

MANCHESTER TOWNSHIP ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, October 25, 2012

**Manchester Township Municipal Building
1 Colonial Drive, Manchester, NJ**

MINUTES OF MEETING

1. The meeting of the Manchester Township Zoning Board of Adjustment was called to order at 7:00 p.m. by Vice Chairman William Cook.
2. This meeting had been duly advertised, filed and posted in accordance with the Open Public Meetings Act.
3. A Pledge of Allegiance and Salute to the Flag.
4. **Roll Call:**
Members Present: T. Umlauf, P. Salvia, W. Cook, M. Dwyer
Members Absent: L. Fazio, K. Vaccaro, J. Hankins, H. Glen
Also Present: C. Reid, Attorney
R. Mullin, Engineer

Administrative Session:

Payment of Bills:

RFP #17017 for T & M Associates in the amount of \$1606.50 for Case 1278

Bills were **APPROVED** on motion by T. Umlauf and seconded by M. Dwyer.

ROLL CALL VOTE: T. Umlauf, yes; M. Dwyer, yes; P. Salvia, yes; W. Cook, yes.

Correspondence: The Secretary stated she has nothing at this time.

Professional Reports: Mr. Reid has nothing at this time.
Mr. Mullin has nothing at this time.

Memorialization of a resolution of approval for a Use Variance for the expansion of the existing telecommunications compound, a height variance for replacement of the existing monopole, and a site plan approval for the installation of the associated ground-mounted equipment. Block 85.03 Lot 12, 102 Lakewood Avenue. Applicant: Crown Castle International Corp. Approved at the September 27, 2012 meeting. Case 1280

This resolution was **APPROVED** on motion by M. Dwyer and seconded by W. Cook.

ROLL CALL VOTE: M. Dwyer, yes; W. Cook, yes.

A copy of the approved resolution is attached.

Memorialization of a resolution of a variance approval to allow an existing 10' x 10' shed to remain having a 10' front yard setback along Parkview Blvd. where 30' is required; and to allow an existing 6' fence to remain on the property line along Parkview Blvd. where a 5' setback is required. Block 1.234 Lot 1, 1601 Commonwealth Blvd. Applicant: Joseph Connelly, Jr. Approved at the September 27, 2012 meeting. Case 1168

This resolution was **APPROVED** on motion by M. Dwyer and seconded by W. Cook.

ROLL CALL VOTE: M. Dwyer, yes; W. Cook, yes.

A copy of the approved resolution is attached.

Memorialization of a resolution of a variance approval to allow the installation of a 6' fence set back 28 feet from the Brooklyn Avenue property line where a minimum of 50 feet is required. Block 99.134 Lot 10, 1100 Chilvers Avenue. Applicant: Gary Jamison. Approved at the September 27, 2012 meeting. Case 1283

This resolution was **APPROVED** on motion by M. Dwyer and seconded by W. Cook.

ROLL CALL VOTE: M. Dwyer, yes; W. Cook, yes.

A copy of the approved resolution is attached.

Mr. Reid wanted to supplement the record regarding why the voting of the members that were allowed to vote on the memorializations, the only members that were present at the hearing can vote for the adoption of the resolution. You only need a majority of those members, both Mr. Dwyer and Mr. Cook were present at the hearing Mr. Salvia and Mr. Umlauf were not, the other 3 members are absent.

Case 1175

Todd Jerman
10 Cupsaw Drive
Ringwood, NJ 07456

Block 1.302 Lots 19-21
Wellington & Manchester
R-10 Zone

Mr. Jerman needs a variance for the construction of a single family dwelling on a lot having a lot area of 7,500 square feet where 10,000 square feet is required; an improvable lot area of 2,600 square feet where 5,800 square feet is required; a lot width of 75 feet where 100 feet is required; and a lot frontage of 75 feet where 100 feet is required.

Mr. Cook explained that at the last meeting there was a vote taken and there was a procedural error in the voting. Mr. Reid stated the case had been carried several times, the applicant had waived the statutory periods and it was finally heard at the September meeting. At that meeting there were 6 members present, 5 regular members & 1 alternate member. All 6 members participated in the hearing. At the hearing the testimony was given by the applicant and had been closed for public comment portion, appropriately they went to a motion for action on the application. There was no opposition to the motion and there was not any public comment. The only testimony provided by the applicant and the applicants experts. Therefore, the testimony portion was closed. The public portion was closed, it went to Board deliberation and eventually to a motion, which was at the time a motion for denial. The motion for denial was seconded, it then went to a roll call and it turned out to be 3-3. 3 voting against the motion for denial and 3 voting for the motion for denial. Whenever there is a motion for denial, if it ends up in a tie, it is just a failed motion. It is important to point out, that if it was a motion for approval and it was a tie vote, that would be a denial of the application. Since there was no majority in this case, the appropriate action is to move forward with an affirmative motion. Mr. Salvia & Mr. Umlauf are present, in accordance with to statute 40:55D-10.2 they listened to the audio recording and have provided a certification & it is in the file, that makes them eligible to vote. At this time, because it is a failed motion, which ended up in no action by the Board, the next step is to make an affirmative motion for approval

