

**WEST AMWELL TOWNSHIP**  
**ZONING BOARD OF ADJUSTMENT**  
**REGULAR MEETING**  
**July 28, 2015**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:33PM by Chairman Fulper.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Fulper: This meeting is called pursuant to the provisions of the Open Public Meetings Law. This meeting was transmitted to the Hunterdon County Democrat and Trenton Times on January 27, 2015. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office. The meeting was recorded via digital recording system and a copy of the CD is on file in the Zoning Board of Adjustment Office.

Chairman Fulper led the Pledge of Allegiance to the American Flag.

**APPOINTMENTS/OATH OF OFFICE:**

Board Attorney Palilonis administered oath of office to the following Board member(s):

John Ashton - (4 yr. term through 12/31/18)

Chairman Fulper stated that for the record, the Alternate #2 position is open. The recently appointed candidate declined the position after originally accepting.

**ATTENDANCE/ROLL CALL:**

Roll call on attendance: John Cronce-present, Brian Fitting-present, Joe Romano-present, Ruth Hall-present, John Ashton-present, Robert Fulper-present

Absent: Kevin Koveloski, Frank Sabatino (Alt.#1)

Professionals Present: Stewart Palilonis, Board Attorney

**PRESENTATION OF MINUTES:**

Special Meeting Minutes – February 9, 2015 - Motion was made by Cronce with a second by Fitting to accept the minutes as written. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-abstain, Fulper-aye

**RESOLUTION(S) OF APPROVAL:** None

**APPLICATION(S):**

**Completeness/Public Hearing: Bergenfeld - Block 21 Lot 32.03 370 Rock Road East** – bulk/front yard setback/side yard setback/rear yard setback variance, use/accessory dwelling variance request(s). (7:38 PM)

Application, checklist, *Existing Site Plan* comprised of four sheets prepared by Michael Burns Architects dated July 10, 2015, were received and distributed.

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Correction was noted by the applicant regarding the proposed property address, record should reflect 370 Rock Road East vs. 270 Rock Road East as listed on the Zoning Permit Denial from Zoning Officer Rose and the July 28, 2015 Zoning Board Agenda. The Block and Lot were listed correctly.

Notices of service and publication were reviewed by Attorney Palilonis and found to be in order.

The following witnesses present on behalf of the applicant were sworn in by Attorney Palilonis:

Michael Burns, Architect – Lambertville, NJ  
Stephen Bergenfeld, Homeowner – West Amwell, NJ

Mr. Burns offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Burns stated the application is for 370 Rock Road East, Block 21 Lot 32.03, Mr. Bergenfeld also owns lot 32.02, and lot 32.04.

Entered as ***Exhibit B-1***, *Existing Site Plan* comprised of four sheets prepared by Michael Burns Architects dated July 10, 2015.

The property is located in the SRPD zone, the area of lot 32.03 is 6.627 acres gross and 6.225 acres maximum, a substandard lot in SRPD zone. Mr. Burns referred to *Exhibit B-1* sheet 1 of 4, stating the lot that is part of the application is an organic farm, consisting of a two-story single family residence, a two-story affordable housing unit, an existing one-story accessory structure garage, two existing sheds, and an existing one-story pole barn.

Mr. Burns stated the existing lot has some existing non-conformities, the minimum lot size requirement is 8 acres, the actual lot size is 6.225, the minimum front yard setback of 150ft, stating the ordinance does allow for a reduction of that 150ft. front yard setback to 75ft. as a result of the existing lot non-conformity. With the 75ft. reduction there is still a front yard setback violation, the actual front yard setback is 20ft. from the 75ft. There is also a minimum rear yard setback of 150ft., the existing pole barn violates that existing rear yard setback; existing setback is 75ft. There is a maximum lot coverage of 10%, actual present coverage is 16%.

Mr. Burns referred to *Exhibit B-1* sheet 2 of 4, stating the proposal is to construct a one-story 1125 s.f. carport, attached to the carport the proposal is to construct a one-story 1500 s.f. garage, and construct a one-story 1850 s.f. mother/daughter dwelling attached to the garage.

Mr. Burns opined the garage and carport are accessory uses and therefore not asking for any use variances. The mother/daughter dwelling is a permitted use with restrictions. The restrictions are that the existing residence be owner occupied, free flowing access between the mother/daughter unit and the existing residence, and they also require a deed restriction.

Mr. Burns stated there are some old non-conformities involved, there's the existing minimum lot size that remains non-conforming, the minimum front yard setback remains non-conforming but not affected by the proposed application, the minimum rear yard setback remains non-conforming, also not affected by the proposed application.

Mr. Burns stated the two bulk requirements that need to be addressed are the minimum side yard setback, which is 60ft. required and proposing 38.7 ft. and the maximum lot coverage is existing 16%, increasing to 19.2% and the allowable is 10%.

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Referring to sheet 3 of 4 of *Exhibit B-1*, Mr. Burns reviewed the direction of the photographs as they were taken.

