

**TOWNSHIP OF PRINCETON
ZONING BOARD OF ADJUSTMENT
Minutes of the Regular Meeting
Wednesday, February 23, 2011 - 7:30 P.M.
Municipal Complex, Main Meeting Room
400 Witherspoon Street, Princeton, New Jersey**

PRESENT: Carlos Rodrigues, Richard Kahn, Antonio Pirone, Penelope Baskerville, Brent Krasner, Louisa Clayton and William Spadea

ALSO PRESENT: Peter A. Kneski, Zoning Officer; Christine Lewandoski, Deputy Zoning Officer; Mike Lapinski, Engineering Develop. Admin.; Robert P. Casey, Attorney; and Debra Rogers, Secretary

ABSENT: Barbara Felton and Robert Ross

There were no members of the public present.

The meeting commenced at 7:31 P.M. with Ms. Rogers reading the Open Public Meetings Act statement.

1. REORGANIZATION:

- a. Nomination and election of Chair:** Member Baskerville said the nominating committee polled each member and by unanimous vote, the membership would like to nominate Carlos Rodrigues as Chairman of the Zoning Board for the year 2011.

Attorney Casey asked if there were any other nominations. Hearing none, the Board closed the floor to nominations.

Upon motion made by Penelope Baskerville and seconded by Antonio Pirone, a motion was made to appoint Carlos Rodrigues as Chairman of the Zoning Board for the year 2011.

ROLL CALL:	Aye	Penelope Baskerville
	Aye	Louisa Clayton
	Aye	Brent Krasner
	Aye	Antonio Pirone
	Aye	Richard Kahn
	Aye	William Spades
	Abstain	Carlos Rodrigues

- b. Nomination and election of Vice Chair:** Member Baskerville said the nomination committee polled each member and by unanimous vote, the membership would like to nominate Richard Kahn as Vice Chairman of the Zoning Board for the year 2011.

Attorney asked if there were any other nominations. Hearing none, the Board closed the floor to nominations.

Upon motion made by Antonio Pirone and seconded by Penelope Baskerville, a motion was made to appoint Richard Kahn Vice Chairman of the Zoning Board for the year 2011.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Brent Krasner**
 Aye **Antonio Pirone**
 Abstain **Richard Kahn**
 Aye **William Spades**
 Aye **Carlos Rodrigues**

- c. **Appointment of Attorney Firm:** Carlos Rodrigues read a resolution into the record to appoint the firm of Lenox, Socey, Wilgus, Formidoni, Brown, Giordano & Casey, LLC. as the Zoning Board Attorney Firm for the year 2011.

Upon motion made by Richard Kahn and seconded by Penelope Baskerville, a motion was made to adopt the resolution appointing Lenox, Socey, Wilgus, Formidoni, Brown, Giordano and Casey LLC. as the firm representing the Zoning Board in the year 2011.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Brent Krasner**
 Aye **Antonio Pirone**
 Aye **Richard Kahn**
 Aye **William Spades**
 Aye **Carlos Rodrigues**

- d. **Appointment of Board Secretary:** Carlos Rodrigues read a resolution into the record to appoint Debra Rogers as the Zoning Board Secretary of the Zoning Board for the year 2011.

Upon motion made by Richard Kahn and seconded by Antonio Pirone, a motion was made to adopt the resolution appointing Debra Rogers as the Zoning Board Secretary for the year 2011.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Brent Krasner**
 Aye **Antonio Pirone**
 Aye **Richard Kahn**
 Aye **William Spades**
 Aye **Carlos Rodrigues**

- e. Chairman Rodrigues congratulated Members Baskerville and Spadea on their reappointments and thanked them for their continued service on the Board.

2. **MINUTES:**

Upon motion made by William Spadea and seconded by Brent Krasner, a motion was made to adopt the minutes of December 8, 2010 as written and amended.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Brent Krasner**
 Aye **Richard Kahn**
 Aye **William Spades**
 Aye **Carlos Rodrigues**

3. APPLICATIONS:

a) TARQUINIO, Peter

694 Ewing Street
Section 5403, Lot 13, R-6

Request for change in condition of approval

File No. 2350-09Z (9719)

Present for the hearing were Mr. Tarquinio, applicant and his attorney Mr. James Manahan.

