

Call to Order:

The meeting was called to order at 7:00 p.m. by Chairperson Fox who read the following statement: “Notice of this meeting was given as required by the Open Public Meetings Act on February 29, 2020. Be advised, no new item of business will be started after 10:30 p.m. and the meeting shall terminate no later than 11:00 p.m.”.

The Board saluted the flag.

Roll call: Present – Mr. Cossaboon, Mr. Fritz, Mr. Mercado, Mr. McLaughlin, Mr. Salvadori, Mr. Sebastian, Mr. Kozak, Mr. Rybicki, Ms. Fox. Absent – Also present – Mr. Coe, Solicitor, Ms. Pellegrini, Planner, Mr. O’Reilly, Council Liaison, Mrs. Farrell, Secretary, Mrs. Orbaczewski, Clerk Transcriber.

Memorialization of Resolutions:

1. #15-20 – App. #20-05 – Ryan Renshaw & Kelley Bell – Lot Coverage Variance Approved

Motion by Mr. McLaughlin, seconded by Mr. Mercado to adopt resolution #15-20. Roll call vote: Mr. McLaughlin, Mr. Mercado, Mr. Cossaboon, Mr. Fritz, Mr. Kozak, Mr. Sebastian, Ms. Fox. Nays – Zero. Abstentions – Zero.

Public Hearings:

1. #20-04 – Matt & Miranda West – Lot Coverage Variance

Present – Matt West, applicant, Miranda West, applicant, Cindy Contini, representative from the Pool Store.

The applicants are requesting a lot coverage variance for their existing 18’ x 38’ inground pool and surrounding concrete walkway. The maximum lot coverage is thirty percent and the applicant requests forty percent. The property is located at 1658 Carriage Drive, also known as Block 103.0201, Lot 35, in the RG-PR Zoning District.

Ms. Fox asked if the application can be deemed complete. Mrs. Farrell replied the application can be deemed complete. Motion by Mr. McLaughlin, seconded by Mr. Salvadori to deem application #20-04 complete. Voice vote; all ayes, motion passed.

Public Hearings: (continued)

1. #20-04 – Matt & Miranda West (continued)

Matt West, Miranda West, and Toni Williamson were sworn in by Mr. Coe. Ms. Williamson stated that the applicants are requesting a percentage of lot coverage variance from thirty percent to forty percent to allow for the existing 18' x 38' inground pool with surrounding walkway. Mr. McLaughlin asked if there were any drainage problems on the property. Ms. Williamson replied there are no drainage issues. Mr. Coe asked what is behind the property. Ms. Williamson replied that there is another resident behind this property; however, there is a fifty-foot infiltration trench along the rear of the applicant's property that has already been approved by the Township engineer. There is a ten-foot buffer and the fifty-foot infiltration trench between the applicant's property and the property behind them.

Motion passed to open the hearing to the public. There being none, motion passed to close the hearing to the public.

Mrs. Farrell asked if they applied for the lot grading. Ms. Williamson replied that they did; however, the Township was between engineers so they were waiting to give it to the new engineer. Mr. Coe reviewed the variance request for the Board. Motion by Mr. McLaughlin, seconded by Mr. Sebastian to grant the percentage of lot coverage variance from thirty percent to forty percent subject to the following conditions: the applicant must secure all necessary permits including lot grading approval and maintenance of their escrow account. Roll call vote: Ayes – Mr. McLaughlin, Mr. Sebastian, Mr. Cossaboon, Mr. Fritz, Mr. Mercado, Mr. Salvadori, Ms. Fox. Nays – Zero. Abstentions – Zero.

2. #18-07 – WBA Arbours, Jr., LLC – Density/Use Variance Reconsideration

The applicant is requesting a density variance in order to be permitted to construct a cluster development consisting of 16 single family homes with one open space/stormwater management lot. The property is located on Blue Bell Road, also known as Block 110.0301, Lot 21, in the RG-PR Zoning District.

Present – Mr. Hoff, applicant's attorney.

Mr. Coe stated he wanted to give a brief statement before hearing from the applicant and the public. He stated that this matter is before the Zoning Board at the request of the applicant for a reconsideration of the vote taken by the Board on November 12, 2019. The applicant requested the density variance at that time to allow for a maximum of 16 single family homes on an 8.59 acre parcel where the ordinance allows for 10 units. If the applicant had an additional three tenths of an acre of property, the cluster zoning would allow a density of up to 20 units. The applicant bifurcated the density application from subdivision and all issues of subdivision approval such as layout, stormwater, etc. would be heard if the density variance is granted.

