

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
June 24, 2013**

MEMBERS PRESENT: Mr. Sarni, Mr. Stachura, Mr. Lippencott, Mrs. Galante

MEMBERS ABSENT: Mr. Powell, Mr. Hammond

ALSO PRESENT: Board Attorney Robert Morgenstern
Board Engineer Ted Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, June 24, 2013 at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Vice Chairman Stachura in accordance with the Open Public Meetings Act.

The flag was saluted and roll call taken.

MINUTES

Mr. Sarni made a **motion** to approve the minutes of May 30, 2013, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Stachura, yes

RESOLUTION

Peter Tanis, Block 1703, Lot 2.01, Cal. No. 580

Application to use an existing eight unit multi-family dwelling building for long-term residential occupancy for low and moderate income housing pursuant to the applicant's Affordable Housing Agreement with the Township of Stillwater executed on 6/14/12; with site plan approval requested.

Mr. Lippencott made a **motion** to adopt the Resolution, seconded by Mr. Sarni with the following terms and conditions applying:

1. The Applicant shall obtain approval of the Sussex County Planning Board or a letter of no interest from the Board.
2. Applicant shall comply with all of the terms and conditions of the Affordable Housing Agreement between the Township of Stillwater and Peter J. Tanis dated June 14, 2012, a copy of which is annexed hereto.
3. The Applicant shall prepare a Deed complying with the laws, rules and regulations of the Council on Affordable Housing and the Department of Community Affairs, deed restricting the eight units in the multi-family dwelling for use for affordable housing for occupancy by persons qualifying for low and/or moderate income housing for a minimum period of 15 years. The deed restriction shall be enforceable by Stillwater Township. The Deed shall be recorded in the Sussex County Clerk's Office and a copy forwarded to the Board.
4. The affordable housing units shall be rented to eligible low and moderate income households for a period of 15 years from the date the Deed is recorded in the Sussex County Clerk's office.
5. The restriction that the units shall be rented to eligible low and moderate income households shall terminate 15 years after the date the Deed is recorded in the Sussex County Clerk's office unless the owner at his sole discretion wishes to extend the restriction at which time an instrument meant shall be recorded to reflect set extension. After the expiration of the restriction, the owner shall be permitted to continue the use of the building for long term residential occupancy.
6. Applicant shall record the attached Affordable Housing Agreement in the Sussex ' Clerk's office.
7. Applicant shall construct a communal kitchen in the eight unit building in the room labeled "utility room" on the As Built Site Plan complying with the laws, rules and regulations of the Council on Affordable Housing and the Department of Community Affairs and obtain approval of said kitchen from said state agency. The communal kitchen shall be accessible to all occupants in the building.
8. Applicant shall file an As Built Plan of the communal kitchen with the Township Construction Official and this Board. Applicant shall obtain a building permit for the communal kitchen from the Stillwater Township Construction Official.
9. Applicant shall obtain approval from the Council on Affordable Housing and the Department of Community Affairs of the Affordable Housing Agreement annexed to the Resolution.
10. Applicant shall cooperate with Stillwater Township in complying with all laws, rules and regulations of the Council on Affordable Housing to have the units qualify and remain qualified for affordable housing. Applicant shall furnish all required documentation and information to accomplish this purpose.
11. The Applicant's compliance shall not only include preparing a Deed that is acceptable to the municipality and the Council on Affordable Housing and the Department of Community Affairs but also executing such other documents as may be reasonably required to address the continuing affordability requirements for the units.
12. Applicant agrees to comply with the reasonable requests of the Township's Affordable Housing Administrative Agent.
13. The Township shall provide for the screening and marketing for the eight rental units with respect to this project. The parties acknowledge that all or nearly all of the eight units are already rented. However, when each unit becomes vacant, the owner shall comply with the Township's Affordable Housing Administrative Agent's request in connection with the screening and rental of the units in accordance with the Affordable Housing Regulations of the State of New Jersey.
14. Deeds and easements shall be reviewed and approved by the Zoning Board Engineer and Zoning Board Attorney and recorded in the Sussex County Clerk's Office with proof of recording furnished to this Board.
15. Applicant shall comply with all other laws, rules and regulations in implementing the variance.
16. No permanent certificate of occupancy shall be issued until all conditions of the Resolution have been met.
17. All taxes and fees shall be paid to the Township of Stillwater.
18. The Applicant shall insert in a deed for the subject the following clause: "This conveyance is subject to the terms and conditions of the Resolution adopted by the Stillwater Zoning Board of Adjustment dated June 24, 2013, which are incorporated herein by reference.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes

RESOLUTION

Edward Mueller, Block 1102, Lot 25, Cal. No. 582

Application for approval of an existing deck requiring variance relief for the front yard setback and being within 100' of a hydrologically sensitive area (lake).

