard.

Mrs. Jane Daley, 39 Paul Drive, Succasunna, said it is important that the Board know there are a lot of deer in our area.

Mrs. Susan Zoino, 30 Paul Drive, Succasunna, questioned if this was in violation with the town, why didn't anyone follow up sooner, she would have never recommended

changing this fence. There was a discussion on the traffic on Helen Road and review of Exhibit A-1. Mr. Zoino explained his old fence has been in place for the past thirteen years, understood what was said earlier, it was not conforming, it was denied back then. He was under the impression that Sam Wilson approved it, he came by, he looked at the fence and left. He never got a fine afterwards. He put up a new fence, if the Board wants a four foot fence he told Russell Stern in a private meeting he would knock down the new fence. There was a discussion on the backyard and the height of a backyard fence.

Mr. John Sandstrom currently lives at 65 Eyland Avenue, Succasunna. He expressed that Helen Street is a non traveled street; except for the residents that use it. Because Mr. Zoino has had his fence for so long it should stay this way.

Mrs. Ann Matson, 47 Paul Drive, Succasunna, felt everyone has an obligation to each other to make our lives better and wanted resolution so that both neighbors will be happy. There was a discussion on the front yard set back and the right of way line. Closed to the Public.

Mr. Crowley explained there are zoning laws; the Board of Adjustment members do not make these laws, the Township and Councilmen make the laws. The Board of Adjustment is here to hear testimony that says that when those laws should not apply due to a hardship. The hardship can't be money; the Board listens to testimony to see if there is a hardship evident enough to allow for a variance. The law is the height of a fence in a front yard can only be four feet high, and has been this way since 1998 and that is why it was denied then, the fence was to be changed to four feet. The Township will need to check the tree and see if it is in the right of way. This application would be split into two parts - 1) for the impervious coverage, 2) for the height of the fence in the front yard.

Mr. Crowley made a motion to approve the impervious coverage and deny the fence. Ms. Robortaccio seconded.

Roll call: Mr. Crowley, yes; Ms. Robortaccio, yes; Ms. Darling, yes; Ms. Dargel, yes; Mr. Data, yes.

Mr. Data expressed concern in reference to the pine tree blocking the neighbors driveway. It needs to be addressed as soon as possible before there is an accident. You can not see the driveway thru the tree; it is an accident waiting to happen.

Impervious coverage is approved and the fence is denied, the six foot fence in the front yard must be removed. Mr. Stern stated Mr. Zoino would be able to come back before the Board with a new location of the fence; it must be done within the next thirty days prior to our Zoning Board meeting of November 14, 2011 in order for any application fees to be waived.

Motion to adjourn the meeting was made at 9:41 p.m.

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Dolores Tardive, Board Secretary
October 13, 2011