

WOODLAND PARK
BOARD OF ADJUSTMENT MINUTES
September 27, 2010

MEETING CALLED TO ORDER AT 7:30 P.M. by Vice Chairwoman Kallert.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS IN ATTENDANCE: RUSSEL JUZDAN, GIANNI INTILI, TRACY KALLERT, RUTH PATTERSON, TONY ORLANDO, AND VINNIE DECESARE

ALSO PRESENT – JOHN FIORELLO, BOARD ATTORNEY

FLAG SALUTE

A motion to approve the minutes of the August 23, 2010 meeting was made by Mr. Decesare, second by Mr. Intili and approved.

RESOLUTIONS

DOCKET # 10-12- LIVING WATER CHURCH OF GOD – 20 ANDREWS DR. – BLOCK 122 LOT 3.02 & 3.03 –USE VARIANCE/PRELIMINARY & FINAL SITE PLAN/C.O.OVER 5,000 SQ. FT. – Application is hereby approved with conditions by a vote 7 – 0.

ORDER OF BUSINESS

DOCKET # 10-08 – 75 JACKSON AVE.,LLC – BUSH AVE. – BLOCK 42 LOT 36.01 – BULK VARIANCE

Mr. Fiorello stated that Mr. Petriello and he have a difference of opinion as to the type of variance that is required. At the end of the last meeting when they were reviewing the application he made a preliminary ruling or observation that when the Planning Board granted the subdivision one of the variances that was granted was a bulk variance. Mr. Petriello opined that since it was granted by the Planning Board this Board did not have to give a bulk variance again. It was brought to Mr. Fiorello's attention by the zoning officer that the minutes of the Planning Board meeting showed the first application before the

Planning Board was to subdivide this one big lot into two equal size lots and put on each of the two lots a two-family home. In reading the minutes it appeared that at that first meeting the Planning Board members were expressing some concern over the division of two equal size lots with two 2-family homes. At the second meeting the applicant's attorney came forward and said they were going to revise the application. The attorney noted that they originally proposed a subdivision right down the middle that would create two undersized lots and the revision now is for one undersized lot and one oversized lot. They originally proposed two 2-family homes and the proposal is now one 2-family home and one single family home. He also said the proposed structures are consistent with the scale of density of the existing houses. They have reduced the size of the dwelling on Jackson Ave. to conform to lot coverage and the house on Bush Ave. was a duplex and redesigned to a single family to conform to the lot coverage and setbacks. It is clear there was a revision of the application. The resolution that was adopted is quite sparse. Mr. Petriello's letter noted there are no conditions in the resolution which is correct. But there are two types of conditions one being a condition of the ordinance and the other being a condition imposed by the Board during site plan approval. The condition of the ordinance does not have to be in the resolution because you cannot change it. He believes his opinion that this was a revision by the applicant and not a condition of the resolution. They are here again with a revision of the application where they did not have garages and now they do and that would not be a condition in the resolution that the Board imposed. Mr. Fiorello said he has read Mr. Petriello's letter but he believes it was not a condition of the resolution but a revision by the applicant which changed the proposal from a two family home to a single family home.

Mr. Petriello said at the time of the Planning Board meeting the applicant did revise the application because the board members voiced some concerns about creating two non-conforming lots. They discussed a desire that instead of two non-conforming lots one should be conforming. There was discussion about one & two family homes. When the plan was revised it did show a two family home on the conforming lot and a proposed single family home on the undersized lot. He disagreed with Mr. Fiorello's position that this was a condition and they cannot come before this board and ask for a two family home to be built on the lot. He felt it was an attempt to impose a condition on any approval. Even though the plan as revised showed a proposed one family dwelling and there was some discussion between the Board and the applicant. There are cases that say even if the applicant shows it on the plan and there is discussion between the Board and the applicant it is not a condition unless it's a condition of the resolution or the subdivision deed or clearly set forth in the minutes then it is a condition. If it doesn't meet one of these requirements then it was never a condition as far as he is concerned and it is not a condition that can be enforced. He felt it was never a condition and it can't be imposed on them today. They can't tell the applicant he can only build a one family home there. The second reason is the ordinance says you can build a one or two family home in this zone. The ordinance shows no distinctions. Mr. Petriello said Cox specifically talks about the situation where you have a zone that allows both one & two family homes and Cox says that if the ordinance does not draw any distinction between one or two family homes then the Board cannot over rule the ordinance. The only distinction in the ordinance between a one or two family home is the open space requirement which they recognize they need a variance for and are requesting. It is their opinion that it was not a condition and even if there was a condition it is unlawful because it

is contrary to the zoning ordinance. Their position is that even if they find it lawful it would be arbitrary and capricious for them to now not grant the same variances that were granted in the prior application for a one family home just because this is a two family home because the ordinance says a one & two family are the same requirements.

