

STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
July 22, 2013

MEMBERS PRESENT: Mr. Sarni, Mr. Stachura, Mr. Lippencott, Mrs. Galante, Mr. Powell

MEMBERS ABSENT: Mr. Hammond

ALSO PRESENT: Board Attorney Robert Morgenstern
Board Engineer Ted Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, June 24, 2013 at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Chairman Powell in accordance with the Open Public Meetings Act.

The flag was saluted and roll call taken.

Mrs. Galante arrived at 8:05 p.m.

Mr. Powell submitted certification for the meeting of June 24, 2013.

MINUTES

Mr. Stachura made a **motion** to approve the minutes of June 24, 2013, seconded by Mr. Sarni.

Roll Call Vote: Mr. Lippencott, yes, Mr. Sarni, yes, Stachura, yes, Mr. Powell, yes

BILLS

Mr. Sarni made a **motion** to pay the following bills, seconded by Mr. Stachura:

<u>Dolan & Dolan:</u>	General – June 2013	\$171.81
	Meeting – June 2013	\$426.25
	Escrow – Tanis	\$736.25
	Escrow – Manser	\$ 38.75
<u>Rodman Associates:</u>	Escrow – Dropchinski	\$296.05
	General – June 2013	\$ 30.25
	Escrow – Poust	\$310.75

Roll Call Vote: Mr. Lippencott, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Powell, yes

Correspondence: NJPO Planner

Committee Liaison Report: Mayor Charles Gross

Mr. Gross reported that the Committee is still pursuing members for the Zoning Board. A brief discussion was held regarding the option of a land use board and the positive and negative aspects of such.

RESOLUTION

Poust, Block 4004, Lot 13, Cal. No. 583 – deck lakeside/front yard

Mr. Lippencott made a **motion** to adopt the Resolution, with the following terms and conditions applying, seconded by Mr. Stachura:

1. The deck shall not be erected any closer to the shore of Paulinskill Lake than 71 feet.
2. The Applicant shall install riprap/gravel under the new deck to minimize erosion on the slope.
3. No permanent Certification of Occupancy shall be issued until all the conditions of this Resolution have been met.
4. All taxes and fees shall be paid to Stillwater Township.
5. Applicant shall obtain all required governmental permits for the deck and balconies.
6. Applicant shall comply with all laws, rules and regulations in the construction of the deck and in the implementation of this variance.
7. The variances expire within nine (9) months from the date of this Resolution unless implemented pursuant to the Ordinances of Stillwater Township.

Roll Call Vote: Mr. Lippencott, yes, Mr. Sarni, yes, Mr. Stachura, yes

HEARING

Dropchinski, Block 2401, Lot 19.04, Cal. No. 584 – Outdoor Wood Furnace (OWF)

Mark Dropchinski, 999A Stillwater Road, was still under oath. Certification was submitted by Mr. Powell for the meeting held on June 24, 2013.

At the June meeting the Board requested the following items from the applicant:

- Survey locating the house and OWF, depicting proper setback distances.
- Proof the chimney is at least 5' above the roofline of the furnace.
- Proof EPA emission standards are being met.

Mr. Rodman reviewed his revised report as follows:

This application seeks relief from Section 240-114P (conditional use) for an existing outside wood burning stove located within the side-yard back. The zoning denial provided with the application is for relief from a “d3 variance”. The applicant cannot meet conditions of the conditional use ordinance. The Board Attorney should advise if additional variances are required.

This application was deemed complete by Arlene Fisher, Zoning Official, on June 13, 2013. The hearing was started at the June 24, 2013, meeting and was carried to the July 22, 2013, meeting to allow time for the applicant to provide additional information. As a result of the completeness hearing, the applicant has provided a revised survey dated June 30, 2013.

The Stillwater LDO 240-114P permits outside wood burning furnaces with setbacks of a minimum of “200 foot side yard and 200 foot rear yard from the property line.”

