

MANCHESTER TOWNSHIP ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, June 28, 2012

1 Colonial Drive, Manchester, NJ

MINUTES OF MEETING

1. The meeting of the Manchester Township Zoning Board of Adjustment was called to order at 7:15 p.m. by Chairwoman Linda Fazio.
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, L. Fazio, K. Vaccaro, J. Hankins, M. Dwyer, H. Glen

Members Absent: W. Cook

Also Present: C. Reid, Attorney
R. Mullin, Engineer

Administrative Session:

Approval of Minutes – May 10, 2012 Special Meeting
The minutes were APPROVED on motion by T. Umlauf and seconded by K. Vaccaro. All in favor.

Payment of Bills:

RFP #14022 for T & M Associates in the amount of \$3400.00 for Case 1162
RFP #14025 for T & M Associates in the amount of \$35.75 for Case 1175
RFP #14023 for T & M Associates in the amount of \$107.25 for Case 1276
RFP #14018 for T & M Associates in the amount of \$765.75 for General Board Matters
RFP #14019 for T & M Associates in the amount of \$107.25 for Case 0925-0892
RFP #14021 for T & M Associates in the amount of \$35.75 for Case 1040
RFP #14024 for T & M Associates in the amount of \$35.75 for Case 1170

Bills were **APPROVED** on motion by T. Umlauf and seconded by K. Vaccaro.

ROLL CALL VOTE: T. Umlauf, yes; K. Vaccaro, yes; P. Salvia, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; L. Fazio, 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 a conditional use variance approval and preliminary & final site plan approval to construct a 6,000 square foot retail building and a 9,882 square foot car wash/detailing/vehicle maintenance facility. Applicant: Steve Lioumis. Block 86.01 Lots 13-15, 66 & 72. Approved at the May 24, 2012 meeting. Case 1276

This resolution was **CARRIED to the July 26, 2012 meeting** on motion by K. Vaccaro and seconded by T. Umlauf. All in favor. A waiver of time was given.

Memorialization of a resolution of a conditional use variance approval and preliminary & final site plan approval to construct a Dunkin' Donuts store (with drive-thru) and a 5,880 square foot STS vehicle maintenance and automotive repair facility. Applicant: Whiting Realty Partners, LLC. Block 111 Lot 4. Approved at the May 30, 2012 meeting. Case 1278

This resolution was **APPROVED** on motion by M. Dwyer and seconded by K. Vaccaro.

ROLL CALL VOTE: M. Dwyer, yes; K. Vaccaro, yes; P. Salvia, yes; J. Hankins, yes; H. Glen, yes; L. Fazio, yes.

A copy of the approved resolution is attached.

Appointment of Solicitor, Christopher Reid through December 31, 2012.

Mr. Dwyer made a motion to appoint Christopher Reid, Solicitor through December 31, 2012. Mrs. Vaccaro seconded the motion.

ROLL CALL VOTE: M. Dwyer, yes; K. Vaccaro, yes; T. Umlauf, yes; P. Salvia, yes; H. Glen, yes; J. Hankins, yes; L. Fazio, yes.

Appointment of Engineer, T & M Associates with Robert Mullin Representative through December 31, 2012.

Mr. Umlauf made a motion to appoint T & M Associates with Robert Mullin Representative through December 31, 2012. Mrs. Vaccaro seconded the motion.

ROLL CALL VOTE: T. Umlauf, yes; K. Vaccaro, yes; P. Salvia, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; L. Fazio, yes.

Approval of meeting dates through December 31, 2012.

July 26, 2012	August 23, 2012	September 27, 2012
October 25, 2012	November 29, 2012	December 17, 2012 (Monday)

On motion by T. Umlauf and seconded by K. Vaccaro the meeting dates through December 31, 2012 were approved.

ROLL CALL VOTE: T. Umlauf, yes; K. Vaccaro, yes; P. Salvia, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; L. Fazio, yes.

Case 1279

Jack Bettio – Bettio Enterprises
2985 Hwy 547
Manchester, NJ 08759

Block 69 Lot 7
Hwy 547
PB-1 Zone

This application is for an extension of time for site plan approval for a warehousing & self-storage facility.