Mr. Fiorello said he agrees with the last position Mr. Petriello said but it means the one family or two family house has to meet the requirements of the ordinance. They don't have that here because the size of the lot is smaller than what is required by the ordinance. You can only do both if you meet the requirements. Mr. Petriello said he would agree if the Planning Board had said they would give them variances only if you build a one family home but that is not what happened. Mr. Fiorello said Mr. Petriello's client said he only wanted a variance to build a one family home and changed his application. The Planning Board granted what he wanted and he can't come in now and say I got what I wanted but now I want to change it. Mr. Fiorello said he can't do that and Mr. Petriello said he wasn't sure he couldn't do that. He felt he showed it as a proposal. Mr. Fiorello said that is not what is in the minutes and he read it again. He said they changed the application and a condition was not needed because he changed the application. Mr. Petriello cited a case and said he did not think his client ever said he would only build a one family. Mr. Fiorello said he would not have gotten the variance and they know it. The only reason he changed the proposal was that the Board was expressing concerns about building two 2-family homes on two undersized lots. When they came back the attorney said they wouldn't do that and now they would have a lot that meets the ordinance for a two family and an undersized lot where they would build a one-family. Mr. Petriello said that is different than saying it is a condition. Mr. Fiorello said it was not a condition. Mr. Petriello said it was a subdivision application. Mr. Fiorello said it was also a variance application. Mr. Petriello agreed. He said the client showed the house as proposed. Mr. Fiorello said everything the Board gets here is proposed until it is granted. Mr. Petriello asked why he can't build what he is permitted to build. Mr. Fiorello said he is only permitted to build on that lot what the Board gave him. Mr. Petriello said he has cited cases where people agree to certain things but if it is not put in as a condition it is just a discussion and it is not binding. Mr. Fiorello said if someone comes here the Board gives them what they ask for and there are no condition put on they just give them what they want. Mr. Petriello said he is permitted to build a one or two family house here. Mr. Fiorello said he is permitted to build on a conforming lot. You can't get a variance to build a one family house on a non-complying lot and then come in and say the ordinance says I can build a two-family in the same zone so he can build a two-family. It makes no sense and the applicant wanted to change his application which the Board allowed him to do and they gave him what he wanted. He did not think that had to be a condition but apparently Mr. Petriello disagrees.

Mr. Fiorello said they need variances for minimum lot size (area & depth) and outdoor living space. They have revised the plan to include garages. The Board members were polled and they agreed that all the variances outlined by Mr. Fiorello are required.

John Evans, architect, was previously sworn in and qualified as an expert. Mr. Fiorello reviewed Mr. Evans previous testimony and comments. Mr. Evans said he has submitted a revised plan to the Board. The plan shows a date of 9/10/10. He has revised the plan to

show the decks for each unit which are 10' X 12'to increase the outdoor usable space. They have revised the plan to show a garage for each unit. It is two one-car garages. The basement level plan was revised to show a garage unit for each dwelling with two garage doors. The garages are divided by fire rated wall which encloses each unit. There would be separate access for each unit. Unit A would access the garage through the unit. Unit B would access the garage through the outside garage door. They also show two parking spaces in front of the garage and there is also an apron on the other side of the property for two more spaces. They have the ability to park 6 cars on the property. Mr. Petriello said you cannot calculate the two spaces in front of the garage per the borough ordinance.