Mr. Sarni made a **motion** to adopt the Resolution, seconded by Mrs. Galante, with the following terms and conditions applying:

1. The deck shall not be located closer than 50.63 feet from the shore of Upper Plymouth Lake (its present setback distance).
2. The balconies shall not be located closer than 56.63 feet from the shore of Upper Plymouth Lake.
3. The balconies shall comply with all other setback requirements of the Zoning Ordinance.
4. No permanent Certification of Occupancy shall be issued until all the conditions of this Resolution have been met.
5. All taxes and fees shall be paid to Stillwater Township.
6. Applicant shall obtain all required governmental permits for the deck and balconies.
7. Applicant shall comply with all laws, rules and regulations in the construction of the deck and balconies and in the implementation of these variances.
8. The variances expire within nine (9) months from the date of this Resolution unless implemented pursuant to the Ordinances of Stillwater Township.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes

HEARING

Poust, Block 4004, Lot 13, Cal. No. 583 – deck lakeside/front yard

All notices appeared to be in order. Robert Poust, 920 East End Road, was sworn in. Mr. Poust would like to construct a 21' x 12' deck on the lakeside/front of his home, on a 20' flat area, approximately 70' from the lake and 35' above the ground. Soil erosion would be prevented using rock. There is a small existing porch exiting the home in the location of the proposed deck which will be incorporated into the deck. Several neighboring properties have similar decks and it is in keeping with the character of the surrounding area.

Mr. Rodman submitted five photographs marked as ZBA-1 depicting the property and proposed location.

The applicant described the photographs included with the application depicting the location of the deck, noting the yard has several terraced levels leading to lake.

Mr. Rodman reviewed his report dated 6/19/13 as follows:

1. This application seeks variance relief from Section NJSA 40:55D-70C of the MLUL. The applicant should provide testimony stating why the benefits of this deviation would substantially outweigh any detriment.
2. Based on a site inspection, the proposed new deck will not extend out over the steep slope down to the lake. However, I would recommend that riprap/gravel be placed under the proposed new deck to minimize erosion on the slope.
3. In addition, it appears that several homes in the neighborhood and on the other side of the lake have existing decks extending out as far as this proposed new deck and therefore would not cause any adverse impact on the character of the neighborhood.

Mr. Rodman determined the deck would be 71' from the lake.

The septic system is located in the rear (roadside) of the home and the proposal will have no effect. Access to the basement was addressed and is no longer located under the location of the deck; a door was added at ground level for access.

Mr. Morgenstern reviewed the variance relief as follows:

240-104(j) The deck will be located within 100' of a hydrologically sensitive area (lake); 100' required; 71' proposed.

The following conditions were suggested:

- Deck to be constructed no closer to the lake than 71'.
- No permanent CO until all conditions are met.
- Variance relief to expire within 9 months unless implemented.
- Rip-rap/gravel to be installed to minimize erosion.
- All other standard conditions applying.

At this point, this portion of the meeting was opened to the public at 7:45 p.m. There being no one from the public wishing to speak, this portion of the meeting was closed at 7:45 p.m.

Mr. Lippencott made a **motion** to grant the variance relief with conditions, carrying the application to the July meeting for the memorializing Resolution, seconded by Mr. Sarni.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes

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

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes

HEARING

Dropchinski, Block 2401, Lot 19.04, Cal. No. 584 – outdoor wood furnace

All notices appeared to be in order. Mark Dropchinski, 999A Stillwater Road, was sworn in.

