

**STILLWATER TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
April 27, 2015**

**MEMBERS PRESENT:** Mr. Powell, Mr. Hammond, Mr. Sarni, Mr. Lippencott, Mr. Stachura, Mrs. Draghi, Mr. Wykoff

**MEMBERS ABSENT:** None

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, April 27, 2015, at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Chairperson Powell in accordance with the Open Public Meetings Act. The flag was saluted and roll call taken.

**MINUTES**

Mr. Stachura made a **motion** to approve the minutes of March 23, 2015, seconded by Mr. Sarni.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Sarni, yes, Mrs. Draghi, yes, Mr. Wykoff, yes, Mr. Powell, yes

At this point, Mr. Lippencott made a **motion** to amend the order of the agenda, Gerber Resolution followed by the Durkos application, seconded by Mr. Hammond.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Sarni, yes, Mrs. Draghi, yes, Mr. Wykoff, yes, Mr. Powell, yes

**RESOLUTION**

**Gerber, Block 2401, Lot 44.02, Cal. No. 586** – Review of condition #7 requiring NJDEP delineation of the wetlands on the property.

The Board reviewed the delineation map submitted with the deed from the original property subdivision. Mr. Rodman noted that although the subdivision was completed in 1988 and NJDEP regulations took place in 1989, the applicant would still have to adhere to NJDEP regulations for encroaching on the wetlands. Mr. Morgenstern stated the applicant is not proposing any new development and there have been no changes to the property. Mr. Powell indicated Mr. Gerber would have to appear before the Board for any new development or expansion on the property and abide by NJDEP regulations. Mr. Stachura made a **motion** to remove the original condition #7 of the resolution and replace it with the following:

*The applicant shall submit the prior written description of the wetlands on the site in the subdivision deed and map to this Board.*

**Roll Call Vote:** Mr. Hammond, yes, Mr. Stachura, yes, Mrs. Draghi, yes, Mr. Powell, yes

**Durkos, Block 3601, Lot 11.17, Cal. No. 590** – Application to demolish an existing cabin and construct a new cabin

All notices appeared to be in order. William Hinkes, Esq. represented the applicant. Ed Durkos, owner, 40 Tolstoi Place, Little Falls, NJ and Dan Rivara, builder, 79 Sunset Lake Road, Blairstown, NJ were sworn in.

Mr. Morgenstern referred to a memo he copied to Mr. Hinkes from Stillwater Township Attorney Richard Stein, indicating a COAH fee would be required in this case. Mr. Hinkes indicated he was in receipt of the memo and his client would like to proceed. Mr. Hinkes described the property consisting of seven cabins on the lot, known as the Swartswood Cove Association. Mr. Durkos has owned the cabin for 30 years and he would like to remove it and rebuild it using the same footprint. It is not a permitted use in the Recreation/Commercial zone. Only one principal use is permitted and there are seven on the lot. The cabin would remain 10-14 feet from the shoreline and the term “seasonal use” makes sense on this lot in this area; the setbacks would remain the same and there would be no increase in size.

Mr. Rivara described the property and new cabin using the map submitted, noting the home to the right has been partially torn down and rebuilt, all the cabins are similar and one-story. The Durkos cabin will be five and half feet shorter in length than it currently is. He referred to the building sketch submitted and stated the existing cabin is dilapidated and needs to be elevated using piers. He considered leaving fifty percent and applying for a zoning permit but felt that would not be beneficial due to the small size of the cabin and work required. The cabin will be demolished in less than a day and fencing will be placed along the lake to protect it from any debris.

Mr. Durkos described the holding tank located in the front of the existing cabin.

A-1: 4/27/15 – Description of the holding tank

It is a closed system and is pumped twice per year; it has never overflowed. There is also an incinerator toilet in the house, electric to 1200 degrees.