Attorney Casey said all the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Mr. Manahan said he is the attorney representing Mr. Tarquinio. He said Mr. Tarquinio was previously before the Board and had received a variance for his deck and one of the conditions of the approval was for him to file a deed restriction with respect to the replacement of the arborvitae screen located in the rear of his yard. He said the Mr. Tarquinio would like to change the wording so it does not limit him to vegetative screening should the arborvitae die. He said Mr. Tarquinio would like to go over this with the Board.

Attorney Casey swore in Mr. Peter Tarquinio.

Mr. Tarquinio attempted to show a PowerPoint presentation, but due to technical difficulties he was unable to do so and walked the Board through the hardcopy of the presentation. He said he spent \$400.00 per month watering the trees during the summer because of the extreme heat and has been out there shaking the snow off the trees this winter. He said now that the trees are older he does not anticipate watering as much this summer. He said if a tree or trees die, he does not want to replace them; he would like to install a privacy screen on the deck. He thinks by doing this, it would make it easier on himself and any future owners of the property. His intention is to extend the rail 1 foot above the current fence line and feels that would be in-line with the intent of the current resolution.

Chairman Rodrigues read condition #4 of Mr. Tarquinio’s approval “Maintenance of the arborvitae screening along the deck including replanting as determined by the Township Zoning Officer and Arborist to be confirmed by the recording of this Resolution in the Mercer County Clerk’s Office”.

Attorney Casey then quoted the minutes from the meeting: “Chairman Rodrigues asked what the meaning of “possible privacy screening” notation meant on the plans. Mr. Tarquinio explained that at one time he was considering putting up lattice as a buffer to his neighbor but has since planted trees”. “Chairman Rodrigues noted it is no longer necessary and should be removed from the plans”. “The Board had a discussion on the maintenance of the arborvitae screening at the rear of the property. It was

ultimately decided that if this application were approved there would be a condition requiring a deed restriction to be placed on the property noting any trees that are removed or die need to be replaced. *“The screening needs to be maintained at all times”*. *“Upon motion made by Louisa Clayton and seconded by Penelope Baskerville, a motion was made to approve the application of Peter Tarquinio with the conditions it is recorded that the rear property line is screened with arborvitae and should any trees die, these trees are to be replaced”*.

Attorney Casey said he is not sure what the applicant is offering to do. He noted that the arborvitae is as high as 12’ right now. He asked Mr. Kneski to explain the fence ordinance to the Board.

Mr. Kneski explained the ordinance requirements, noting that if the fence were located on the property line, it could not exceed 6’ 6” in height; if the fence is higher than the 6’6”, the fence would need to adhere to the 15-foot setback requirement or the applicant would need to apply for a new variance.

Mr. Tarquinio said he is not seeking approval for a fence. Rather, he is seeking to increase the rail on the deck and the height would be no greater than a privacy screen. He noted that the other option he has is to plant bamboo on the property line.

Member Krasner asked Mr. Tarquinio if he was looking to amend the resolution so as to allow something other than vegetation.

Mr. Tarquinio said yes, there were 90 days during the summer when it did not rain and he had to spend a lot of money to water the trees.

Member Krasner said that his concern would be whether the railing would provide the same screening as the arborvitae.

Member Clayton said it appears that the railing would be 6’2” at grade; she asked if the applicant is asking the Board to grant a variance for the railing.

Mr. Tarquinio said no, he is not asking for a variance, the railing would be 3’ higher than the existing railing.

Member Kahn said the actual height is taken from the average grade.

Member Spadea said the Board should be looking at the intent of the privacy screen and he thought the railing would meet that intent.

Mr. Kneski said that if the railing is going to be located on the deck, it would not need a variance because the Board previously granted the variances for the deck.

Chairman Rodrigues asked Attorney Casey if this is something the Board has the power to do. He said he does not remember anyone ever coming back to amend a resolution.

Attorney Casey said the Board is free to amend the condition of approval or modify it to reflect the request; however this would put the Board in an awkward position, not knowing exactly what it is that the applicant wants to do. He said the applicant has not provided drawings of what this railing or privacy screen will look like.

Member Krasner said he would feel more comfortable if the applicant came back before the Board and presented plans showing what it is he wants to do.

Chairman Rodrigues said the wording change that the applicant is requesting would allow him to replace all of the arborvitae if just one were to die.

Member Kahn said the Board is hearing “if’s” – he asked at what point is it ok to adjust the wording.

Member Krasner said he would like to see what the replacement screening will look like.

Member Clayton said she does not feel comfortable approving a replacement screening without knowing what it is.

