

March 2, 2016

A regular meeting of the Board of Adjustment was held in the Municipal Complex at 7:00 p.m.

Present	Also Present
Harvey Langer	John Miller, Esq.
Dennis Raftery	Ronald Cucchiaro, Esq.
Eileen Della Volle	Brian Boccanfuso
Dawn Marie White	Tara Paxton
Stephen Leitner	Sean Kinnevy
Louis Sorrentino	Denise Sweet
Jeffrey Schneider	
Carl Anderson	

Absent

Frank Mizer

Mr. Langer led the salute to the flag; and the roll was called.

The Board Professionals were sworn in.

BA-2963- Kimberly DiStaso

Kimberly DiStaso was sworn in. She is requesting to construct a hip roof with posts over part of the rear elevated deck to create a pavilion/covered porch, about 18' x 20', approximately 16' high from the ground to the ridge. A minimum rear setback of 15 feet is required by the Ordinance and a setback of only 9' is proposed. No walls or screening is being proposed. Ms. DiStaso stated this proposal would have no negative impact on the neighborhood. She also stated that she is a survivor of skin cancer and the roof would keep her safe from the sun.

Robert Yacullo was sworn in. He is her neighbor. He wasn't sure where the pavilion would be placed on the deck. He was concerned it would be too close to his property line.

Sean McCaffrey was sworn in. He is the builder constructing the deck. He stated the pavilion would be 12 feet in height.

Public portion closed

Factual Findings

Mr. Raftery- The property is located in the R-7.5 zone. The applicant is proposing to construct a pavilion on the elevated deck at 9 ft. from the rear property line where 15ft. is required. The

pavilion will have no screening or walls. A neighbor was present with a comment. This application will have no detriment to the neighborhood or area.

Ms. Della Volle- Concurred

Ms. White- Concurred

Mr. Leitner- Concurred

Mr. Sorrentino- Concurred

Mr. Schneider- Concurred

Mr. Langer- Concurred

A motion was made to approve case BA-2963- Kimberly DiStaso. It was moved by Ms. White and seconded by Ms. Della Volle. All other eligible Board members voted AYE.

BA-2964-Brian and Gina Harvey

Brian and Gina Harvey were sworn in. The applicants are proposing to construct a front covered porch approximately 27' x 7' and 14' high. The porch is proposed to be constructed at 23.12 ft. from the front property line where 25 ft. is required by the Ordinance. Mr. Harvey stated that the home is being raised and the porch will square off the front of the home. He intends to extend the porch and roof line. He also stated the porch will give his home a more custom look than the other homes in the area.

Mr. Kinnevy stated he had no objections to the application.

Public portion closed

Ms. White- The property is located in the R-7.5 zone and is an undersized lot. The porch will measure 27' x 7' and stand 14' high. The porch will enhance the look of the home. This application will cause no detriment to the area or zoning plan. The benefits out-weigh the negative aspects.

Mr. Raftery- Concurred

Ms. Della Volle- Concurred

Mr. Leitner- Concurred

Mr. Sorrentino- Concurred

Mr. Schneider- Concurred

Mr. Langer- Concurred

A motion was made to approve case BA-2964- Brian and Gina Harvey. It was moved by Mr. Raftery and seconded by Mr. Leitner. All other eligible Board members voted AYE.

BA-2951-Kathleen Johnson

Kathleen Johnson was sworn in.

Nick Ortense was sworn in. He is the builder constructing the proposed home.

The applicant is proposing to construct a 2 story 5 bedroom single family residential dwelling with an attached garage. The existing asphalt driveway and existing above ground pool on the property are to remain. The survey Variance Application Plan submitted with this application both depict a 30 foot wide utility easement encumbering the northerly portion of the property, and it appears that the proposed side deck will encroach into same. Construction within this easement will require approval from the agency to which the easement is dedicated.

Mr. Ortense stated that Ms. Johnson has been displaced from her home for 27 months due to a fire. He discussed an easement to the front of the property but was not aware of who the easement belonged to.

Donna Conover was sworn in. She is Ms. Johnson's cousin. She stated that the variance being requested was for the front setback. The ordinance requires 35 ft. from the property line and 25 ft. is proposed. She was not aware of any other variances required.