Mr. Petriello referred to the exhibit Mr. Evans prepared showing a colored, aerial photograph of the neighborhood which was marked A-1. The exhibit shows the one-family homes in blue and the two-family homes in red in the neighborhood. There are 11 one-family homes and 35 two-family homes. There are 12 improved on Bush Ave. and the site in question is the only undeveloped lot. There are 3 one-family homes and 8 two-family homes on Bush Ave. Mr. Evans stated that all the lots are 70' deep and no lots conform to the 100' requirement on Bush Ave. All properties on Jackson are 90' deep. They are divided to conform with the pre-existing lot lines on Jackson & Bush. The width of the lots vary along Bush Ave. from 50' to 150'.

Mr. Evans said the applicant is requesting an open space variance where 3500 sq. ft. is required and they are proposing 2993 sq. ft. They are short 507 sq. ft. They could eliminate the parking pad that is proposed for the two parking spaces in order to pick up some extra space. Mr. Petriello said they would have to only eliminate one space to be in compliance. They would gain 200 sq. ft which would reduce the deficiency to 307 sq. ft. Mr. Evans said he would recommend it because the parking would be satisfied too. Ms. Kallert said they would need a parking variances because they need 4 spaces. Mr. Evans said they only need 3 because the requirement is 1 ½ spaces per unit. Mr. Evans said the open space would be consistent with the open space in the neighborhood. The variances can be granted with no detriment to the public good and will not impair the zoning ordinance. The proposal would be consistent with the neighborhood.

Ms. Kallert asked if the deck space was calculated into the open space. Mr. Evans said he needed a minute.

Mr. Fiorello was provided with the ordinance and it requires 2 spaces per dwelling unit and the spaces in the front of the garage can not be counted. Eliminating the parking pad would not be an option.

Mr. Evans stated they did increase the deck size but it is not calculated in the open space requirement.

Mr. Juzdan asked if the design of the structure is similar to the one that was built on Jackson Ave. He asked if it was the intention to sell the units separately because the Board did have one a few months back with the garages being under one side which created a lot of confusion. Mr. Evans said he did not know. Mr. Petriello asked if he meant making a

condo out of it and his client did do it with the other one. Mr. Petriello felt it made no difference to the Board. Mr. Fiorello said that was correct. Mr. Juzdan said the one garage cannot be accessed internally. Mr. Evans said it would also be an independent garage. There is a walkout basement that is unfinished.

Ms. Patterson asked what the L-portion of the basement is going to be. Mr. Evans said that would be the mechanical room. Ms. Patterson said the second unit occupant would have to walk outside to get into the garage. Mr. Petriello said it would be similar to someone with a detached garage. Mr. Evans said the garages were designed this way because of Bush Ave. being on a hill. The garage did not work on the left hand side of the building. They felt this was the best way to set up the garages. They could not put the garages underneath in the center because the structure would be too high and would exceed the height restrictions.

Mr. Intili said there were two decks in the rear and asked how high off the ground they were. Mr. Evans said it is about 6' off the ground on one side and on the other side it would be 9' off the ground. Mr. Intili said it looks less than that on the plans. Mr. Evans said it would average about 5' off the finished grade in the rear. Mr. Intili asked if the space under the deck was unusable. Mr. Evans said it would be using the space on the deck instead of the under it. Mr. Intili asked about the stair into the storage area and asked if it would be on the site plan. Mr. Evans said it would be on the site plan. Mr. Intili found it hard to believe that the average elevation is 34' 10". Mr. Evans said they averaged all the perimeters to come up with that figure as per the ordinance.

Ms. Kallert felt if they eliminated the 3rd floor master bedroom suite they could put in the garages. Mr. Evans said the roof is the roof as they show it and it would raise the building with a condition of 2 ½ stories. He did not know if they would need a variance if they should eliminate the suite and put in the garages.

Mr. Intili asked if the mechanical room could be arranged in a way to permit access to Unit B garage through that area. Mr. Evans said if it suited the Board they could accommodate that. The furnace and water heater could be relocated to another area.

Mr. Petriello felt the last suggestion was a good suggestion and they would be happy to revise the plans to show that. Ms. Kallert asked how they would accomplish that. Mr. Evans noted they would need a 3' hallway so they would make the garage bigger and continue the wall along the rear to make a connection for Unit B.

PUBLIC OPEN – CLOSED

Ms. Patterson said she likes the idea of having access for both residents. They would have two spaces for each unit.

