

**BOROUGH OF WASHINGTON, WARREN COUNTY, NEW JERSEY**  
**BOARD OF ADJUSTMENT MINUTES**  
**May 26, 2009**

**Roll Call:** Durfee, Eller, Mangiacotti, Post, Truman, Vitalos – 6 Present.

**Absent:** Semonche, Turner – 2 Absent

**Vacancy:** 1 Vacancy

**Also Present:** Stuart Ours, Esq., Board Attorney  
Ann Kilduff, Clerk

Chairman Eller led the members of the Board in the flag salute and read the Open Public Meetings Act into the record.

**MINUTES:**

**Regular Meeting – April 28, 2009**

Chairman Eller entertained additions or corrections to the minutes. Hearing none, it was moved by Post, seconded by Truman, that the minutes of the regular meeting held April 28, 2009 be approved as submitted.

Roll Call: Durfee, Post, Truman, Vitalos and Eller  
Ayes: 5, Nays: 0, Abstained: 1 (Mangiacotti)  
Motion carried.

**RESOLUTIONS:**

**Case #2009:2 – April Gallagher – 207 Belvidere Avenue**

It was moved by Post, seconded by Truman, that the resolution be adopted as approved at the April meeting approving the construction of an 8' x 10'6' deck.

Roll Call: Durfee, Post, Truman, Vitalos, Eller –  
Ayes: 5, Nays: 0, Abstained: 1 (Mangiacotti)  
Motion carried.

**Case #2009:4 – Thomas Domen – 30 Fisher Avenue**

It was moved by Truman, seconded by Durfee, that the resolution be adopted as approved at the April meeting granting the construction of a two-story addition.

Roll Call: Durfee, Truman, Vitalos, Eller –  
Ayes: 4, Nays: 0, Abstained: 2 (Mangiacotti, Post)  
Motion carried.

**APPLICATIONS:**

**Case #2009:3 – Kenneth Hale – 51 Broad Street – Block 95 Lot 20 – OB Zone**

This application is filed for the purpose of allowing automobile storage and repair. The applicant has bypassed the Zoning Officer and therefore there is no Refusal of Permit.

Mr. Ours stated Mr. Baucom will hear the case and stepped down due to a conflict. Mr. Baucom distributed the resolution regarding the prior matter of this property. He stated notices are in order; however, he is concerned

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with the completeness of the application. There is no mention of which variance is requested, no special reasons and no mention of how it will not affect the zoning plan. The existing conditions have not been filled in. Dates of previous applications were not submitted. He feels this application is not adequate as far as requesting a variance. Mr. Baucom noted that the state statute was mis-quoted in the legal notice, but feels this will not be an issue. Mr. Hale's attorney, Mr. Richard Burke, stated his client is asking for alternate relief and feels all information regarding this purpose will be presented at the meeting. Mr. Burke stated he spoke to Mr. Ours after he submitted the application. Mr. Baucom stated it has already been decided by the Board and this is the same situation. The Board has denied the request for the same request being requested tonight. An application cannot be heard twice. The Board refused the use in this zone and the refusal is still in existence. Mr. Burke stated that it is a certification of a non-conforming use and should be certified as such. He feels the second application is not the same as the first. The first was an appeal to the zoning officers refusal of permit and feels this time is different in the manner his client came before the Board. There was no denial from the Zoning Officer. Mr. Baucom stated that if the zoning ordinance had changed, the applicant could come to the Zoning Officer or Board of Adjustment for determination. He stated that in this case the Board already denied it, the same parties are involved and he questioned why the applicant is here again. Mr. Vitalos asked if the testimony would be different than that presented last year. He feels there is nothing to base a decision on as the application is blank. Mr. Baucom deemed the application incomplete. Mr. Burke feels the application is not applicable for a use variance and feels no other part of the application needs to be filled out for certification of a non-conforming use. He asked what the Board requires for completeness. Mr. Baucom instructed him to complete the application. Chairman Eller stated it is the client's job to complete the application, not the job of the Board to tell them what to write.

A motion was made by Truman, seconded by Post, to deem the application incomplete for reasons of no reasons being listed on the application, no supplemental sheets listed, previous application not cited, and no reason why it should be certified as non-conforming use.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos, and Eller –  
Ayes: 6, Nays: 0, Abstained: 0

Motion carried.

Mr. Burke stated the form does not provide for it and would provide testimony at the hearing. He will bring the application to the Zoning Officer, the Zoning Officer's denial, the resolution with denial and the resolution of the model business. Mr. Mangiacotti reviewed the resolution approved by the board in 2008 and stated the first paragraph states the same thing the applicant is looking for tonight. Mr. Baucom agreed. Mr. Burke stated there was an error in what the applicant came before the board for. Mr. Baucom questioned why the applicant didn't appeal the decision within the timeframe. He feels the resolution was not a mistake. The only difference is the route taken to come before the Board. Mr. Burke stated the procedure coming before the Board is different and has influence on the way the Board hears the case. Mr. Baucom told the audience members this case will be continued at the June 23<sup>rd</sup> meeting.

Mr. Baucom stepped down and Mr. Ours returned to the meeting.