Mr. Boccanfuso stated besides the variance for the front setback, lot area and lot depth also require variances. Public Notice did not include these additional variances. These variances were not requested in the application.

Mr. Miller explained to Ms. Johnson that these variances must be included in her application and must be in her public notice. He stated that until these issues are addressed the application could not be heard. He advised Ms. Johnson to be scheduled for another meeting and bring a professional with her, either an engineer or an attorney so they could please her case for her. Ms. Johnson agreed to carry the application and return to another meeting with a professional.

The application was carried to May 18, 2016. New public notice must be given. Ms. Johnson waived the time.

Recess: 8:05 Meeting resumed: 8:15

BA-2682- New Beginnings Christian Fellowship Church

Michael McCaulley was present to represent the applicant. A brief history of this application was stated by Mr. McCaully. This application was remanded back to the Board to be presented including the conditions of the Settlement Agreement And Release.

Mr. Cucchiaro stated the conditions of the Settlement Agreement to the Board members:

1. **Cross-easement/Cross-lease agreement:** Plaintiffs shall prepare in form and substance acceptable to the Township of Brick and the Zoning Board of Adjustment, a cross-easement or cross-lease agreement for the joint use of Block-382.20, Lots- 66 and 72 on the Official Tax Map of the Township of Brick. The cross-agreement/cross-lease agreement must, at a minimum meet the following requirements;
 - a. Represent and warranty that the agreement is limited to cross-use for religious purposes only, including Plaintiff's use of the mercantile center, food pantry, church and teen center;
 - b. Specify the exact number of parking spaces available in each lot, and available in the aggregate;
 - c. Represent that the easement or lease shall be in recordable form and shall be recorded within a specified time period with the appropriate local and county offices;
 - d. Reference within the easement/lease the application number and revised site plan.
 - e. The cross-easement or cross/lease shall terminate upon sale or lease of either Lot or both Lots to a third party. Any termination of the cross-easement/cross-lease shall result in the religious use being terminated.

2. **Occupancy:** Occupancy in the sanctuary/church space is approximately 250. The proposed expansion of this occupancy shall not exceed 325 in total.

This Settlement Agreement does not exempt the Plaintiff from complying with all Construction Code requirements promulgated by the State Uniform Construction Code Act N.J.S.A 52:27D-119, et. Seq., (P.L. 1975, c.217).

3. **Lot Acre Area Requirement:** Defendants do not concede, and expressly deny, that Lots 66 and 72 are a "joint" property sufficient to meet the minimum 2.0 acre lot area requirement under Section 246-296 of the Brick Township Zoning Code. Accordingly, Plaintiffs shall be required to seek and obtain variance relief from this requirement, in order to use the lots in a joint manner. The submission of an acceptable cross-easement/cross lease agreement for the use of the property for religious purposes, executed between New Beginnings, Inc. and Destiny Community Development Corp. may be relied upon in establishing grounds for variance relief from the minimum 2.0 acre lot area requirement. The application before the Zoning Board of Adjustment shall include a new plan which at a minimum contains a note as to the cross-easement/cross

lease agreement, shows the four foot fence and landscaping buffer, and depicts the parking spaces, the location of the dumpster, the pick- up and drop- off area for the shuttle buses and the fire lane(s).

4. **Fencing/Buffering:** Plaintiffs shall install a four foot solid fence and buffer the west side of Lakeshore Drive with landscaping to be shown on the plans, which must be maintained and irrigated as per Section 245-408 of the zoning code.
5. **Solid Waste/Recyclable Facilities:** One location must be designated to accommodate dumpsters and recycling facilities sufficient to service both Lots, including the mercantile center and worship service. This will require an enlargement of the existing trash enclosure on Lot 72 so that it is designed to serve both Lots 72 and 66, as per Section 245-375 of the zoning code.
6. **Loading Zone:** There is currently no designated loading zone for the mercantile center. The mercantile use has regular drop off of donated items. A loading zone must be established in an area that does not conflict with the fire zones. To the extent that a loading zone may overlap with a small number of parking spaces, these parking spaces shall be preserved through appropriate signage indicating the hours of day when the area is to be used as a loading zone and when it is to be used for parking.
7. **Parking:** Shuttle bus(es) shall be provided from an off-site location to bring individuals to the site for worship services to help alleviate traffic and parking. There must be a designated pick-up/drop-off location for the shuttle bus(es) that are outside of all fire lanes.