Mr. Intili felt they could do something with the grading so the open space is not lost in the space under the deck. Mr. Petriello said the comment was because the deck is only 5' off the ground you can't walk underneath it. Mr. Evans said the space is available on the deck rather than under it. As a practical matter it is sort of a wash. Mr. Petriello said his client

has indicated to him they could lower the grade to 7' below the decks. They have already calculated the space under the deck in the open space. Mr. Fiorello said it would be a condition of approval that the space under the deck be 7'.

Mr. Decesare felt there could be 8 cars generated from that house. He felt the proposal would impact the area. It is difficult to get a fire truck down that street.

Mr. Juzdan asked Mr. Fiorello if the Planning Board already granted an application for a one-family home. Mr. Fiorello said the applicant changed his application to propose a one-family on the lot. Mr. Juzdan asked if he was now coming to this Board for a variance for a two-family home. Mr. Juzdan asked if he attempted at first to get two 2-family homes. Mr. Fiorello said it was going to be a different subdivision altogether with 2 undersized lots with 2 two-family homes. When the Planning Board was asking questions and seemed to be wavering they came back the second time and said they are revising the application and they are now going to have a conforming lot and a non-conforming lot. This is the lot that did not conform. Mr. Petriello said just to clarify the larger lot conforms to the neighborhood but technically does not conform to the ordinance.

A motion to deny was made by Mr. Decesare, second by Ms. Patterson. Mr. Fiorello asked for reasons. Mr. Decesare said his reasons were the parking. It is terrible in the area and you can barely get a truck through. The applicant should build a one-family on the lot as proposed at the Planning Board. Ms. Patterson agreed. Application is denied by a vote of 4- 2.

**DOCKET # 10-06 – L. MARULANDA & J.I. TORRES – 28 ROCKLAND AVE. –
BLOCK 44 LOT 29 – BULK VARIANCE**

Lina Marulanda & Jorge Torres, applicants, were sworn in. Mr. Torres said they want to use the area in the basement that is wasted space. They want to add a half bathroom because they only have one bathroom. The tenants on the 2nd floor have access to the laundry room in the basement and they would like access to the backyard from the 1st floor apartment.

Mr. Torres said they were denied a permit because a bathroom is not allowed in a basement that has a door leading outside. The town does not want to have an illegal basement apartment. Mr. Torres said they just want to finish off the basement.

Ms. Marulanda said if they have access to the basement and have to close up the door they would have to go to the front of the house to go to the back yard. They provide a laundry hookup to the second floor tenant and it would be inconvenient for them. It is also inconvenient not to be able to get to the backyard. They are proposing a half bath that would include a sink or a toilet. Mr. Fiorello asked if it was already there. Ms. Marulanda said no they have not done anything yet. Mr. Torres said the tenants would have access to the laundry area and they would like to make the rest a family room.

Ms. Kallert asked about access to the deck from the 2nd floor. Mr. Torres said the deck goes from the second floor to the 1st floor. Ms. Marulanda said they do have access but it is very

small and made of metal. She said it is very steep and slippery when it rains. She does not feel comfortable using it.

Mr. Intili said he looked at the site plan and based on these drawings he sees the garage on the left side of the house. In back there is a screen porch and he asked if it was on ground level. Mr. Torres said it is where the door to the basement goes out. They will not rent the basement as a living unit and will be only for their use.

Mr. Juzdan asked if the ordinance prohibits a full bath. Mr. Intili said it prohibits both if they have access to the outside. He felt it could be inconvenient but the ordinance does prohibit it. Mr. Juzdan asked if they could do it without the door outside. Mr. Torres said the backyard is really on the basement level. They moved into the 1st floor apartment 2 months ago. He felt tenants look for apartments with laundry rooms and felt it would increase their revenue. It will only be a simple ½ bath for convenience.

Mr. Torres said at the time they submitted the application they were not living in the house but they are now living in the 1st floor apartment.

PUBLIC OPEN

Kristina Trovato, 233-235 Salomone Ave., stated she and her Mom live just below the house in question. She has no objection to the application but the applicant has clean out the whole backyard and he did do some digging. When it rains the water and mud runs down onto her property which is her only concern. She thought the digging and the new pipe was for the bathroom. Ms. Kallert asked the applicant to discuss it with Ms. Trovato at a later date.