Mr. Greg Leonard, attorney for the applicant, also a principal in Bettio Enterprises was present. Mr. James Hankins recused himself because he is an adjacent property owner. Mr. Leonard explained what the application is about. He stated that Mr. Bettio & himself had the good fortune to run into their engineer, Mr. Bill Stevens and he is familiar with the property & contrary to Mr. Mullin's letter which refers to the site as an environmentally sensitive area he said it is in a regional growth area & it is covered by the Act. He would leave that up to the engineers to discuss. He stated they haven't been able to go forward for the last year for several reasons almost all of which are related to the economy. They have had some informal approaches to some banks & have been met with no interest on the parts of the banks.

Mr. Mullin stated regardless of the permit extension act the approval will expire next year. Mr. Leonard said they are looking for the extension to take them through July of next year. Mr. Mullin said that will be the last time the Board could statutorily approve an extension.

This application was **APPROVED** on motion by P. Salvia and seconded by K. Vaccaro.

ROLL CALL VOTE: P. Salvia, yes; K. Vaccaro, yes; T. Umlauf, yes; H. Glen, yes; M. Dwyer, yes; L. Fazio, yes.

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. *This application was carried from the March 22, April 26, & May 24, 2012 meetings.* Mr. Todd Jerman was sworn in by Mr. Reid. Mr. William Stevens, Professional Engineer/Planner was sworn in by Mr. Reid. He was accepted by the Board as an expert. The following items were marked into evidence:

- A-1 Affidavit (title letters) dated 6/18/12
- A-2 Buy/Sell letter to Ridgewood Village Estates (lot 22) – no response
- A-3 Buy/Sell letter to Jeff Jerman (lots 16 & 17) – response - does not wish to buy or sell
- A-4 Tax Map & Photo Board

Mr. Jerman explained what variances were being requested. Mr. Mullin stated before they get into Mr. Stevens testimony he has some additional follow up questions on this issue of common ownership both of the lots in question and some of the adjoining properties. He knows the affidavit addressed 3 lots that he is the owner of record, lots 19, 20 & 21. What he wants to be clear on the record Jeffrey Jerman owns lot 17 the lot adjacent to that is owned by Breckendridge Properties and he wants a little bit of background on who that is because on the adjacent property list it is the same address as Mr. Jeffrey Jerman. Todd Jerman said he is not aware who the owner of Breckenridge is. Mr. Jeffrey Jerman said he is the partial adjoining owner, he was sworn in by Mr. Reid. Lot 17 he cleared the title to or is in the process of that. Lot 16 is Breckenridge, which is an LLC owned by himself, in the process of clearing title to. He is in the process of trying to get the adjoining Lot 15 - a 50' x 100' lot owned by Ridgewood Village Estates then he would have a conforming lot. He would assume in 3 or 4 years he will be able to swap properties with them and have a conforming lot, if not he will end up with a 75' lot.