Public Hearings: (continued)

2. #18-07 – WBA Arbours Jr., LLC (continued)

Under New Jersey law, the standard for granting a density variance is more relaxed or permissive than a use variance. The reason is because the property is already zoned for residential use which is being proposed by the applicant. The property is not preserved open space, preserved farmland, or a fire lane. The question is whether the site will accommodate the problems associated with a density of 16 units versus 10 units. The applicant presented testimony at the November hearing as to why the density variance is appropriate. Members of the public testified in opposition citing concerns about drainage, basement flooding, and other issues. The Board's planner recommended that the applicant receive the density variance noting that that the three tenths of an acre difference between 10 conventional units or 20 cluster units was negligible. He further commented that this property was purchased many years ago as part of the overall Arbours planned residential development. The planner also concluded that the plan does fit with the intent of the zoning code and the Master Plan. At the conclusion of the testimony, the seven members of the Board voted four in favor and three against; since the approval of the density variance requires five affirmative votes, the density variance was denied. The three members of the Board who voted against the density variance decided that the applicant failed to meet its evidentiary burden. The four members who voted in favor determined the applicant had met its burden and the site issues would be handled at subdivision approval.

The applicant contends that the Board erred by not stating the reasons on the record for the denial at the time of the vote. The applicant also contends that the Board erred as a matter of law as the applicant believes they sustained their evidentiary burden. Mr. Coe stated as to the first issue, there is no requirement in the land use law or case law that requires the Board to state its reasons at the time the vote is taken. The reasons can be stated at the time the resolution is adopted. The Board denies the request for a reconsideration based on that issue. The Board has granted limited reconsideration of its decision on the issue of whether the Board erred as a matter of law in denying the density variance. The applicant had filed suit in Superior Court against the Zoning Board asserting that the Board acted in an arbitrary and capricious manner in their denial. The Court has decided to remand the matter back to the Board to allow the reconsideration hearing. If the Board reaffirms its prior decision, then the matter will proceed before the Court for a final decision. If the Board agrees that it did err and grants the variance, then the applicant will only be able to proceed if they return to the Board for subdivision approval.

Mr. Coe stated he will explain how the procedure will work this evening. The Board must comply with the decisions and statutes of the Courts. They must apply the law to the facts that come before them. They are required by law to maintain complete order and decorum during the meeting.

Public Hearings: (continued)

2. #18-07 – WBA Arbours, Jr., LLC (continued)

If anyone disrupts the meeting, he or she will be removed without further warning. The Board will hear argument on the applicant's position that the Board erred as a matter of law in their denial. The rehearing will be limited to legal argument including the application of the law to the facts. The matter will not be open for further testimony or exhibits from the applicant or the public. The Board will entertain up to twenty minutes of relevant argument from the applicant and up to twenty minutes of relevant argument from the objecting public. The applicant may reserve a portion of its twenty minutes for rebuttal. The purpose of this hearing is to address the limited issue of whether the Board erred in its decision to deny the variance.

Mr. Hoff introduced himself as the applicant's attorney. He commented he would like to reserve five minutes for rebuttal time. He stated he appreciated the Board providing this opportunity. He explained that a complaint has been filed with the Court because they are under statutory constraints to file appeals within a certain time period. They had to file the complaint in order to preserve their right to an appeal. He stated they thought it was important, based on the record that was provided, that they come back before the Board for the rehearing in the context of the legal framework in which the Board needs to act. Mr. Hoff did feel maybe he did not properly provide the legal standard to the Board and did not properly explain the difference between a regular use variance and this variance for the density. The Board should determine will the 16 units as opposed to the 10 units advance one of the purposes of land use law which is the positive criteria. With regard to the negative criteria, is there something about the 16 units opposed to the 10 that doesn't satisfy the negative criteria; is there something about those six units that harm the zoning code. Mr. Clemson went through each of the standards for the cluster zone. The professionals have acknowledged, if they had three tenths of an acre more, they could have 20 units. As previously testified to by the applicant's professionals, there wasn't anything about the 10 to 16 units that would harm the zoning code or the intent of the code for each of the criteria, such as for the stormwater, the buffers, drainage, etc. Mr. Clemson determined that there weren't any issues in going from 10 to 16 units and their design will have to accommodate the 16 units to meet all the criteria. The proposal is less dense than what currently exists in the Arbours and less dense than the Lafayette Estates subdivision. That subdivision was approved in the exact same cluster as they are seeking but with a higher density. They discussed the issue of clearing and determined that there would be no difference in clearing from 10 units at a larger lot size of 27,500 square feet to 16 units with lots sizes at 10,000 square feet. The clearing could actually be worse because of the buffering and open space requirements in a non-cluster subdivision. They went through all of the issues and they could not find any reason the density variance should be denied based on the facts presented.