The four (4) spaces on the western side of Lot- 66 and the five (5) spaces on the northern side of Lot 66, as shown on the previously submitted plans, do not provide adequate fire lane width if cars are parked in these spaces. Therefore, these spaces must be eliminated.

8. **Facilities:** In accordance with this Settlement Agreement, Lot 66 and Lot 72 will be used for religious exercise, which use includes a church, teen center, mercantile center and floor pantry. While worship services are being conducted, the mercantile use and food pantry must be closed. The teen center will not be used as overflow seating for worship services. Nothing in this section shall restrict or limit the legal authority of the municipal assessor to determine the extent of property taxes to be imposed on the property or any portion thereof.

9. Nothing herein shall prohibit the use of Lot 66 and Lot 72 for any other uses as may otherwise be permitted pursuant to the Zoning Code. Such additional uses may require further variance relief as well as site plan approval.

Madeline Iannarone was sworn in. She questioned if she should even speak or is this agreement a done deal. She was told the Board would be voting on this agreement later in the meeting. She questioned why she wasn't noticed for the court hearing. The agreement referred to 325 people being a maximum for the services. Who will be policing this number of people. She was told to call the Zoning Officer. She stated that people could not get out of their homes during and after the services because the traffic is directed through Lake Riviera. She questioned how many services did the church hold during the week. She also stated that a special policeman should be directing traffic on the site, not one of the parishioners. She questioned if the Lots were tax free and how can the church be trusted. The church has a history of doing whatever they wanted in the past so why should she trust them now? This use has a negative impact on the children in the area. The traffic should be pushed out to the highway not the development.

William Page was sworn in. He stated that since 1984 there has been a parking problem in this area. During Saturday night services cars are parked all over the place. This is a negative impact on the area.

Donna Yahr was sworn in. She has no problem with the church or the food pantry but the traffic is flowing into the neighborhood. The traffic should be rerouted on Sundays. This issue is getting overwhelming and soon will be uncontrollable. There is too much going on with this site.

Michael Thulen- He stated he is a former councilman in Brick Township. He stated this is an overuse of the site. The site should have additional street lights and the applicant should be responsible for them not the township. There are also speeding issues on the site. He questioned if the Board agrees to the settlement do they still have to grant the variances. There is not enough parking on the site and the Board should consider denying this application.

Lisa O'Neil was sworn in. She has no problem with the use of the church. She questioned if a traffic engineer has ever reviewed the plans for this site. She feels the applicant needs more space and should move to another location. People are parking all over and it creates an unsafe situation. Where will the parking be for the shuttle services.

Becky Kirshman was sworn in. She stated there is a traffic problem on the site. Drivers cannot see around the corner on Lake Shore Drive. The street is narrow and the shuttle buses will not fit. The traffic should not be going through the development. She suggested parking on one side of the street might be the answer.

Mr. Cucchiaro stated that the application is in Litigation right now. He wanted to keep in mind that if the application is denied all the conditions that the applicant and the Board agreed to

can be taken away and the application will remain as before. He also stated that there are challenges for the Board to consider as a Board member directing traffic on the site and offering another site to the church that was for sale. A member of the Board that recused herself and was allowed to remain in the room during testimony. These are issues that can be a challenge in court for the Board.

A motion was made to move forward with the Settlement Agreement. It was moved by Mr. Raftery and seconded by Mr. Leitner. Ms. White, Mr. Raftery, Mr. Sorrentino, Mr. Leitner, Ms. Della Volle, Mr. Schneider and Mr. Langer voted AYE. Mr. Anderson was present but not voting. Mr. Mizer was absent.

Ms. Barbara Allen Wooley-Dillan was sworn in. She is the Planner for the applicant. She presented her credentials to the Board.