Mr. Mullin asked lot 15 is that also shown as lot 14 on the tax map? Yes, it is. He indicated that he is the owner of Breckenridge, LLC. Mr. Mullin stated that according to the tax records Breckenridge has tax liens on lots 19, 20 & 21. Mr. Jerman said it may be, he buys hundreds of liens every year at the sales, it is possible. Mr. Mullin stated that is why he needs clarification on the common ownership, because Breckenridge/Jeffrey Jerman owns some adjacent properties and Breckenridge/Jeffrey Jerman owns tax liens on the property in question. Mr. Jerman stated tax liens have nothing to do with ownership. Breckenridge buys tax liens 1000's a year, he goes to the sale, buys them pays & gets 18% interest. It doesn't even concern him who owns them. Mr. Glen asked what happens if he doesn't get his money? Mr. Jerman stated he either has to get his money with interest or he forecloses in 2 or 3 years and then he owns the property. Mr. Dwyer stated so he does have an ownership interest in the property. Mr. Jerman stated that has nothing to do with ownership, he has a lien that's all. He is sure Todd Jerman will pay the liens. As part of the application submission they have to submit that the taxes are current. Mr. Reid asked Todd Jerman if the taxes were paid when he submitted the application. He did not know. Mr. Jeff Jerman stated the taxes have to be current, it doesn't matter by who. Mr. Mullin asked the tax office for some history on these lots and that's when he found out all this. As Mr. Dwyer stated there is some potential monetary interest in these 3 lots because you (Jeff) own the tax liens. Both Todd & Jeff said that is irrelevant because it's not ownership. Todd stated, it is well established that the lienholder that does not create any ownership interest. That is the main point that has to be focused on here. A lien establishes no ownership interest whatsoever. Mrs. Fazio stated she is not convinced that common ownership has been addressed. Mr. Mullin asked about Lot 16, Breckenridge owns it. Jeff (Breckenridge) with other heirs who he has not cleared title yet. Lots 19, 20 & 21 owned by Todd Jerman with tax liens held by Breckenridge. If those 3 lots by default are not paid he would be able to foreclose on them. Jeff stated he is sure Todd will pay him and not let him foreclose on them. He believes he has a lien on Lot 14 as well. Jeff asked Todd if he could guarantee that he would pay off the liens on the property in question. Todd said yes he was going to pay them. Todd Jerman said he has so many tax liens on properties, that he can't keep track of all his properties & he doesn't know who paid the taxes on the property in question. Mr. Reid asked why he is letting the 18% accrue on the taxes and does he intend to pay it. Todd stated, yes he is going to have to. Mr. Reid asked if he would put it on the record today that he is going to pay the liens & clear them so he has clear title. Yes, he will. Todd could tell the Board that he has full title to these 3 lots in question. Mr. Reid stated as long as he can put it on the record that he is going to pay the liens & they would be removed then the Board could move forward. Jeff stated that as long as the taxes are paid to dated, it shouldn't matter who paid them. He is sure if Todd had known there were outstanding tax liens on the property he would have paid it before now.

There was additional discussion regarding this issue & case law related to such.

Mr. Mullin has an updated list dated March 2012 and it says Lot 16 is now owned by Todd Jerman at 52 Sunset Avenue, so did Todd buy Breckenridge? Jeff tried to explain what his attorney does with foreclosed properties & the names he uses on the deeds, etc. There was additional discussion regarding this issue & ownership of the adjacent properties. Todd Jerman stated he will provide whatever information the Board requires & documentation that he never had any ownership interest in Lot 17.

The Board would like additional information/clarification on this issue before going forward with the application.

This application was **CARRIED to the July 26, 2012 meeting** on motion by K. Vaccaro and seconded by P. Salvia. All in favor. A waiver of time was given.

Discussion – Undersized (Isolated) Lot Report for Pine Lake Park

Mrs. Fazio did not put her comments in an e-mail because she felt it would be better for the Board to discuss it & put their comments together as one. She feels this Board does cover the FAR to a point, when an applicant comes in with an undersized lot, they ask the

applicant about the other homes in the area, the size, 1-story vs. 2-story. They go into the height and that is addressed in the report. Mr. Mullin stated the Board has historically looked at houses that are 2-stories high and requested they be reduced to a raised cape or 1-1/2 stories. They have asked that windows be moved around to try to mitigate what may be perceived as an impact on light air and open space.

Mr. Glen likes the report/proposal. He didn't like the idea of the storm water being directed into the streets from all these properties. Anyone building on these properties the water is supposed to be directed out into the street. He feels it shouldn't be directed to the streets. Mrs. Fazio agrees. He thinks drywells should be used or rain gardens or some other type of alternative.

