

VOORHEES TOWNSHIP ZONING BOARD OF ADJUSTMENT MINUTES FEBRUARY 27, 2014

The Chairman called the meeting to order and stated it was being held in compliance with the Open Public Meetings Act and has been duly noticed and published by law.

ROLL CALL VOTE:

PRESENT:Mrs. Kirshbaum, Mr. Weil, Mr. Cohen, Mr. Daddario, Mr. Kerr, Mr. Willard, Mr. Senges, Mr. Doug Rohymeyer from CME, the board engineer, Cheryl Lynn Walters, the board solicitor from Platt and Riso and Kathy Merkh-the board secretary (fill in).

ABSENT:Mr. Leoncio and Mr. Cupersmith

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APPROVAL OF MINUTES: January 23, 2014:

Motion made by Mr. Willard; Seconded by MR. Cohen. Abstention: Mr. Kerr. All the remaining voice vote was in favor.

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APPROVAL OF RESOLUTIONS:

- 14-01-Solicitor
- 14-02-Engineer
- 14-03-Board Chairman
- 14-04 Board Vice Chairman
- 14-05 Board Secretary
- 14-06 Completeness Review Committee
- 14-07 Dev elopement Review Committee

There may be one motion to approve all of those. Mr. Weil made a motion to approve all the resolutions; Seconded by Mr. Cohen. The remaining voice vote was in favor. Mr. Willard and Mrs. Kirshbaum abstained.

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CORRESPONDENCE: NONE

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NEW BUSINESS:

FOSTER

Application ZC 2014-002

They are seeking bulk variances related to the property at 6 Brookview Court, Block 229.13, Lot 5. Continued from January 23, 2014 meeting. They are seeking relief from the unified land development ordinance as follows:

Section 152.015d3a-minimum side yard setback –one side for the deck, 10 ft required; 9 feet existing.  
 Section 152.015d3a-minimum side yard aggregate for the deck, 30 ft required, 22.99 ft existing.  
 Section 154.001b4-lake setback for the deck. There is 50 ft required, 30.46 ft existing. Section 154.00b1 grading alteration construction a minimum distance from the side yard of 5 ft for the driveway. 0 feet is existing. Section 154.00b1 grading alteration construction-minimum distance from side yard 5 ft, 0 ft provided or existing for the retaining wall. Section 152. 015d3a minimum side yard 1 side required for the addition, 10 feet, 9.48 ft existing; 13 feet was previously approved. Section 152.015d2A aggregate side yard for the addition, 30 ft required-24.47 ft existing; 21.5 ft previously approved. Section 154.001b4-Lake setback for the addition -50- ft is required-44.49 ft is existing. Section 154.0012b4 lake setback for the paver patio-50 ft is required -21.71 ft from the edge of the paver patio that extends over the stream encroachment.

Ms. Walters called the applicant forward. The Fosters were sworn in for testimony. Diane Foster 6 Brookview Court. Ms. Walters stated that you are here this evening for a residential property in the MDR zone for a bunch of bulk variances. She wanted to make the applicant aware of the burden of proof on the bulk variance-under the MLUL-Section 40:55D-70C1 or C2. A c1 variance requires that you demonstrate by reason of exceptional narrowest or shape of a piece of property or reason of topographic conditions or physical features uniquely affecting property or by reason of extraordinary or exceptional situation uniquely affecting the property or structures lawfully existing on –the reasons by not granting the variance would create a hardship-exceptional; the hardship is not financial in nature. This is considered the positive criteria. You also have to satisfy what the law considers the negative criteria you indicate sufficient proof to the board that the variance can be granted without substantial detriment to the public good and will not substantially impair the zoned plan or zoning ordinance. Ms. Walters gave her this information because she sees that she is not here with any professionals (engineer, planner) that would provide that type of testimony. The board would take from those type of professionals. This would be your burden of proof. Mrs. Foster understood what she explained to her. Mr. Senges stated that there are many applications that come before this board with this type of issues The board members are required to take courses to understand what their legal responsibility. Mr. Senges stated that some of the issues that the board solicitor outlined for you-this what they have been taught; what ends of happening, if they make their proofs. The court can overturn the board's decision; the chairman stated that they have to be very careful in that regard. Mr. Senges stated that you have many issues and it is complicated-you will be hard-pressed without a professional to stand up and tell the board what is required. Mr. Senges stated that if these cannot be granted they will have to be removed.