Mr. Manahan said the Board is right to feel sensitive but the applicant is also trying to be sensitive to the future owners of the property.

Chairman Rodrigues asked Attorney Casey what if any formal action the Board needs to take.

Attorney Casey said the Board can honor the request of non-vegetative screening and allow him to work with the Zoning Officer and Arborist to come up with privacy screening.

Member Krasner said he thinks the attorneys need to draft new language for the resolution and deed restriction and then come back in front of the Board next month.

Member Kahn noted that the applicant does not need permission to build the railing, but he would need permission to eliminate the arborvitae screening.

Member Spadea noted that in his opinion the key is that screening be maintained, not so much the type of screening.

Member Clayton said the whole point is to have privacy screening for him and his neighbor and she does not feel comfortable with the Board giving a “blanket approval” for something they have not seen.

Member Kahn said the issue right now is whether or not the arborvitae needs to be maintained.

Mr. Kneski noted that if there is going to be a screen alternative, the Board would need to predetermine its maximum allowable height and not leave it up to the staff.

Member Kahn said if the applicant wants to change the screening then he should come back in front of the Board and present a specific screening alternative.

Member Krasner agreed with Member Kahn saying that suggestion is the most practical and logical alternative at this point.

Mr. Manahan stated that the attorneys can come up with something and bring it back to the Board.

Chairman Rodrigues noted that the language in the resolution and the deed restriction must match.

Chairman Rodrigues asked if there were any members of the public who wanted to comment on the application. Hearing none, he closed the public portion.

Member Kahn stated that this should not be a matter of words; the applicant should present to the Board exactly what he wants to do with the screening.

Chairman Rodrigues noted that the screening works both ways between the neighbors. Right now, the neighbor is looking at an arborvitae screen; if that were removed, the neighbor would be looking at the privacy screen on the deck, which would be very different visually.

Member Clayton said that if the applicant plans on replacing the arborvitae with anything other than vegetation he needs to come back to the Board and present it for approval.

Member Pirone agreed; saying that if the applicant wants to replace it with something other than vegetation he needs to come back to the Board.

The applicant and his attorney thanked the Board and said they would return next month with plans showing what he would like to replace the arborvitae with.

b) INNIS, Edith
178 Birch Avenue
Section 6903, Lot 12.01, R-9
“C” & “D” Variances for Addition
File No. 2364-10Z (9817)

Present for the hearing were Ms. Edith Innis, applicant; Mr. John Dumont, Attorney; and Mr. Ronald Rheaume, Architect.

Attorney Casey said all the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Mr. Dumont said he is the attorney representing Ms. Innis. He said she is proposing to build an addition to her home at 178 Birch Avenue, which is a duplex – 174 – 178 Birch Avenue which is also condominiumized. He noted that the FAR and ISC calculations are for the entire site. He said the applicant is seeking many variance requests but many are current non-conformities. He said she would like to enlarge the first and second floors for a total of 719 square feet. He said there will be no change to the light and air or to the streetscape; the additions will be to the rear of the property.

Member Krasner said he also noticed the applicant was seeking a waiver of fees.

Attorney Casey said the applicant is seeking bulk variances and d3 and d4 variances and a waiver for the fees.

Mr. Dumont asked the Board to consider the waiver of fees request after they have rendered a decision on the variances requests.

Chairman Rodrigues agreed saying it should be the last item the Board deals with.

Attorney Casey swore in Edith Innis.

Ms. Innis said she bought the property back in 1990 and then in 1993 it was condominiumized. She said the house was originally located on Baker Street and was moved to Birch Avenue in 1923. She said when they moved the house, they had to remove the pitch in the roof, and now the flat roof leaks all the time. She said her mother is coming to live with her in the near future and she would like to have more room; right now the rooms are very small and there is only one bathroom on the second floor. She also said that she was in a bad car accident in which she suffered a brain injury. She said as a result of the brain injury she now suffers dizziness and has trouble going up and down the stairs.

Chairman Rodrigues asked if anyone had any questions for Ms. Innis. Hearing none he asked Mr. Dumont to proceed with the presentation.

Attorney Casey swore in Mr. Ronald Rheume, Architect. Mr. Rheume noted his credentials and the Board accepted him as an expert witness.

