

**Board of Adjustment
Minutes
August 24, 2004**

Chairman Eller declared that a quorum was present to conduct the meeting in accordance with the 'Open Public Meetings Law.'

Roll Call: Post, Hurley, Eller, Schlader, Woykowski and Mangiacotti – 6 Present.

Absent: Semonche and Nienstedt – 2 Absent.

Also Present: Stuart Ours, Esq., Board Attorney
Linda L. Hendershot, Clerk

Chairman Eller led everyone in the flag salute.

MINUTES:

Regular Meeting – July 27, 2004

Chairman Eller entertained additions or corrections to the minutes of the July 27th meeting.

Board member Hurley noted two minor corrections on Page 3 and 8 of which the Clerk so noted.

It was therefore moved by Hurley, seconded by Woykowski that the minutes of the regular meeting held July 27, 2004 be approved as corrected.

Roll Call: Mangiacotti, Eller, Schlader, Post, Woykowski and Hurley.

Ayes: 6, Nays: 0.
Motion carried.

RESOLUTIONS:

**Case #2004 7 – Francis & Patricia D'Astoli – 284 Belvidere Avenue, Blk. 35,
Lot 46**

It was moved by Hurley, seconded by Woykowski that this resolution be adopted as approved at the July meeting approving an addition to this property.

Roll Call: Mangiacotti, Eller, Schlader, Post, Woykowski and Hurley.

Ayes: 6, Nays: 0.
Motion carried.

Case #2004:9 – Frederick A. Perry, 19 E. Church St., Blk. 24, Lot 1.02

It was moved by Schlader, seconded by Mangiacotti that this resolution be adopted as approved at the July meeting approving a wrap-around deck around this property.

Roll Call: Schlader, Post, Eller, Mangiacotti, Woykowski and Hurley.

Ayes: 6, Nays: 0.
Motion carried.

14 Case #2004:10 – Randy Werkheiser, 239 W. Washington Ave., Blk. 101, Lot

It was moved by Woykowski, seconded by Schlader that this resolution be adopted as approved at the July meeting approving the retention of this deck previously constructed prior to obtaining permits.

Roll Call: Mangiacotti, Eller, Post, Schlader, Hurley and Woykowski.

Ayes: 6, Nays: 0.
Motion carried.

Case #2004:11 – Charles & Susan McDade, 115 Taft Terrace, Blk. 71, Lot 1

It was moved by Schlader, seconded by Hurley that this resolution be adopted as approved at the July meeting approving the expansion of an existing deck.

Roll Call: Woykowski, Hurley, Schlader, Post, Eller and Mangiacotti.

Ayes: 6, Nays: 0.
Motion carried.

Dr. Stanley J. Blyskal, 123 W. Washington Ave., Blk. 99, Lot 7

It was moved by Mangiacotti, seconded by Post that this resolution be adopted as approved at the July meeting approving a free-standing sign for a dental office.

Roll Call: Eller, Post, Schlader, Hurley, Woykowski and Mangiacotti.

Ayes: 6, Nays: 0.
Motion carried.

OLD BUSINESS:

**Case #2004:13 – Samuel Hicks, Garfield & Harrison St., Washington, NJ,
Blk. 61, Lot 10** (Represented by Alan Lowcher, Esq.)

This application was tabled from last month. The application was filed for the purpose of constructing a 2-story single family home. The testimony was carried over from last month due to the lateness of the hour.

Mr. Lowcher presented documentation from Joseph Fox, Fire Chief that the Fire Department can provide fire services to this lot. The letter was marked into evidence as Exhibit A-9. The Emergency Squad has not responded to date but a letter will be forwarded to the Board for their information and file.

At the last meeting Mr. Charles Anthony had a concern with the access to this property in view of the fact a deed of easement is in evidence and has been recorded in the County Clerk's office for access to this property. He was concerned with the liability issue and maintenance of the roadway to this property. Attorney Lowcher informed the Board that this problem has been resolved and that they have entered into a Declaration of Driveway Maintenance and Repair Agreement which was marked into evidence as Exhibit A-10.

Attorney Lowcher noted for the record that Section 94-73.1 eliminated the need for a bulk variance as this undersized lot meets the requirement of this section dealing with undersized lots. However, a variance is still required for fronting on an unimproved street.

Sanitation removal was discussed and Mr. Hicks will take care of this himself if the sanitation department cannot provide service to the property.

Board member Eller was concerned with sanitation pick-up to this property. Attorney Lowcher noted that many houses in this community front on narrow streets, if not alley ways and the Sanitation Department does do there best to service them. Cattelle Court is a private lane and they receive service. He indicated that his client would not be against a restriction being placed in the resolution making it the owner's responsibility to work the sanitation pick-up out.