EVIDENCE

A-1- Rendering of Whispering Woods Hearing Site Plan

A-1A- Settlement Agreement on Site

Ms. Wooley-Dillan stated she was brought in the review this application in 2011. A loading dock was designated. There will be no parking on Lot-59. A drop-off and pick-up area have been designated. Some parking spaces were eliminated. An agreement was made to Capri School Of Hair and Off Shore Pools that their parking lots can be used for additional parking. It was stated that members of the church direct the traffic rather than a special police officer. The site was formerly used for retail. There is now a church, teen center, food pantry and mercantile store on the site.

Recess: 9:30 Meeting resumed: 9:35

There are now 84 spaces on the site but 93 spaces are being proposed. The site has a dual zone, B-2 in the front of the site and R-7.5 in the rear. Churches are a permitted use in both zones. The site needs front yard variances, lot coverage, percent of landscaping, size of the parking stalls and sign variances. Each use will have limited hours. The number of goods being dropped off will also be limited.

Ms. Wolley Dillan stated that she did research and there are 1,024 open lots in the township. Only 124 lots are over 2 acres. The site in question only has 2 acres with Lot- 66 and Lot- 72 combined. Considering the 2 lots as 1 many setbacks and variances can be eliminated. Some other variances will remain. The church will not combine the lots. She stated the church has less of an impact that the retail uses.

Additional landscaping has been proposed along with a 4 ft. fence along the back of the site (Lake Shore Drive) for additional buffering. The landscaping will be irrigated.

It was noted that the Zoning Table on the plan must be corrected. The shuttle buses will hold 15 people.

Madeline Iannarone was sworn in. She stated that even with the shuttle buses proposed there is still a traffic problem in the neighborhood. She also stated that special police should be on the site directing traffic now a parishioner. The site does not fit in the area.

William Page- The use is too huge for the site. He stated no safety issues were discussed during the meeting at all.

Jonathan Yahr was sworn in. He questioned how many access points are on the site out to Brick Blvd. He stated that during services the church blocks off all entrances to the site with cones forcing traffic to Essex Drive.

Michael Thulen was sworn in. He stated the signs on the site are different than before. He asked the Board to deny the application.

Becky Kirshman was sworn in. Will this applicant be back before the Board within 2 years with the same problem? As the church grows this will become a bigger problem. She also stated that Off Shore Pools is open all year not only in the summer. Where will the cars park when their lot is full.

Charles Bacon was sworn in. He asked what will happen to the agreement for parking if the Capri Hair School and Off Shore Pools sell their property. Where will the overflow of parking go then.

Lisa O'Neil was sworn in. She questioned if the proposed landscaping will be planted inside or outside of the proposed new fence. She suggested closing the exit onto Essex Drive completely. She stated that special police should be on the site directing traffic not parishioners. Are any handicapped spaces proposed on the site. She wants her neighborhood to be safe.

Madeline Iannarone was previously sworn in. She suggested a No Left Turn sign be installed on Essex Drive.

Donna Yahr was previously under oath. She is very concerned about the traffic on the site.

Public portion closed.

Mr. Cucchiaro stated to the Board that there cannot be a partial settlement. The Board members would have to agree to all the conditions. If the applicant is denied all the conditions and benefits could be taken away and all the legal fees would have to be paid by the Township. He also noted there is a variance needed for parking.

A motion was made to approve the Settlement Agreement with New Beginnings Fellowship Church. It was made by Mr. Raftery and seconded by Ms. White. Ms. White, Mr. Sorrentino, Mr. Leitner, Ms. Della Volle, Mr. Raftery, Mr. Schneider and Mr. Langer voted AYE. Mr. Anderson was present but not voting. Mr. Mizer was absent.

A motion was made to approve the Vouchers. It was moved by Ms. White and seconded by Mr. Leitner. All other eligible members voted AYE.

A motion was made to approve the Resolution as posted for case BA-2960-Thomas and Diana Cuccurullo. It was moved by Ms. White and seconded by Ms. Della Volle. Ms. White, Mr. Leitner, Mr. Raftery, Ms. Della Volle, Mr. Schneider, Mr. Anderson and Mr. Langer voted AYE. Mr. Sorrentino was ineligible. Mr. Mizer was absent.

A motion was made to adjourn the meeting at 11:45p.m. All members voted AYE.

Respectfully submitted,

Christine Papa, Secretary
Planning Board/Zoning Board