Mrs. Foster stated that the night before they were supposed to close on the purchase of this home in November 2013, the sealed survey was provided to the township for the certificate of occupancy and they were called and told that they had all these variance problems; since then this is a house that no one lives in, the bank had taken it over and they decided that they would fix some of these items. There are many things to address on this-Mr. Senges stated that we need testimony based on the proofs that the solicitor explained. Mr. Senges stated that you have to give legal testimony as to why a variance should be granted.

She started with the driveway. The driveway by taking up the concrete-it would provide no access to the third bay on the garage. The only thing they could do would be to rip up the concrete and put pebbles and then we would have water during the winter it would freeze up and look unsightly. What was there originally she was asked? Mrs. Foster stated that she could not answer that, she did not live there originally. Originally, there were two bays –she believed that they received a permit for the additional bay-the variance in the past. It was approved in the past. They just did not bother getting the addition of the concrete for the driveway. She stated that the driveway is like the shape of a V-the Chairman asked if she had pictures. Mrs. Foster stated that she had pictures that she provided to the board. The photo of the driveway was marked in as evidence (taken in December 2013) and it was marked in for evidence as A1. Mrs. Foster stated that the bay was added-garage. The house was built with a 2 car garage and this was added. Mr. Senges asked when it was added. She believed in 2004-at the time of the variance-she was told by workers that have come to the house and the realtor. The retaining wall that infringes on the neighbor in the right of way. Mrs. Foster stated that it is 1 or 3 retaining walls, the neighbor's property is up and it helps supply the driveway with preventing the water and flow of soil coming down into their yard. Mr. Senges stated that if you took 5 ft off the driveway – that it would make an awkward approach. The garage bays are very narrow and try to angle it and get your car into it; if there were pebbles it would be a disaster. Not pertaining to the driveway but the driveway supports the retaining wall there –if you take 5 ft off that-you will not have support at the base of the retaining wall. Mr. Senges stated the wall will fall over if you take it out? Mrs. Foster stated that there is a great deal of ice, snow and weight. The chairman asked Doug, the board engineer for some advice. He stated that he did not inspect footing of the retaining wall, he doesn't think that the retaining wall –it will not create any issue with the integrity of the wall. Mr. Senges stated that you see you are expressing unprofessional opinion if this is where, someone an engineer testify for you, the engineer could make the claim you are making and explain why. Mr. Senges stated that if there were pebbles there you could still get in-he stated it may be unsightly. Mr. Senges stated that pebbles are considered impervious, which means they would hold less water than the cement.

The retaining wall is necessary she believes; it helps with the flow of earth. Mr. Senges stated that they could legally grant you up to 0 ft. not legally grant you permission to leave the wall on your neighbor's

property—they have no jurisdiction on the neighbor's property. Mr. Senges stated that they cannot grant you permission to leave the wall in the township right of way. Mrs. Foster stated that she believed that went to township committee this month—she thought the zoning officer sent a letter out to the board. The Zoning Officer did send her a copy of it—stating they approved of that, but the township committee was drafting a hold harmless agreement for them to sign and they would be notified when it was ready for them to sign. Mr. Senges stated that it says the right of way/retaining wall, dated February 3, 2014. It states please be advised that we will take this matter up with township committee—this letter does not indicate in any way, shape or form that the township committee approved it. Mr. Senges stated that we would need that letter to Mrs. Foster. Mrs. Foster stated that as to the easement with the neighbor—they do have that as well. Mr. Senges stated that this document would have to be recorded; any approvals that you are given on that wall would be contingent on two things, one that township committee would approve the infringement on the ROW, which Mrs. Foster believes is already completed and then you would have to sign any agreement they would ask to sign and you would provide that documents to the Zoning Board Solicitor; the other thing would be that you would have to record the encroachment agreement to the Camden County Clerk's office and provide within a certain period of time—that agreement has been recorded. The board solicitor wanted to mark the document in as A2-encroachment agreement. Mrs. Walters stated that the driveway and wall if those are granted that variance would be null and void and you couldn't satisfy the other conditions that would be attached to it. The board would give you a time frame to get recorded and returned to the office.