Board member Post noted that it appeared they did not want to explore using Garfield Street for access this property.

Chairman Eller entertained comments or questions from the audience, pro or con. There were no audience comments or questions.

Chairman Eller posed the question to Mr. Anthony regarding the liability issue. Mr. Anthony stated that there is more liability in the parking lot that is utilized by the area residents that there would be in this graveled driveway.

Attorney Ours reviewed the criteria necessary for the granting of this variance for the Board members. The only variance required would be to allow this home to be constructed on a lot that does not front on an improved street.

Access to the property and the driveway was discussed. It will have to be constructed in accordance with Section 94-53K of the Washington Borough Zoning Ordinance.

It was therefore moved by Post, seconded by Hurley that a variance be granted for the construction of a single family two-story house on the corner of Garfield and Harrison Street, conditioned upon the recording of a deed establishing private pick-up of both garbage and recyclables and to also record the declaration of driveway maintenance and repair agreement with the County, further that the access to the property comply with section 94-53K of the Washington Borough Zoning Ordinance. This variance can be granted with out substantial detriment to the public good, nor will it impair the intent and purpose of the zone plan.

Roll Call: Mangiacotti, Eller, Post, Schlader, Hurley and Woykowski –
Ayes: 6, Nays: 0. Motion carried.

(Resolution annexed to the Minutes).

**Case #2004:14 – Raymond & Sue Ellen Schultes, 103 Sunrise Terrace,
Washington, N.J., Blk. 44.01, Lot 14**

This application is filed for the purpose of constructing a wooden deck.

In the Zoning Officer's Refusal of Permit this request was denied for non-compliance with the provisions of Section(s) 941075B (4) of the Municipal Zoning Ordinance for the following reasons: Failure to meet 50 foot rear yard setback requirement.

Attorney Ours reviewed the notices of service to the property owners and affidavit of publication and found everything in order to proceed.

The Oath was administered Mr. Schultes for his testimony.

Prior to hearing any testimony Mr. Hurley disqualified himself from taking part in this case as he was within two (200') feet of this property and had been noticed.

Mr. Schultes produced several pictures for the Board to view their property to better show them the landscaping and trees that are on their property. In order to better utilize their property they wish to construct a deck and a gazebo. Because of the configuration of their yard and the amount of trees on the lot they cannot meet the rear yard setback. The gazebo infringes on the rear yard setback by 7' feet.

Board member Schlader questioned whether there were any regulations in the Code concerning the construction of gazebo's? There are none.

Chairman Eller questioned whether the gazebo could be reversed to come into compliance with the setback? Mr. Schultes explained that it would interfere with their patio on the east side of the property.

Chairman Eller entertained remarks from the audience. There were no testimony or questions from the audience.

Attorney Ours reviewed the criteria necessary for the granting of this bulk variance for the Board.

It was therefore moved by Schlader, seconded by Post that a variance be granted for the construction of a deck and gazebo on this property and that relief can be granted from the rear yard setback due to the unusual configuration of the lot, said rear yard setback shall be 43', this variance can be granted without substantial detriment to the public good, nor will it impair the intent and purpose of the zone plan.

Roll Call: Woykowski, Schlader, Post, Eller and Mangiacotti – Ayes: 4,
Nays: 0. Motion carried.

(Resolution Annexed to the Minutes).

Case #2004:15 – Eric Matland, 3 S. Prospect Street, Washington, NJ, Blk. 100, Lot 3

This application is filed for the purpose of installing a driveway 8.5' wide and 31' deep.

In the Zoning Officer's Refusal of Permit this request was denied for non-compliance with the provisions of Section(s) 94-53 K 11 and K2 of the Municipal Zoning Ordinance for the following reasons:

The minimum driveway width shall be 9' (nine foot) and no driveway shall be located less than 5 feet from the perpendicular extension of the property line to the curb-line.

The Attorney reviewed the notices of service to the property owners and affidavit of publication and found everything to be in order for the Board to proceed.

The Oath was administered Mr. Matland for this testimony.

Mr. Matland explained that the house when he purchased it did not provide with off-street parking. He would like to construct an undersized driveway. The street is rather narrow and he is presently parking on the street in front of his neighbor's house.

The Board discussed his proposed driveway extensively and were very concerned with the visibility in pulling out of this driveway. The porch on the front of the house obstructs the view. It was determined that the fence that is presently there would have to be removed. Mr. Matland maintained that having a driveway on his property was beneficial to the residents on the street as well. He wouldn't be parked on the street.