Mr. Umlauf stated that the new houses going up have the roof drains, but that is just minimal. They have the patios/pavers which creates runoff. There are so many different variations in the grades where you can't get it to go to the streets. Put drywells in the streets maybe, that would be engineering territory. How deep would you go, what happens when it backs up? There are drains in some streets and they are constantly backing up. He lives at the bottom of the hill, so he gets every bit of it when it rains. He is always sweeping the sediment out of the street. He asked what Mr. Mullin's thoughts are. Mr. Mullin said the current ordinance has a maximum building coverage requirement of 25%, but it does not have maximum lot coverage, so to the point maybe there is some supplemental discussion through this report to consider maximum lot coverage which would include patios, driveway, etc. That becomes part of the review process, not only for undersized lots, but for everyone. That could serve to mitigate some of the drainage issues that occur in the streets. In a lot of cases the applicants are putting in drywells. The groundwater is at least 2 feet below the bottom ground, so that provides infiltration. Most if not all the soils in Pine Lake Park are well draining. It is something else the Board could consider for storm water management. Mr. Umlauf asked if that would equate to an impervious ground coverage ordinance like most towns have? Mr. Mullin said that's exactly what he's talking about. The definition of what is considered pervious and impervious would have to be clear. Mr. Umlauf said that then falls in hand to hand with all these undersized lots, the quality of life, can you put in a pool in the back, if you put a pool you want a patio, etc. That is his concern with the undersized lots, he lives on a corner lot and he has 2 front yard setbacks and he is on a 100 x 100 and is limited to what he can do, so with a 75 x 100 you would be really limited. To have a clear conscience he wants people to be able to put a swing set and pool or patio if they want. The other issue with the undersized lots is 9 times out of 10 there is a 1-car driveway. When you drive around you see cars parked on the lawns and people today have 5 or 6 cars. There is a house down the road that has cars parked on the grass on the driveway in the road. Mr. Salvia asked if these are issues the Board could deal with? Mr. Umlauf stated no the Board can't, but with cars parking on the lawn, the grass dies turns into dirt, it rains the water runs out into the street.

Mr. Salvia said he is intrigued with the statement that if building on these undersized lot is against the Township Plan, he asked this question a couple years ago and never really got an answer, the Board is controlled by the Dallmeyer Case on these undersized lots so they have to apply the law to the facts, but when does excessive building on 75 x 100 lots become something that is detrimental to the plan? Is there case law on this, is it covered anywhere, is there anything that they can use in their deliberations? Mr. Umlauf asked has anyone ever done a study on how the undersized lot septic were effecting the existing? Mr. Salvia asked is there something else that can be considered in addition to what was outlined in Dallmeyer? Mr. Umlauf stated the soils are very good draining here, but like Mr. Mullin said drywells, there are so many scenarios. You are putting the drywells, the septic, roof drainage you are adding so much more to the ground, eventually something is going to give. What is it going to take to do a study? Would Mr. Thomas do it? How do we request it from the Board of Health? How do we start the whole process? Can we request it? Would the Board or Council consider such a report? Mr. Glen stated that if we continue to allow these 2-story houses to be built on the undersized lots with 3 or 4 bedrooms and 2-2 1/2 baths eventually the State is going to come in and force the Town to put a sewer system in Pine Lake Park. He thinks they will. He thinks the ground will become contaminated, the lake is already contaminated. Who knows the reason for the contamination? Mr. Umlauf stated the sewerage goes to Berkeley; we don't have a sewerage plant. If we start with a sewer system, we would have to put in a sewerage plant then.

Mr. Hankins thinks that eventually Pine Lake Park is going to need a sewerage system, it's inevitable. Who knows when, but it will have to happen. Once that comes about, then everyone who owns a 50 x 100 lot will be in for a variance. What would be our next step? According to Dallmeyer we can't deny them. It is something that should be kept in mind. There has already been one variance issued to a 50 x 100 lot on Beacon that does have sewer available to it.

Mr. Glen thinks this report is a good start, at least it shows the Board is trying to move in the right direction. He doesn't think we are going to get everything we want. He doesn't think it's going to be perfect, but at least it's a start. It is requiring more from the applicants, which he thinks should have been required before as far as landscaping, as far as stripping the properties, it is a start and we are moving in the right direction. He thinks it's a positive.

Mr. Hankins asked if the comments have been forwarded to the Planning Board? The Secretary stated they will be reviewing the report Monday night and making comments as well. Both Boards will then forward their comments to the Business Administrator who will then address it with the Township Council. Mr. Hankins would like these comments plus the e-mails forwarded to the Planning Board for their meeting Monday night so they are aware of how the Board feels. The Secretary will make sure they have them.