**Case #2009:5 – Edward Steele, Jr. – 47 Ophelia Street; Block 98 Lot 50.02 R3 Zone**

This application is filed for the purpose of repairing a driveway. In the Zoning Officer's Refusal of Permit, this request is 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'.

Mr. Ours found all notices to be in order. The Board has jurisdiction to hear this application. The oath was administered to Edward Steele for his testimony. Mr. Steele stated he resides at and owns 47 Ophelia Street and

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wanted to have the driveway repaired. When they came to do the work he was told a permit was need. He applied for the permit and the work was completed the same day. He heard from the Zoning Officer the next day that he needed a variance. The driveway existed for twenty years, built in 1988. The original house was torn down. Plans were approved at the time. He would like to keep the driveway the way it is. Mr. Steele passed around a map and explained the plans to the board members.

Chairman Eller noted there was no one in the audience in regards to this application.

Mr. Ours noted the applicant is on a dead end street. The property to his right is undeveloped. Although the work has been done, the Board needs to base their decision as if the work was not done. Mr. Vitalos asked the applicant if he is planning to make the driveway any bigger than it is now. Mr. Steele replied he is not. Chairman Eller noted there is no curbing and feels this is not a detriment to the public good. Mr. Steele noted the street ends before getting to his driveway.

Mr. Ours stated this is an unusual condition in that the street comes to his boundary line and stops. The drive apron is the width of the street. Chairman Eller noted for the record that the property's lot number is 50.02. There is more documentation verifying that. Mr. Ours asked if the borough finished the gravel road. Mr. Steele replied that the borough paved the road. Mr. Ours questioned if the house fronts Ophelia Street as it is different on two different tax maps. He stated it is an unusual circumstance as to whether the street in front of the house is a public road or not.

A motion was made by Durfee, seconded by Truman, to grant a variance for a wider drive apron from 15' to 32' due to pre-existing conditions such as the situation of a dead end street, undeveloped land and no curbing.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos, and Eller –  
Ayes: 6, Nays: 0, Abstained: 0

Motion carried.

**Case #2009:6 – Lana and Tim Shanahan – 23 Lambert Street; Block 2.11 Lot 38 R1C Zone**

This application is filed for the purpose of constructing a 12' x 20' deck. In the Zoning Officer's Refusal of Permit, this request is denied for non-compliance with the provisions of Section(s) 94-75 B4 of the Municipal Zoning Ordinance for the following reasons: there shall be a rear yard of 35'.

Ms. Truman stepped down as she is a neighbor of the applicant. Mr. Ours found all notices to be in order. The Board has jurisdiction to hear this application. The oath was administered to Tim Shanahan for his testimony. Mr. Ours stated the house was built to fit just within the blueprint, therefore there is no room for a deck without a variance. Mr. Shanahan stated there is a metal bar fence that encloses his backyard. It was there when he purchased the house. The property backs up to another property. The deck will be off of the first-story kitchen. He currently has a sliding glass door with a 5' x 5' landing. He has a walk-out basement. Mr. Post asked about the right of way behind the house. Mr. Ours explained it is 20' drainage easement. Mr. Durfee asked the applicant if the houses on either side of his property have decks. Mr. Shanahan explained that the house to his right has an above ground pool, is paved with asphalt and fenced in. The house to the left is not fenced in and has no deck that he recalls. Chairman Eller noted the zoning encroachment is 5' and asked if the deck will have any affect on the neighbors. Mr. Shanahan stated it will not. The neighbors respect each others privacy and are all friendly with one another. Mr. Vitalos asked if there will be anything underneath the deck. Mr. Shanahan stated that was not his intent, but will probably store children's toys there. Chairman Eller asked the board member's feelings in the case it is enclosed underneath in the future. Mr. Ours stated another variance would be needed to enclose it.

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Chairman Eller noted there was no one in the audience in regards to this application.

Mr. Ours stated there are special circumstances such as the terrain, it would be a hardship for the family if there was no deck as it would limit the ability to enjoy the backyard. He feels there is no detriment to the public good and minimal detriment to the zone plan.

A motion was made by Durfee, seconded by Vitalos, to grant a variance to construct a deck and have a 30' setback in the backyard. The deck is not to be enclosed underneath. The variance is granted because of the property's terrain and small deck that is currently in place.

Roll Call: Durfee, Mangiacotti, Post, Vitalos, and Eller –  
Ayes: 5, Nays: 0, Abstained: 0  
Motion carried.

Ms. Truman returned to the meeting and the Board discussed houses in the development.

**COMMUNICATIONS:**

The Board received a copy of the letter Mr. Ours sent to Mayor McDonald regarding the Board's feelings towards the creation of a Land Use Board. Mr. Eller noted if there are two boards, each can have seven members. If joint, it cuts the opportunity for five taxpayers to give input toward making this a better community. Ms. Truman noted the Planning Board was also against joining the boards.

An updated member listing was received.

**REPORTS:**

There were no reports at this meeting.

**REMARKS:**

There were no remarks at this meeting.

Hearing no further business to come before the Board, a motion was made by Durfee, seconded by Truman, that the meeting be adjourned at 9:35 pm.

Ayes: 6, Nays: 0.  
Motion carried.

Respectfully submitted,

Frank Mangiacotti, Secretary