Mr. Dropchinski testified he installed an outdoor wood furnace (OWF), non-pressurized, outside boiler with thermostat. His purposes for doing so was for economical reasons, using wood to heat the home and eliminating CO2. The applicant provided a manufacturer's brochure to the Board. Mr. Rodman reviewed his report dated 6/19/13 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.
2. The Stillwater LDO 240-114P Section 3H requires a permit to operate an outdoor wood furnace. That section requires that an applicant "shall file a site plan for conditional use in all zones". It also requires permits to install and operate the furnace. These permits were not obtained. Any transfer of the property to a new home owner would require the new home owner to obtain a permit to operate the furnace. Any perspective buyer should be put on notice of this condition.
3. I assume all the requirements of Sections 3D and 4D will be in the jurisdiction of the building department.
4. The date of installation of the furnace has not been provided to our office. The Board Attorney should advise as to the applicability of Section 3E which appears to provide an exception provided the furnace meet "minimum EPA and NJDEP air emission requirements" provided it was installed prior to the adoption of the Ordinance. **Owner will provide proof that the OWF meets the EPA standards.**
5. Section 5F requires that chimneys be no less than 5' above the roofline of the furnace unit. No dimensions have been provided. Based on a site inspection, it appears it is very close. **Owner will provide proof that chimney is at least 5' above the roofline of the unit or he will add a section to the chimney to comply.**
6. Section 3 I, Significant Changes In Elevation, states that there "be no significant change in elevation which is greater than 30 feet in height above the natural grade of the outdoor wood burning furnace." Based on the site inspection, it appears there are no structures which exceed this limit. However, if top of trees are considered tree-lines, then the 30 feet is exceeded. If the base of the tree is the tree-line, then it does not appear to exceed the 30 feet. **The Board agreed it would be the tree baseline and the requirement has not been exceeded.**

7. Section 3J requires the applicant to provide distances to property lines. Front property line is not shown and side yard dimension is illegible on the plans provided to our office. **Applicant will provide a survey including proper setback distances; and determining if the OWF is located in the front yard or not.**

8. The Environmental Report listed a primary concern for the close proximity to pine and red oak trees located above the smoke stack.

Mr. Rodman submitted nine photographs of the property and OWF, marked as ZBA-1. Mr. Dropchinski indicated all necessary plumbing work has been completed and the OWF was installed in November of 2012. The OWF can be connected to an oil or gas burner as a back-up, however the applicant has not done so, testifying the OWF is strictly wood burning. The OWF is located approximately 60' from the southerly property line and a deeded ROW falls between the OWF and that line. The house located on the adjacent property is approximately 300' from the property line. Mr. Dropchinski testified the emissions from the OWF are similar to that of a fireplace and smoke is expelled when the damper opens and it fires up. The OWF is approximately 28' from the existing home.

After further discussion, the Board requested the following items from the applicant:

- Survey locating the house and OWF, depicting proper setback distances.
- Proof the chimney is at least 5' above the roofline of the furnace.
- Proof EPA emission standards are being met.

Possible conditions were reviewed:

- Permits to be obtained from the Building Department.
- Compliance with Ordinance 240-114(p)
- Height of the chimney shall be at least 5' above the peak of the roof line of the OWF.
- Compliance with Mr. Rodman's report dated 6/19/13, sections 2 and 4.
- Filing of a revised site plan indicating front and side yard setbacks.
- All other standard conditions applying.

It was noted that no public was present at the meeting.

Mr. Lippencott made a **motion** to carry the application to the July meeting with the applicant to provide further information to the Board, seconded by Mr. Sarni.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes

BILLS

Mr. Sarni made a **motion** to pay the following bills, seconded by Mrs. Galante:

<u>Rodman Associates:</u>	General	\$ 28.25
	Escrow – Tanis	\$452.00
	Escrow – Mueller	\$310.75
<u>New Jersey Herald:</u>	Nextel Resolution	\$ 12.60
<u>Staples:</u>	SanDisk	\$ 14.54

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes

Correspondence:

Email - 6/3/13: Manser, New Image Landscape Services

Cramer Ecological Services, LLC – Notice of NJDEP application for a Transition Area Waiver Averaging Plan, Manser, Block 2401, Lot 19.06

At this point, this portion of the meeting was opened to the public at 8:25 p.m.

There being no members of the public present, this portion of the meeting was closed at 8:25 p.m.

Committee Liaison Report (Mayor Gross):

Mr. Gross stated he is seeking members for the Zoning Board without much success and he suggested advertising in the New Jersey Herald. He commended the current Board members and their service.

There being no further business, Mrs. Galante made a **motion** to adjourn the meeting at 8:33 p.m., seconded by Mr. Sarni. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

James Stachura, Vice-Chairman