Mr. Dwyer stated that a lot of people are getting solar on their houses. He wonders how that will effect or be impacted by undersized lots as to 2-story homes. If you take a home and put it on an undersized lot and build it out to its maximum setbacks and its 2-stories next to a home or with 3 surrounding homes being single story and a single story home across the street, if you take that 2-story home built at 35 feet how will that effect the house if they want to put solar on their home. Can a study be done to see how it would affect the installation of solar on those single story homes? That 2-story home would be shading those smaller homes, where if it were a tree it could be trimmed a house can't be. As far as light air and open space, that is something that should be addressed. He can see more and more people in the future putting solar on their homes. Mr. Umlauf brought up the issue of the low E windows, the sun reflects off them and acts like a magnifying glass and melts the siding of the other homes. He asked Mr. Jeff Jerman if he has experienced this problem?

Mr. Jerman stated that there is virtually no chance that a 2-story home could have any effect on that 1-story adjoiner with solar or with the windows. Mr. Umlauf stated he has had that issue in other towns with the windows. He asked that if this will be open to the public for comment as well? He stated that impervious coverage is a great issue whether you are talking about a regular sized lot or an undersized lot, he looked through the report briefly it said maybe reduce the square footprint of the house via impervious coverage, but as Mr. Umlauf said you don't really want to make the house smaller or restrict the house, you have the setbacks now, if you are thinking of that you should leave the setbacks the way they are and have the impervious coverage only cover the patios, driveway or things like that. One thing you can do, it will cost me money down the road and it has in other towns, but this is what you can do to alleviate some of the impervious coverage, you are talking about driveways and you don't want cars on the grass and everything, well how about a pervious driveway? They are built these days, you can have a pervious driveway, and all that runoff would go into the ground not into the road. Not just for undersized lots, but for all lots, build it into the ordinance. He has done that in other towns, it would eliminate some of the drainage problems. Mr. Mullin asked if he was talking about porous pavement? Yes, it costs a little more but it works. Mr. Mullin stated it's a newer technology, it's a methodology to reduce runoff, all it does is take the rainwater and put it right in the ground. Mr. Reid asked if he had any comments with regard to the report. He said it's always a trade off because like Mr. Umlauf said you don't want to stop someone from putting a patio in the back yard or a pool, well someone buying it will know, but almost everyone wants a patio for the barbecue. As far as the water running out to the road and the drywells, almost every time now from an engineering standpoint, you do have the drywells for the house so that takes care of that, when you consider the runoff to the road it is often times less post development then pre development.

Mr. William Stevens of Professional Design Services stated that he has said this over and over again, but a sewer system is needed in Pine Lake Park. It is very important; it is what the environmental problems are there. It should be a top priority here in Town. The DEP has money out there; there are grants to be had for doing this type of construction, start small take a piece of it, move it forward. That is what it's going to take get this

thing done. You are right Mr. Umlauf it is going to take pump stations, a real infrastructure needs to be built here. It is not going to need a treatment plant, not something that Manchester would have to do. The treatment plant is run by Ocean County, but you do have to get the sewerage there. Mr. Reid asked if he thinks that would lead to 50 x 100 coming in for applications. He said there is no question that building a sewer system in Pine Lake Park will be a benefit to engineers like him who are trying to build houses out there, there is no question to that, but in his mind that's not an excuse the detriment doesn't outweigh the benefit of providing a sewer system. He feels very passionately about this issue and it would make a big difference here in this Town environmentally.

Mrs. Fazio asked if anyone else had any comments. No one had any comments at this time, but if they do they will forward them via e-mail to the Secretary to be included in the report to the Business Administrator. The Board asked the Secretary if should could request a copy of the Planning Board's comments after their discussion on Monday night.

Adjournment: The meeting was adjourned at 9:15 p.m. on motion by J. Hankins and seconded by T. Umlauf. All in favor.

Respectfully submitted,

Darlene E. Garcia
Secretary