A-2: 4/27/15 – Description of the incinolet

Mr. Hinkes reviewed the Environmental Commission Site Survey as follows:

-The cabin will remain 10 to 14 feet from the shore line and this is an existing condition.

-No septic field is serving this cabin.

-The outhouse (privy) will be removed.

-Setbacks were measured by Mr. Rivara and an affidavit submitted.

-An Environmental Impact Statement was recommended; there is no basis as there will be limited effect on the property, footprint will remain the same and there will be no further disturbance. An existing berm prevents drainage to the lake, there is no septic field, and the holding tank is pumped.

-Wetlands are located in the general area but not near the cabin property. The lake is considered open waters.

-Aquifer recharge area – the septic is fully self-contained and waste is taken off-site.

-There is no raised bed and no shared septic.

The tank is located under the picnic table approximately 8' from the cabin toward the right side.

The shed on the property will be removed.

Mr. Rodman submitted eight photographs page 1; and seven photographs page 2; depicting the property and marked as ZBA-1.

The following report dated 4/23/15 by Ted Rodman was reviewed by Mr. Hinkes as follows:

1. The applicant should provide testimony which demonstrates that the relief sought can be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance. *Positive criteria – the site is particularly suited for the cabin; there are six other similar cabins located on the site. Negative criteria – the use is recreation related; seasonal use.*

2. The applicant's attorney has stated that the existing septic system is a dedicated system to this cabin and is comprised of a Norwesco holding tank which is pumped out as needed. I assume this system will remain in use. Any approval should be conditioned on receiving approval from the Sussex County Health Department for the holding tank and "ash toilet" shown in the plan. *Mr. Hinkes agreed to Sussex County Health Department approval as a condition.*

Specifications for the holding tank should be provided to ascertain if this is indeed a water-tight (leak-proof) tank. Does this tank contain an alarm system to prevent overflows? *The specifications were provided; the tank currently has no alarm. The applicant agreed to install an alarm.*

Based on a site inspection and after reviewing the sketch provided by the applicant's attorney, it appears the clean-out for the holding tank is located under the picnic table. The applicant should clarify the location of the tank. *The location is just to the right of the house approximately 8' off of the cabin.*

3. A site survey has been received from the Stillwater Township Environmental Commission. They have recommended an Environmental Impact Statement be provided. They have also indicated that this lot is very close to wetlands as depicted on ERI Wetlands Map. They recommend the outhouse be removed from the site. The site plan shows two outhouses. If these belong to this cabin, I would concur that they should be removed. *The outhouses will be removed from the property.*

4. The application states the cabin is "deteriorated". Is this cabin structurally unsafe? It appears that the existing exterior walls extend below grade. Will the new sonotube foundation raise the floor level of the cabin? *The cabin is deteriorated; built directly on the ground. The frame will be constructed in a very short time period, with a sonotube foundation raising the floor of the cabin.*

5. If the cabin is demolished, how will any hazardous materials (lead, asbestos, etc...) be handled and disposed of? *There will be no such materials. There is no plumbing except for the kitchen sink and there are no lead pipes. The floor is plywood and the shingles are asphalt. The roof is new in the last five years, no water, and the septic holding tank was installed in 2010.*

6. Will a NJDEP permit or waiver be required for construction of this replacement cabin? *Mr. Hinkes did not believe an NJDEP permit or waiver would be required. The lake is considered open waters. The same footprint will be used and there will be no disturbance outside of that footprint. The house will be 5' shorter on one side.*

In response to Board questioning and concerns with the holding tank, Mr. Durkos described the 300 gallon tank indicating he and his wife are the only two that use the cabin. He is willing to address Board concerns and install a warning system. Mr. Durkos testified there is no water from October to May; no running water in the house, a flush toilet is used during the summer months and the water is brought in for that and a shower. All the cabins use water that is pumped from the lake. Mr. Durkos is only at the cabin on weekends and it will never be a full-time residence. The power switch to the tank is shut off when they leave the cabin. Mr. Durkos stated as far as he knows the tank was installed according to codes with proper permits and inspections. According to the association contract he thought it was limited to seasonal use, and rentals are definitely not permitted.