Removal of the front porch was explored but Mr. Matland utilized this enclosed porch for living space.

It was moved by Schlader, seconded by Post that this case be tabled until the next meeting and that Mr. Matland explore some additional options and come back to the Board with additional information.

Roll Call: Hurley, Schlader, Post, Eller and Mangiacotti – Ayes: 5,
Nays: 0. Abstained: Woykowski.

Motion carried.

Case #2004:16 – Ryan M. Fedon, 199 Broad St., Washington, NJ, Blk. 96
Lot 9

This application is filed for the purpose of paving an existing driveway and extending the right side of parking area from 20 to 30 feet.

In the Zoning Officer's Refusal of Permit this request was denied for non-compliance with the provisions of Section(s) 94-53 K10 of the Municipal Zoning Ordinance for the following reasons: The maximum size of the drive apron shall be 15 feet.

Attorney Ours noted for the record that notice of service to the property owners was in order and the affidavit of publication. The application was in order to proceed.

Attorney Ours wanted the Board to know that he had represented Mr. Fedon when he purchased his property and other members of his family. The Board did not have a problem with the attorney advising them and there was no objections from the audience.

Attorney Ours administered the Oath to Mr. Fedon.

Mr. Fedon explained that he had expanded his parking area for additional parking for company. The width of his driveway is comparable to the other houses in the immediate vicinity of his home. The work has already been done. The garage itself is basically utilized for storage. The driveway was increased from 20' to 30' wide.

Chairman Eller noted that by paving this additional area this is taking away curb space and parking away from the street. He did not see this as being a hardship. Mr. Fedon noted that there is no curbing on this side of the street and that similar driveway aprons in the area are as wide as his. In the future he may be placing a basketball hoop up for recreational purposes and the asphalt apron could also be utilized for other recreational activities.

The Chairman noted that there were no comments from the audience on this application.

The Board discussed the fact that Mr. Fedon had done this work without benefit of the necessary permits. Mr. Fedon indicated that he did not knowingly do the work without permits. He engaged his contractor to pave the driveway and then decided to widen the driveway rather than have the grassy area remain. The contractor was not aware that a permit was required for a driveway to be blacktopped.

A motion was made by Schlader, seconded by Post that Mr. Fedon's application for the driveway be denied based on the fact that they did not deem that it was a hardship given the fact he has a two-car garage on his property.

Roll Call: Hurley, Post and Schlader – Ayes: 3, Woykowski, Eller and Mangiacotti – Nays: 3.

Tie Vote – Motion failed.

Rudolph Bescherer, Code Enforcement Officer addressed the Board and stated that he lives in the immediate neighborhood. He did not feel that approving this variance for widening this driveway was truly a detriment to the public good. There is no curbing on S. Lincoln Avenue and the applicant did not intentionally pave his driveway without permits.

Attorney Ours explained that a precedent would not be established in that you handle each case and set of circumstances and findings on their own merit.

Board member Hurley stated that the Board has been very lax over the years with applicants who do the work prior to getting their approvals.

Board member Woykowski stated that given the fact that the contractor was in default of applying for a permit, the applicant does have a situation that has created a hardship for hi.

Board member Eller agreed that this additional paved area could be utilized for recreational purposes.

Board member Schlader noted he is impacting the intent and purpose of the zone plan and we have been extremely lax over the years he has served on the Board.

Board member Woykowski stated that there are driveways in this immediate area that are just as wide and the applicant did not intentionally disregard the fact that a permit was required. He asked his contractor and was guided by what he said.

Another motion was moved by Woykowski, seconded by Mangiacotti that a variance be granted to Mr. Fedon for the construction of a 30' x 20' wide paved driveway, this variance being granted to allow for additional recreational space for children to play, the action can be granted without substantial detriment to the public good, nor will it impair the intent and purpose of the zone plan.

Roll Call: Woykowski, Hurley, Eller and Mangiacotti – Ayes: 4,
Post and Schlader – Nays: 2.

Motion carried.

(Resolution Annexed to the Minutes).

Board member Eller thanked everyone for their comments and opinions regarding the matter just considered. Board member Schlader suggested that perhaps the Chairman should vote last on applications. He suggested that a citizens information booklet be initiated or some other form of public relations to make people more aware of the need to apply for the necessary permit prior to contracting any work done to their properties.

Hearing no further business to come before the Board, it was moved by Post, seconded by Hurley that the meeting be adjourned at 10:40 PM.

Ayes: 6, Nays: 0.
Motion carried.

Respectfully submitted,

Frank Mangiacotti, Secretary