Mr. Burns stated that from a use point of view, the issues are that the mother/daughter unit is permitted in the zone but must be owner occupied and free flowing access between the mother/daughter unit and the existing residence. Mr. Burns opined that although the residence is not occupied by the owner it is owned by the applicant and occupied by a tenant. Based on this it would be inappropriate for the free flow of access between the two units since the owner doesn't actually live in that residence, but does live in the adjacent residence on lot 32.04. Adding that it does meet the spirit of the ordinance by providing housing to the applicant's mother. Also, by granting the variance requests will advance the purposes of the MLUL as stated in letter G, while allowing the applicants mother to live independently yet within proximity to the applicant.

Mr. Burns stated, in their point of view, the applicant chose the proposed location rather than his own residence because it represents a farmstead, and in fact is an organic farm. In this collection of three properties, this is the property that has the densest construction already. From an environmental point of view it seems to make more sense to put an addition on the building here, to maintain the idea of farmstead which typically is a collection of buildings around a particular area. Adding that this particular site is not encumbered by any environmental conditions, the site to the north does have some environmental issues; a stream running through it. Stating that they are placing it in a way that it fits within the context of the existing property with minimal impact. Opining that they believe the variance can be granted without substantial impairment to the zone plan. Since this is a permitted use, opining it has been demonstrated it advances the MLUL and also advances the zoning ordinance and the land use element of the Master Plan.

The other bulk issues on the site are because of the unique configuration of the site. Stating that the way the front yard, rear yard and side yard setbacks are established; the rear yard runs from property line to property line, the front yard runs from property line to property line, and the side yard runs in-between. Actually ending up with a side yard that by virtue of the addition will be violating, opining that as a result of the strange configuration, that side yard violation is a result of that.

Mr. Burns stated the lot coverage is currently at 16% and proposed is at 19.2% which is a minimal increase and a result of the lot being substandard, opining the additional increase will have no impacts, in particular no drainage impacts, on the neighboring properties whatsoever.

Mr. Burns offered that he had a copy of a draft amendment to the zoning ordinance that the Planning Board is currently considering. Stating it addresses the issue of accessory dwelling units, it identifies the accessory dwelling unit as *"a self-contained residential dwelling unit secondary to a principal residential or non-residential use that is clearly a subordinate part of the principal use/structure. The unit shall include a kitchen, sanitary facilities, sleeping quarters, and a private entrance and may be created within the existing home or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site."*

Mr. Burns stated the draft ordinance is being considered and if in fact was adopted the applicant would not be here requesting a variance. Mr. Palilonis suggested they wait and see, Mr. Bergenfeld offered that his mother was inpatient.

Mr. Palilonis requested the structures on the property be identified. Mr. Burns identified as depicted in *Exhibit B-1*. Chairman Fulper requested the location of the existing well and septic. Mr. Burns stated they were not included on the plans but later indicated on Exhibit B-1, stating for the record, the well is located

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to the east of the existing residence, the septic tank is to the north-west of the residence and the septic field is further to the north. Adding that the septic will be re-done, a new septic, sized to accommodate the additions, will go in with the construction of the additions. The well will remain to also serve the addition unless decided a new one is required.

Chairman Fulper questioned if the lots were conforming when the sub-division took place in 2003. Mr. Bergenfeld stated they were conforming lots, the property zone was R-3 at the time of the sub-division.

Member Hall questioned if Mr. Bergenfeld had considered allowing his mother to live in the existing two-story single family dwelling on the property, rather than constructing a mother/daughter. Mr. Bergenfeld stated that he has had the same tenant for eight or nine years and wouldn't just kick them out.

Mr. Palilonis questioned whether he considers the fact that it is necessary to go through a carport and garage to get to the principal residential structure to be free flowing. Mr. Bergenfeld stated the carport and garage are for his use, more storage. Mr. Palilonis read the mother/daughter ordinance, *"a portion of an owner occupied single family dwelling used for the purpose of providing living space for a maximum of two persons that may or may not be related. Such dwelling shall be permitted to have a separate bedroom, kitchen, bathroom, and may also maintain its own entryway from the outside. However, at all times, interior free flowing access from dwelling to dwelling must be maintained. Prior to issuance of certificate of occupancy, a deed restriction shall be recorded restricting the use of the dwelling unit to conform to the limitations specified herein"*

Chairman Fulper questioned if in the future, Mr. Bergenfeld's mother no longer required use of the dwelling, what is the deed restriction going to require of the 1850s.f. dwelling, suggesting that the ordinance requires it to be free flowing between the units because it converts back to the house. Mr. Palilonis stated it could not be rented out.

Mr. Bergenfeld stated that if it had to be deed restricted, he would ask that it either be a family member or farm help. Chairman Fulper stated that if you are applying through this ordinance, it has to be deed restricted.

Mr. Burns suggested that if it was deed restricted and at the point the draft ordinance was adopted, the restriction would be removed. Mr. Palilonis stated that if at that point the owner wanted the deed restriction revoked, they would go to the township, for consideration, and not this board.

Mr. Palilonis again addressed the issue of free flowing access. Mr. Burns stated that since Mr. Bergenfeld doesn't live in the existing house, so having free access between his mother's unit and the tenant, doesn't make sense. In terms of physical configuration, since they are all attached, there can be access doors from the mother/daughter unit into the garage, from the garage into the carport and then into the house.