Public Hearings: (continued)

2. #18-07 – WBA Arbours, Jr., LLC (continued)

There was also discussion about parking as one of the members of the public stated that the parking would never work on the streets because they are too narrow. Mr. Clemson testified that they must comply with the RSIS. Each of the houses in the layout complied with RSIS; the streets complied with RSIS at thirty feet wide which would provide for additional on-street parking. With regard to the water and sewer, there aren't any problems or issues in that regard since the water and sewer is available and the connections are in place. The public commented that they like the site as it is and commented that the children from Lafayette Estates use the property as extra area to play in since they do not have large backyards. Mr. Hoff stated that it is private property and its going to be developed. With regard to the positive criteria, it was testified by the applicant's planner and engineer that the surrounding development is consistent with what the applicant is proposing. There isn't any development that utilizes the conventional development standards with 27,500 square foot lots in the surrounding area. This property is almost the exact size of the Lafayette Estates subdivision and they developed at a density for 19 units. With all the facts and testimony presented, they felt they made a very compelling case and that there is no reason to deny the density variance. The issues raised by the public that they like the trees, they like the buffer, etc. can't be considered by this Board. They believe that this is a better design which does preserve more of the open space and buffering and its in keeping with the characteristics of the surrounding neighborhood. All of the other issues such as drainage and water runoff will be addressed with the subdivision plans and they will have to comply with the best management practices for stormwater runoff. They believe they met their evidentiary burden, Mr. Kernan, the Board's planner concurred, and there was no other expert evidence or testimony to the contrary. The Board should be guided by the testimony and law and they believe the Board erred as a matter of law. They respectfully request the Board reconsider their decision with regard to the density as well as the front yard setback variance and the variance for the basin as previously requested.

Mr. Coe stated that the Board will hear up to twenty minutes of argument from the public.

1. Merrill Pavlow, 1101 Lafayette Street. Ms. Pavlow thanked the Board members who voted against the variance. She stated that after two failed attempts to get the variance approved, the applicant has placed a lot of pressure on the Board to do this. She talked about a Mr. Bowman who approached the neighbors and came to their homes. She stated that this development cannot be laid out the same way as Lafayette Street because they want to put the basin in the back of their lots. She continued to speak about Mr. Bowman who asked her to convince the neighbors to agree with him on building the 20 homes but then went down to 16, then 10 and 8. She also commented on the fire road being present and the threats from Mr. Bowman. In her opinion 8 to 10 homes is enough and not the 16 they are asking to build.

Public Hearings: (continued)

2. #18-07 – WBA Arbours, Jr., LLC (continued)

2. Donald Biggerstaff, 1113 Lafayette Street. Mr. Biggerstaff stated that most of the houses that border this property in Lafayette Estates have shallow backyards. When they purchased their homes they were told no one would ever build behind them. He stated the taxes are high and if he wanted to sell his home he wouldn't be able to sell it for what they say its worth if this development is built so close to their houses. He stated that Board should consider it like it was their home and not just the law but what is right for the people because they represent the people. He stated he drew a sketch which depicted a design he came up with for the applicant to keep the houses away from their houses and wanted to pass it around. Mr. Coe stated that the Board is only hearing argument on what was presented at the last hearing. Many of the issues brought up are issues that would be addressed with a subdivision application.

3. Susan Whipple, 1893 Forest Drive. Ms. Whipple wondered why the applicant keeps bringing the same exact proposal to the Board and not a proposal with lesser lots since the Board has denied them twice already. She commented on the size of the property and did not understand how they will be able to fit the number of homes they are requesting. She stated that their engineer would agree that it will work because he is paid by the applicant. She commented that the town changed its ordinance since the previous developments were approved because they do not want to make the same mistakes they made before. There is no benefit to the Township but it is only beneficial to the builder. She did not have an issue with the them building the 10 homes and stated the only reason they want to build more is for pure greed. She asked the Board to think about the existing residents when they vote.