**George Morville, Officer of the Cove Association** was sworn in. He testified that each owner owns the cabin and the footprint and the association owns the property. It is for recreational use and some of the cabins have full septic systems approved by the County. He did not believe the by-laws stipulated the length of stay, only that no rentals are permitted. The association pays the land tax and each owner pays the taxes on the structures. All cabin owners had to approve the application made by Mr. Durkos. Mr. Morville encouraged improvements to the buildings and removing the privies and cleaning up the property.

The Board discussed pumping the water from the lake and Mr. Powell felt the NJDEP diversion rule – 30,000 gallons per day – would not be an issue.

**At this point, this portion of the meeting was opened to the public at 8:39 p.m.**

**There being no members of the public wishing to speak, this portion of the meeting was closed at 8:40 p.m.**

Following a Board discussion to determine certain conditions, Mr. Morgenstern reviewed the conditions as follows:

- The new cabin shall be constructed in the footprint of the existing cabin.
- The new cabin shall be no closer to the lake than the existing cabin.
- The two outhouses and shed must be removed.
- The demolition of the cabin must be in accordance with the law and will require a demolition permit; debris must be disposed of appropriately and the lake protected from such debris.
- The new cabin must be no larger than the existing cabin.
- COAH Fee will be required.
- Installation of an alarm system on the septic tank with an automatic shut-off.
- Must comply with height requirements of the ordinance.
- Must comply with the association's LLC agreement with respect to occupancy.
- Existing drainage pattern will not be affected by the construction.
- Other standard conditions applying.

It was noted that there will be less than 5,000 square feet of disturbance and Sussex County Soil Conservation District approval would not be required. Stormwater regulations will not be triggered.

Mr. Morgenstern reviewed the variances as follows:

- Use variance: cabin is not permitted in the Commercial Recreation Zone District.

-Variance from the requirement that no lot shall have erected upon it more than one principal residential use or building.

-Variance from the requirement for setback from the lake; 100 feet required.

-Variance from the requirement relating to construction in a hydrologically sensitive area.

Mr. Stachura made a **motion** to grant the necessary variance relief with conditions, seconded by Mr. Hammond.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Sarni, yes, Mrs. Draghi, yes, Mr. Wykoff, yes, Mr. Powell, yes

Mr. Lippencott made a **motion** to allow the applicant to waive his right to wait to receive the Resolution, to proceed at this own risk, seconded by Mr. Hammond.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Sarni, yes, Mrs. Draghi, yes, Mr. Wykoff, yes, Mr. Powell, yes

**May Meeting Date:** Following a brief discussion, the Board determined the meeting date for May would be Monday, May 18, 2015; appropriate notice to be provided.

**BILLS:**

Mr. Sarni made a **motion** to approve the following bills, seconded by Mr. Stachura:

Dolan & Dolan	General – March 2015	\$ 53.13
	Escrow – Durkos	\$ 80.50
	Escrow – Nextel	\$ 80.50
	Escrow – Mackey	\$ 40.25
Newton Trophy	Nameplate – S. Wykoff	\$ 8.00

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Sarni, yes, Mrs. Draghi, yes, Mr. Wykoff, yes, Mr. Powell, yes

**Correspondence:** None

**At this point, this portion of the meeting was opened to the public at 9:15 p.m. There being no members of the public wishing to speak, this portion of the meeting was closed at 9:15 p.m.**

**Committee Liaison Report:** Charles Gross, Committeeman

No report.

There being no further business, Mr. Stachura made a **motion** to adjourn the meeting at 9:16 p.m., seconded by Mrs. Draghi. In a voice vote, all were in favor.

Respectfully submitted,

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Kathy Wunder, Board Secretary

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Eric Powell, Chairperson