The solarium and addition has been called many things. She believed because of the foundation it would be very difficult to remove 3 ½ ft from the corner—the porch would have to remove to take the building; she believed that the survey is showing the addition is almost 6 ft short from the lake encroachment. The porch would have to be ripped off—there is very limited excess; they would be required to go on their neighbor's property with heavy equipment—this is a 6-7 ft high building. The side porch has been there for the last 10 yrs.—which would disturb the entire lake area there; Mrs. Foster stated that she knows there is a certain kind of fence that you could place to prevent soil erosion, but with the topography of the land, the neighbor and retaining wall. This particular land is pie shaped lot; it widens at the lake. It is at the exact end of the cul-de-sac. Mr. Weil stated when you say this was previously approved, he was confused. Mrs. Foster stated that they had architectural plans, but they expanded on it and did what they wanted to do. Mr. Willard stated that he believed the style and design had been approved; they went outside the footprint and added to it. Mr. Senges stated that the previous approval of 13 ft for a minimum side yard setback. Mr. Senges stated that it doesn't seem to be our problem because there was a previous approval of 13 ft for both sides for the minimum side setback—it is 9.48 ft—the 21.5 but it is actually further away. Mrs. Walters stated that way she would recommend to the applicant, that they are trying to make this as clean as possible—moving forward; make it right, if the board grants the variance. The setback aggregate it is a curious one, because of the previous owner went outside of the previous approval—she would recommend that even though granted at 21.5 ft and they seem to be a little inside of it—the requirement is actually 30 ft within Sturbridge. You can ask for variance as well just to keep it clean—you could choose not to—because 24.47 ft—previously granted for 21 ½ ft. Mr. Senges stated that the biggest dilemma that they are running into thus far—is that you are giving opinion; and you are not a licensed professional, so that opinion is not based on your experience or education. Mrs. Foster stated that she believed that the board has photographs that were previously submitted of the side of the building so it shows the access is very limited to that side because of the trees, the topography of the land (refer to the photos you are speaking about—per Mr. Senges—they have to mark in the exhibit). Mrs. Foster stated that this photograph depicts from the side of the porch—the actual solarium addition—it shows all the trees up against there—Mr. Senges stated that this is the solarium /addition. Mr. Senges stated that they made the solarium bigger than the architectural drawing depicted—the original plans that they scaled back when the board asked them to in 2004. Mrs. Walters stated that they did on paper and in the minutes—that was represented by the previous property owner. Mr. Senges stated so you are saying that this would be a hardship to shrink the size of this; it would be a hardship with all the trees, per Mrs. Foster and the way the land goes. When you see this—it is not all her property, it is her neighbor's property. The photo that they are describing was marked in as A3—taken in December 2013. Mr. Senges asked Mrs. Foster to put a line on the picture and show where the property line ends. It a pie shaped lot and it expands as it goes back. Mrs. Foster stated that this is a hardship with all the trees, it is not something you are going to go into the property with small equipment. Mr. Willard stated is it your contention that the solarium was built prior to the house of the adjoined that you are afraid of trampling on their property. She stated yes, Mr. Willard stated that the house is newer than the solarium. Mrs. Foster