Member Cronce questioned the distance between the mother/daughter unit and the existing two-story single family dwelling, Mr. Bergenfeld replied approx. 100ft.

Chairman Fulper questioned the applicant if he was comfortable going through this process, asking for the mother/daughter dwelling, knowing that the unit would be deed restricted, and restricting future uses of it? Mr. Bergenfeld stated yes, as long as it could be for someone working on his farm also. Mr. Palilonis stated no, it could not for purposes of this preceding. Adding that there is a provision for accessory dwellings for farm workers in the ordinance, but there is no reason for us to comment, it is not in front of us.

Chairman Fulper stated that the application is confusing, in the application it states that they are applying for a mother/daughter addition to an existing single family residence not occupied by the owner but in

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Zoning Officer Rose's denial, he talks about 109-79C(4) accessory dwellings for domestic, household or farm workers. Adding that there is some confusion. Mr. Bergenfeld stated the COAH unit is being used for farm help. Adding that, the COAH unit previously was a garage on the first floor and efficiency upstairs and over the years the garage turned into part of the house.

Chairman Fulper stated that in the application submitted, under the D variance use request, both the mother/daughter dwelling and the accessory dwellings are referenced, stating that one or the other should be requested, not both. Mr. Burns stated for the immediate future, the mother/daughter unit is the issue. For future use the applicant would like to use it for farm help. Chairman Fulper reminded that if using for mother/daughter it would have deed restrictions.

Mr. Palilonis suggested the applicant review the deed restriction before proceeding, and reiterated that we will not grant both reliefs, it will be one or the other.

Mr. Burns stated they are requesting a continuance to next month.

Member Romano asked if the proposed addition could be moved into the buildable area, Mr. Bergenfeld stated that was the growing field. Chairman Fulper clarified, could it be relocated to within the building envelope identified on the plan, and not have to ask for bulk variances. Mr. Burns responded there is only one bulk variance issue attached to this location and because there is already a collection of buildings in this area, it seems to make sense to put it in this area rather than in the field. Mr. Romano agreed, except that you're not really moving that much further where you would destroy the look that you are trying to achieve.

Mr. Romano stated that the maximum impervious coverage is 10% on the lot, questioning if that included the gravel driveway. Mr. Burns stated that it does include the gravel driveway. Mr. Romano stated that by reconfiguring the location, the gravel driveway could be reduced, therefor eliminating some impervious coverage that is already being exceeded.

Member Ashton stated, the need to care for our family is a growing need and one that we hope to be able to meet within our flexibility of the rules while balancing out the needs of our township.

Chairman Fulper stated the applicant is continued to next month. Attorney Palilonis stated there may be further notice depending on which way the applicant decides to proceed.

Attorney Palilonis stated the application was deemed complete subject to submission of revised map showing location of well and septic.

### **CORRESPONDENCE:**

The following items were received/distributed as correspondence:

**Zoning denial** –1872 River Road **Blk 26 Lot 17** – hotel, restaurant, retail, pool. Lot size, front yard setback, side yard setback, accessory building.

Forwarded email from Clerk Olsen re: **HC Community Day-June 13, 2015**

Forwarded email from Clerk Olsen re: **Tower Space HC Communications**

Forwarded email from Clerk Olsen re: **Department of Community Affairs – “ePlans”**

**Jan/Feb Planner**

**Mar/Apr Planner**

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**CORRESPONDENCE con't:**

**May/June Planner**

**Code Book updates** were provided to Attorney Palilonis for the full code, chapter 109 updates were provided to the members.

**Approval of Bill List 7/28/15:**

Motion was made by Ashton with a second by Cronic for the approval of the Bill List contingent upon certification of funds. Motion carried on voice vote - all ayes.

**DISCUSSION:**

**Budget** a copy of the 2015 operating budget was received from the treasurer and remains the same as 2014. The Zoning Officer operating expense line has been removed from the Zoning Board budget line, the salary line remains.

Attorney Winget representing **Mostofizadeh** contacted Secretary Hall requesting information regarding the application from 2010. Secretary Hall provided Resolution 2010-8. Secretary Hall to advise Mr. Winget he is welcome to view the file for additional information.

**Resolution 2015-07 – 2014 ZBA Annual Report** – Resolution/Annual Report of 2014 containing cases heard by the Board for 2014, was presented by Secretary Hall. Attached to the report is a history of Zoning Permit application denials received from the Zoning Officer. The ZBA is required to file the report annually with the Township Committee and Planning Board. Motion was made by Ashton with a second by Fitting to approve the resolution as presented. Motion carried on voice vote - all ayes.

Secretary Hall provided an ***Outline of Zoning Board Duties and Responsibilities***, shared with us by the Zoning Board at West Windsor Township.

Attorney Palilonis provided an update on the remand of the **Garden Solar** application back to the Board.

**OPEN TO PUBLIC:**

The floor was opened to the public. Hearing no comments/questions, the floor was closed. (9:06 PM)

**ADJOURNMENT:**

All members voted in favor of adjournment at 9:06 PM

Respectfully submitted,

Ruth J. Hall