4. Karen Booker, 1124 Tamarind Place. She commented on the number of developments on Blue Bell Road within one mile. She felt they were already squeezed in and did not think they could squeeze in anymore homes. She commented on her being a foster home for many children and home schooling her children and stated it is sad to see the property in question taken away from all the children. She expressed her concern with the increased traffic accessing Tamarind to get to this proposed development as well as the proposed development not having a second access. She asked the Board to consider the people and keep it the way it is.

Mr. Coe stated that the Board would take a five minutes recess and then hear rebuttal from Mr. Hoff.

The Board took a brief recess at 7:46 p.m. and returned from the recess at 7:50 p.m.

Public Hearings: (continued)

2. #18-07 – WBA Arbours, Jr., LLC (continued)

Mr. Hoff stated that the issues raised are the same as before and are important to the residents but they don't go to the question. Many of the issues raised are subdivision questions and they will address them when they engineer the plans. Mr. Biggerstaff commented on the rear yards in his development being too shallow which is why they are asking for the front yard setback variance so they can provide for larger rear yards to keep the homes further away from the existing properties. With regard to the statement about the applicant's professionals saying the development will work because they are being paid, Mr. Hoff stated that they are professionals and under oath, but more importantly than the applicant's experts, the Board's expert stated they satisfied the criteria for the variance. The decision to ignore those experts can't be anything other than arbitrary and capricious. They believe they made their proofs and asked the Board to reconsider the application and grant the density variance and associated requested variances.

Mr. Coe stated he wanted to comment on some statements that were made. One of the members of the public commented that the Board has heard this matter three times. But it is not a matter of the applicant being allowed to keep coming back until they get what they want. This matter was brought to the Board in 2018 and denied. The applicant took the matter to Superior Court but since there wasn't a verbatim recording, as the recording equipment malfunctioned, the judge remanded the matter back to the Board for a completely new hearing. The law allows for a limited reconsideration and the Superior Court has agreed that the applicant does have the right to come back, which is why the matter is before the Board again. There was also a comment made that the Board is under pressure because of the lawsuit. Mr. Coe stated that is not the case at all. The issue before the Board this evening is whether or not they will grant the density variance for up to 16 units with a front yard setback of 25 feet versus 40 feet and an open space variance of 1.8 acres versus 2.21 acres. The conditions that are appropriate are that the applicant has to return to the Board for major subdivision approval. The applicant will have to maintain its escrow account and they must obtain any and all outside agency approvals deemed necessary. Mr. Fritz commented that he thought they were only voting on the density variance. Mr. Coe replied that the applicant originally asked for the additional two c variances. The Board can choose to vote on the density variance and defer the other two c variances to the time of subdivision approval. Mr. McLaughlin commented on the letter submitted by the public. Mr. Coe stated that the issues raised in the letter are not pertinent to the density issue. Harassment by any individual is a civil matter or police matter and not the Board's issue.

Mr. McLaughlin made a motion to reverse the Board's previous decision and to grant the density variance. Mr. Sebastian seconded but asked that the other two c variances be deferred to subdivision approval. Mr. McLaughlin agreed to that condition. Roll call vote: Ayes – Mr. McLaughlin, Mr. Sebastian, Mr. Mercado, Mr. Salvadori. Nays – Mr. Cossaboon, Mr. Fritz, Ms. Fox. 4 ayes, 3 nays, motion failed.

Public Portion:

Motion passed to open the meeting to the public. There being none, motion passed to close the meeting to the public.

Reports:

1. Mr. Coe stated that the Board will need an executive session at the next meeting and he will prepare the resolution. Mrs. Farrell commented that the next meeting is March 31st and there are three application scheduled.

Approval of Minutes:

1. 3/3/2020 regular meeting.

Motion by Mr. Fritz, seconded by Mr. McLaughlin to approve the minutes from the March 3, 2020 regular meeting. Voice vote; all ayes, motion passed.

Adjournment:

The meeting was adjourned at 8:00 p.m.

These minutes are an extract from the meeting that was held on the above date and are not a verbatim account or to be construed as an official transcript of the proceedings.

Respectfully submitted by: Ninette Orbaczewski, Clerk Transcriber