Mr. Rheume went over sheet A-4 (floor plan) from the packet that the Board received from the applicant. He described the current floor plan noting that the applicant is proposing to add a small addition to the rear of the structure and reconfigure the first floor plan to make it more functional. He also stated that she is proposing a small patio (9X13) and a covered side porch that will provide access into the kitchen. He said the second floor currently has 3 small bedrooms and a bathroom and she is proposing 2 bedrooms (instead of 3) and a bathroom that will be shared by both bedrooms. He referred to sheet A-3 saying the front façade will basically remain the same except for a new gable roof and a gable roof above the front door.

Chairman Rodrigues noted that some of the changes will affect both units.

Mr. Rheume said that the roof structure will affect both units and that is to solve the issues with the roof leaking on both sides. He noted that the addition will only be on her side. He also noted that the light and air space of the neighbors would not be impacted.

Mr. Rheume entered Exhibit A-1 into the record -- a large topographical map that had been rendered. He pointed out the properties in the neighborhood with a greater footprint than Ms. Innis' proposal.

Chairman Rodrigues asked if the FAR was calculated using the non-conforming lot FAR calculation.

Mr. Rheume said yes.

Chairman Rodrigues asked if there were any members of the public who wanted to comment on the application.

Mrs. Mary Lessard, 174 Birch Avenue, said that she and her husband live in the other unit and they approve of the proposal and feel it will constitute a much needed enhancement for Ms. Innis.

John Tully, 182 Birch Avenue, said he lives on the adjacent lot and he feels the proposal will enhance Ms. Innis' quality of life and he approves of the proposal.

Mr. Dozier Hammond, 187 Leigh Avenue, said the proposal will improve the look of the house and he is in favor of the proposal.

Chairman Rodrigues asked if there were any other members of the public who wanted to comment on the application. Hearing none, he closed the public portion and the Board went into deliberative session.

Mr. Dumont thanked the Board for their time.

Member Baskerville said she feels the proposal is a creative solution to the needs of the applicant.

Member Kahn said he too feels it will be a nice improvement. He asked if all the windows would be ungraded on both sides of the structure.

Mr. Rheume said both sides will have windows replaced in the front, but Ms Innis will replace all of the windows on her side of the structure.

Member Clayton said she feels the proposal will be a great improvement to the neighborhood.

Chairman Rodrigues asked for a motion.

Member Krasner noted that there was also a variance for Impervious Surface Coverage.

Mr. Kneski introduced Mike Lapinski from the Township’s Engineering Department.

Mr. Lapinski said the applicant will provide storm-water management that will be adequate for the site. He said they will install a pre-cast drywell to capture all of the run-off.

Upon motion made by Richard Kahn and seconded by Penelope Baskerville, a motion was made to approve the application of Edith Innis as presented to the Board.

ROLLCALL:	Aye	Penelope Baskerville
	Aye	Louisa Clayton
	Aye	Brent Krasner
	Aye	Antonio Pirone
	Aye	William Spades
	Aye	Richard Kahn
	Aye	Carlos Rodrigues

Chairman Rodrigues noted that the Board has had 2 requests in the past for a waiver of fees and both requests had been denied.

Member Pirone noted that if the applicant has the means to pay for the addition, they should be able to cover the fees.

Member Kahn said he has a concern that if the Board grants the request for the waiver of fees, a precedent will be set.

Member Krasner said he has the same concerns and the ordinance states that the fees can only be waived for justice, government or economic hardship and he is not sure he sees any of those here.

Chairman Rodrigues said the Board has no criteria for evaluating fee waiver requests, and would have to make an ad hoc decision, with which he is not comfortable.

Mr. Dumont noted that Ms. Innis has spent a lot of money on the variance applications and she is currently on a fixed income.

Chairman Rodrigues asked if anyone would like to form a motion.

Upon motion made by Richard Kahn and seconded by Louisa Clayton, a motion was made to deny the applicant's request for a waiver of fees.

ROLLCALL:

Aye	Penelope Baskerville
Aye	Louisa Clayton
Aye	Brent Krasner
Aye	Antonio Pirone
Aye	William Spades
Aye	Richard Kahn
Aye	Carlos Rodrigues

4. ADJOURNMENT:

Upon motion made by Antonio Pirone and seconded by William Spadea, a motion was made to adjourn the meeting at 9:23 p.m.

ROLLCALL:

Aye	Penelope Baskerville
Aye	Louisa Clayton
Aye	Brent Krasner
Aye	Antonio Pirone
Aye	William Spades
Aye	Richard Kahn
Aye	Carlos Rodrigues

Respectfully Submitted,



Debra Rogers, Secretary

Date Approved: March 23, 2011