and take another vote. At this time, he asks under these circumstances there should be a motion for approval at this time. Mr. Cook stated that the motion for approval can be made at this time, the motion can be voted for or against and a majority of the vote would mean that the motion would be approved; a tie vote in this case would mean the approval would be denied. Mr. Umlauf asked if it would be possible to make a motion to carry until all the members are present and take another vote then. Mr. Reid stated that unfortunately the application has been carried & the applicant had waived statutory time in the past, however they have not waived it, they were present in September; there is no waiver of time to act. In order to avoid an automatic approval situation, the vote must take place tonight. Mr. Umlauf asked if the Board could make conditions either way tonight? The Board can always make conditions of approval as long as they are reasonable. Can they make conditions without the applicant present? The conditions would have to be made in accordance with the testimony that was given, so unless it was actually proposed to the applicant and the applicant had a chance to give some sort of feedback via testimony on the record, to bring a condition that they did not have the chance to address on the record would not be appropriate at this time. Any one of the members could make a motion for approval. Mr. Cook asked if any of the members had any further questions. Mr. Dwyer asked if they could make a condition of additional tree coverage. Mr. Mullin stated they would have to meet the tree ordinance. Mr. Umlauf remembered hearing Mr. Stevens say they do meet the tree ordinance requirement. Mr. Umlauf asked Mr. Mullin if Mr. Stevens addressed his concern about the seasonal high water table level for the drywell. Yes, it was addressed and he also noted there is a note on the plan with regard to the trees. Mr. Salvia recalled they did mention the trees & the drywell would be addressed. Mr. Umlauf stated the taxes were paid up to date and there were no tax liens on the property. A lien is not an ownership interest, it is a security interest. Mr. Reid explained the process of tax liens & foreclosures on tax liens.

This application was **APPROVED** on motion by P. Salvia and seconded by W. Cook.

ROLL CALL VOTE: P. Salvia, yes; W. Cook, yes; T. Umlauf, yes; M. Dwyer, yes.

Case 1164

Michelle Lloyd
1309 Englemere Blvd
Toms River, NJ 08757

Block 1.340 Lot 3
1309 Englemere Blvd.
R-10 Zone

Mrs. Lloyd needs a variance to allow an existing 14' x 14' outside "tiki bar" to remain having a 2.20 foot front yard setback where 30 feet is required and for the installation of a 6' high fence along the front property line. Paul Spanola & Michelle Lloyd were both sworn in by Mr. Reid. Mr. Spanola testified that there is already a tiki bar already in place and they are proposing to keep it there. They didn't realize that it was illegal, they just put it there. It's a large structure, it's not anchored down, it's just sitting on top of the ground. They spend a lot of time in their yard with family & friends. In their opinion it enhances the yard. They use it a lot. It is 18.20 feet from the street. In his opinion, it isn't an obstruction to anyone driving by or to anyone pulling in or out of their driveways. They would like to keep the tiki bar in its current location. They have a white picket fence on their property line and then there is another fence that is 7 feet off the street. They originally thought it was 10 feet, but they didn't know how to read a survey, so the fence was installed in the wrong location. Since they have to move the existing exterior fence, they would like to put up a 6' fence on the property line, which is 16 feet from the road. When they first moved in there weren't that many people, now there is a lot more traffic and people going by. The 6' fence would be for privacy because their side yard is actually their back yard. The fence would serve also as a barrier into their yard & for privacy for them to enjoy their yard. Mr. Cook asked if there is any other place in the yard that the tiki bar could be located without needing variances. Mr. Spanola stated they have an in-ground pool and they were trying to keep it a safe distance away from the pool. If he would have to move it to the back, it would be on top of the concrete to the pool, which he doesn't think would be safe. If they had to move it to the back, they would have to remove trees, bushes, landscaping. It would require grading changes. Sprinklers would have to be moved. The tiki bar has been in its current location for at least 2-1/2 to 3 years. Mr. Umlauf is familiar with the area and thinks the

6' fence would help it. You would only be able to see the roof of it then. The ideal thing would be to move it back, but it would be an inconvenience & a hardship. With the fence, if it is approved, it would help, it would give the privacy & it would "hide" the tiki bar from view. He has no problem with the application. Mr. Cook asked the Board members if they had any other questions on the tiki bar. No further questions. Mr. Cook would now like to address the fence. They would like to remove the 4' vinyl picket fence & install a 6' vinyl fence on the property line. They would eliminate both the existing fences. The new fence would be approximately 17 feet off the road, which would be on the property line. They would leave the area between the fence & the road for parking since it is such a large area. The fence would run from the edge of the driveway over to the property line to the right and would go back on the two sides. On the other side of the driveway, they would go to the house & install a gate. Mr. Cook asked the Board if they had any further questions, no one had anything further.

Mr. Cook opened this portion of the meeting to the public. There being no public participation at this time, this portion of the meeting was closed.

This application was **APPROVED** with conditions on motion by T. Umlauf and seconded by M. Dwyer.

ROLL CALL VOTE: T. Umlauf, yes; M. Dwyer, yes; P. Salvia, yes; W. Cook, yes.

Adjournment: The meeting was adjourned at 7:40 p.m. on motion by M. Dwyer and seconded by T. Umlauf. All in favor.

Respectfully submitted,

Darlene E. Garcia
Secretary