Mr. Decesare asked what the applicant dug up and if it was for the bathroom. Mr. Torres said the drain pipe that was below grade terminates in the middle of the yard and was deteriorating. He just replaced what was there. It had nothing to do with the proposed bathroom. He did discuss it with the Code Enforcement office.

PUBLIC CLOSED

A motion to approve with the condition that it would be a ½ bath with no shower or tub was made by Mr. Intili, second by Mr. Orlando. Mr. Decesare felt there was an ordinance that prohibits any kind of bathroom. Mr. Intili said they were requesting a variance and felt it would be convenient to have a bathroom on that floor. Application is denied by a vote 2 – 4.

DOCKET # 10-11 – K. HADDOUCHE – 76 MARCELLUS AVE. – BLOCK 13 LOT 38 – BULK VARIANCE

Younes & Kamel Haddouche, applicants, were sworn in. Younes Haddouche stated the original violation was they changed the garage door to a sliding door. They spoke to the inspector and he asked for pictures of the door. He asked to inspect the house and when he inspected he saw they had created a small laundry room. The inspector said they had

changed the garage into a habitable area. They would like to dispute the fact that it is a habitable area because there is no bathroom or kitchen area. The upstairs has direct access to the lower level without any restrictions.

Mr. Fiorello asked if cars can pull in and if they pulled cars into it. Mr. Haddouche said they do not pull cars in because they have side parking. The house is a duplex and the actual driveway is very steep. They have a side lot they designated for parking cars. The other garage is also used for a storage area and has a pull up garage door. The other garage they have installed a 3-panel door because the door was deteriorating. They have taken pictures showing a car can still be put in the garage. The Board Secretary had pictures taken showing the car pulled in. Mr. Fiorello asked what they use the room for. Mr. Haddouche said it is a small library with books and a laundry room.

Kamel Haddouche said they moved the wall into the garage to make the room larger. In the area there is a laundry room and storage room. The drawing shows a previous wall that was the rear wall of the garage that they moved up. They have converted part of the garage to storage. The basement has painted walls and linoleum on the floor. The garage is the basement level.

Mr. Juzdan asked if a car can fit in the garage as it is now. Mr. Haddouche said a small car can fit in. Ms. Kallert said you cannot close the door. Mr. Haddouche said if the car was small you could. Ms. Kallert asked how much they came into the garage. Mr. Haddouche said about 4' and they did not obtain a permit. They were not aware they needed the garage. They thought making the storage area bigger would be more convenient.

Mr. Juzdan asked if this is not used as a garage how many spaces do they have. Mr. Haddouche said there is a lot on the side where you can fit 4 cars do they met the ordinance requirement.

Mr. Haddouche said there is no bathroom in the basement.

Mr. Intili asked if it was important to keep the separation for the storage room. Mr. Haddouche said they opened it up for the kids and put the door there for safety. Mr. Fiorello said they also removed a side wall in the garage to give them more space. Mr. Haddouche said the space was used for a work out area.

Mr. Decesare asked about the picture and where they can fit 4 cars. Mr. Haddouche said they have a lot that fits 4 cars.

Mr. Fiorello said they do not see land next to the house. Mr. Haddouche pointed it out on the survey. Only one car can fit in the lot and they cannot be parked side by side. The lot is only 12.7' wide. The cars can only be parked in tandem on the lot. Ms. Kallert stated that tandem parking and spaces in front of the garage are not counted in the calculation.

PUBLIC OPEN

Jesus Lopez, 81 Marcellus Ave., was sworn in and stated she had no problem with the door like it is. She lives in front of them and they have no problem with the proposal.

Eduardo Lopez, 81 Marcellus Ave., was sworn in and stated that he had no problem with what they are doing.

PUBLIC CLOSED

The photos and survey were marked A-1 through A-5.

A motion to deny was made by Ms. Patterson, second by Mr. Decesare and denied by a vote of 6 – 0.

Mr. Fiorello said in order to get a variance you must prove there is a hardship to the property. The house had a garage and they prevented it from being used as a garage according to Mr. Esposito.

A motion to adjourn was made by Ms. Patterson, second by Mr. Juzdan. All in favor. Meeting adjourned.