stated no-how did they build it there without infringing? Mrs. Foster believes that when it was built, it was in between owners. Mr. Senges, stated that as hard as it is, and has hard as it is for the zoning board helping –you don't have the answers you need-you need a professional; this is a complicated. Mr. Senges stated that they are trying to give you good advice. This is hard to approve –Mr. Senges stated that you would be well advised to have professionals represent you in this application. This is the last time he will say this; if you proceed on your own and you don't make your proofs-you could end of having to rip this stuff down. Mr. Willard stated the hardship is not a hardship of financial means to cure a wrong doing; it is hardship based on the topography or the land. Mrs. Foster stated correct and that is what she is trying to show to the board. Mrs. Walters stated that the Chairman is right, the approach is with professionals. Mrs. Walters stated that you are entitled to come in on your own. The testimony is not disregarded-it is just given less weight-based on your knowledge and background. Mrs. Walters asked her if she had an educational background in engineering/planning/zoning. Mrs. Foster stated no. Mrs. Walters stated that A1-the garage the retaining wall. The plan on the other side of the property indicates that there is only a 14.99 (essentially a 15 ft setback) setback to get around the existing structures on the opposite property line. You could provide testimony to the board what you are getting at with heavy equipment/access, etc. Mrs. Foster stated that from what she understands you would have to alter it-the foundation would have to be altered because the foundation underneath it is also in violation. Mr. Senges asked who you are understanding this from. Mrs. Foster stated it is the son of the people that came to give us estimates on it-they are not submitting estimates. Mr. Senges stated that those are the people they near from –professionals of why this cannot be done and why it would be difficult and a hardship. Mr. Senges stated that you are really putting the board in a difficult hardship. Mrs. Foster stated that she would like to submit another photograph of the back of the solicum. Mrs. Walters stated that the chairman is trying to say that there is a legal consequence to if you are here tonight and you did not provide enough information –variances –not the legal consequence if you have to remove it-once you are before the board –if for some reason you get denied, you cannot come back to the board for the same relief again. Mrs. Walters stated that you can always come back to the this board and ask for various relief over time-ok, but the board cannot consider the same application twice-it is called res juta. Mr. Senges stated that you cannot educate - they are barred by law-so if for any reason denied it-your only recourse would be to appeal to the state-decision. The board's hands are tied and your hands are tied because these are existing conditions. Mrs. Walters stated that the addition –your hands are tied with a respect to a subsequent application too, there is no room to go with a scaled back plan and I want different relieve now-because these are existing conditions. Mr. Willard stated that they need more technical data to support what you are stating. Mr. Senges stated that we don't want to make you take it down. The photograph of the rear (from the lake- 1-16-14) of the solarium was marked in as an exhibit-marked in as A4-. This picture was not in packet. Mrs. Foster stated that the porch has 5 doors-if the porch was removed or required to take 5 ft off the solarium 5 doors would have setback and rebuilt. Mr. Senges asked how is this a hardship and not financial. Mrs. Foster stated that this is a safety factor, you cannot have a door that goes to nowhere. Mr. Senges he stated he is not sure if that statement is accurate or not. Mr. Senges asked Doug Rohymeyer. Mr. Kerr asked when this project was made by the former owner-he brought plans into the township and then he went on his own; he wanted to know didn't the township inspect this project. MR. Senges stated you call in your inspections. Mr. Senges stated that he has a similar situation where he has a house with open permits on the lake and the work was never started-there are all these permits, the house is being sold and permits have to be closed out. They can be closed out because the work wasn't done. Mr. Kerr stated you have to be called for your final inspection. Mrs. Walter stated they do it when they are called out, please come out –the inspectors that go out, they don't measure the setback –the zoning officer would be the only one would be authorized to measure the setback. Then the zoning officer would issue certificate on that project.

Someone asked for a 5 minute break.....

Robert Foster – 6 Brookview Court, Voorhees

Mr. Foster was sworn in for this information. Mr. Senges wanted to know if there were permits pulled. Mr. Senges wanted to know if there are construction permits pulled. Mrs. Walters wanted to know if anyone has come out to inspect any of the improvements tonight for the garage and addition-all the other improvements, we know they were not done/pulled, the township had no idea they existed until they got a copy of the survey.

Mr. Senges –stated that our engineer is willing to ask some questions that your answers may help us through this-the type of testimony that you are giving us; may have some validity. If a licensed

contractor comes up here-and says ABC and carries weight, we will accept that-we will take their testimony. Mr. Senges stated that the zoning officer and the construction officer are the same. Mr. Foster stated that you have made a comment several times this evening to come back with a professional, so they wanted to ask for a continuance. He is willing to do anything. Mr. Senges stated that the board relies on their professionals. Mr. Rohmeyer stated that it is the applicant's burden. The board members have to follow the laws. He felt they have valid points. Mr. Senges stated that you could take to Elaine and she can give you names of people familiar with the ordinances. Mr. Senges stated it may work to cost you less if you use professionals rather than eat up all of your escrow. Mr. Foster understood all that he was explained to for this application. A motion was made to continue this application by Mr. Weil –to allow the applicant to obtain guidance and testimony; Seconded by Mr. Willard.

ROLL CALL:

AYES: Mrs. Kirshbaum, Mr. Weil, Mr. Cohen, Mr. Daddario, Mr. Kerr, Mr. Willard and Mr. Senges

NAYS: None

Mr. Senges stated that the board wants to get it right and he wants you to get it right; this is the best way to do it. The board secretary will contact you to advise you of the next date-Kathy was asked –to March 27, 2014. Mrs. Foster wants her TCO extended as well. Mr. Senges stated that the applicant agrees to extend their action date beyond to May 1, 2014. The board secretary will send a letter on behalf of the board advising the zoning department to extend the TCO until March 27, 2014; they are making an announcement this evening as well so they don't have to do notice and republication.

OPENED TO THE PUBLIC

TOM HOOPER

4 Brookview Court

He was sworn in for testimony.

Mr. Weil-asked which side of the property-he stated on the left side. He is not directly infringed upon – he is not on the retaining wall side. He is on the downhill side. He understands the problem with the board. He has been around 20 yrs. ago. 10 yrs. prior to the addition and 10 yrs. after. 10 yrs. prior to the addition and the retaining wall-anytime we have a problem with rain-it would fall onto the Babit's – now the fosters and onto their property and then right into the lake-taking anything with it. There was a run off and erosion problem. They have a drainage pipe-with a 15 ft easement directly between the properties-he called numerous times to get that drainage easement cleaned out-since that wall has been there, they have not had this problem. As to the legality of this, he is not able to render an opinion. He will tell you that everyone sitting here in court room is okay with it-he doesn't think anyone opposed; it does not look out of place. He stated that there is a very fragile ecosystem on the lake – what now they have is grass eating karp because they have filtered down into the big lake-demarco's lake-they now have two mature bald eagles now-he went looking and very fragile. Mr. Babit went too far for what he did but it is not the Foster's fault. As a result of tearing this up-it would not be a good thing. Mr. Senges stated that is good information and that could be forwarded over to the planner. Mr. Babit never called for a c/o on this improvement.

SEEING NO ONE THE PUBLIC PORTION WAS CLOSED.

Mr. Senges stated to Doug Rohmeyer –that he said about the pavers that were actually infringing into the stream encroachment line. Mr. Rohmeyer stated that if you remember back to the prior hearing, when the applicant appeared. There was a lot of discussion or concern regarding regulated area. Being located adjacent to a lake/water body. There are flood hazard area, there are wetlands, there are riparian zones, all these regulated areas associated with the water body. Looking back at this application, this development happened quite some time ago, the question would be did this occur prior to the regs in place, the flood hazard regs that were adopted in 2007? It was subject to the stream encroachment regs-all to the DEP. There was no riparian zone or such a regulated area prior to 2007. Looking at the plan, there is an area of pavers that infringes over the stream encroachment line, that scales to 3 feet-if all the pavers, the deck, the house, the chimney if this was all built prior to the flood

hazard regs of 2007 (most likely that was 50 ft) then he sees no issue for the need to pull a permit, if the work was done today, there would be a lot of permits that would be needed. The timing is very critical. The applicant is always responsible for regulated work. The board has received some testimony as to approximate time for work to be done –the board has received a letter from the zoning board officer that the work has been done 10 years prior as the date of the work; with that being said, the deck, pavers and the house would have not been regulated by those requirements that are currently in place with the exception that one area of the pavers. The pavers at a minimum have to be corrected or permitted. Just advising the board and in addition they listed 9 variances that are being requested before the building itself. It is difficult to modify the footprint of the building, now that the foundation is completed. It is framed, it is plumbed, there is electric, it is closed in, it is roofed. There are other setback infractions that are up for debate at this point, the deck, the pavers-at a minimum. Mrs. Walters stated that we are using the words loosely for permits. Mr. Rohymeyer summarized that the subdivision plan and all the plans provided to CME indicate a stream encroachment line, there is an upland side of the stream encroachment line and the water root of the line. The pavers should not be on the water side of the stream encroachment side on any situation.

Mr. Rohymeyer would be available to speak with any of the Foster's professionals if they need any clarification.

The Chairman asked the board of any comments.

A motion was made to adjourn.

Respectfully submitted:

Valerie S. Marchitto, Board Secretary (transcribed for Kathy March)