The revised survey now shows one side yard setback as 72.2' from the southerly property line. No dimension to the furnace is provided to the northerly property line. This distance scales 200'. A dimension of 135' is shown to the existing dwelling. I have reached out to the applicant's surveyor to get this distance and will have it prior to the meeting on Monday. Once we have that information, we will be able to determine if a second variance will be required from the northerly property line.

The revised survey that has now been provided shows the front setback to the house as 222.6'. The survey shows that the wood furnace is setback slightly behind the front of the house.

The following **additional comments** are made at this time:

1. The applicant should provide testimony which demonstrates that the relief sought can be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance.
2. The Stillwater LDO 240-114P Section 3H requires a permit to operate an outdoor wood furnace. That section requires that an applicant "shall file a site plan for conditional use in all zones". It also requires permits to install and operate the furnace. These permits were not obtained. Any transfer of the property to a new home owner would require the new home owner to obtain a permit to operate the furnace. Any perspective buyer should be put on notice of this condition. I assume that approval of this site plan satisfies the requirement for a permit to be issued to the present owner.
3. I assume all the requirements of Sections 3D and 4D will be in the jurisdiction of the building department.
4. The date of installation of the furnace has not been provided to our office. The Board Attorney should advise as to the applicability of Section 3E which appears to provide an exception provided the furnace meets "minimum EPA and NJDEP air emission requirements" provided it was installed prior to the adoption of the Ordinance. - *I assume the applicant is not going for this exception. The Board Secretary has advised us that the applicant will be providing a letter from the County regarding emissions for the meeting on July 22, 2013.*
5. Section 5F requires that chimneys be no less than 5' above the roofline of the furnace unit. Pictures have now been provided which show the top of the chimney as approximately 6'-0" higher than the furnace peak.
6. Section 3 I, Significant Changes In Elevation, states that there "be no significant change in elevation which is greater than 30 feet in height above the natural grade of the outdoor wood burning furnace." Based on the site inspection, it appears there are no structures which exceed this limit. However, if top of trees are considered tree-lines, then the 30 feet is exceeded. If the base of the tree is the tree-line, then it does not appear to exceed the 30 feet. - *The Board agreed that the base of the trees constitute the tree line and that this requirement has been met.*
7. The Environmental Report listed a primary concern for the close proximity to pine and red oak trees located above the smoke stack.

With reference to #4 of Mr. Rodman's report, Mr. Dropchinski testified he could not obtain a letter from the County regarding the emissions as no testing has been done as there is no requirement to do so, and ordinances vary from municipality to municipality. Mr. Morgenstern noted that the ordinance was passed prior to the installation of the applicant's OWF and all regulations apply. Mr. Powell stated the ordinance does not provide an inspection or enforcement clause, and it is his understanding that it falls under the jurisdiction of the County Department of Health and is complaint generated.

Mr. Morgenstern read Section NJAC 7:27-3.2 Smoke Emissions From Stationary Indirect Heat Exchangers as follows:

- (a) No person shall cause, suffer, allow or permit visible smoke to be emitted into the outdoor air from the combustion of fuel in any stationary indirect heat exchanger except as provided in (b) below:
- (b) No person shall cause, suffer, allow or permit smoke the shade or appearance of which is darker than number 1 on the Ringleman smoke chart or greater than 20 percent capacity, exclusive of visible condensed water vapor, to be emitted into the outdoor air from the combustion of fuel in any stationary indirect heat exchanger having a rated hourly capacity of 200 million BTU or greater gross heat input and discharging through a stack or chimney having all internal cross-sectional dimensions of 60 inches or greater.
- (c) The provisions of (a) and (b) above shall not apply to smoke which is visible for a period of not longer than three minutes in any consecutive 30 minute period.

Mr. Morgenstern read Section NJAC 7:27-3.6 Stack Test as follows:

- (a) Any person responsible for the construction, installation, alteration or use of an indirect heat exchanger shall, when request by the department, provide the facilities and necessary equipment for determining the density or opacity of smoke being discharged into the open air and shall conduct such smoke tests using methods approved by the department.
- (b) All smoke test data shall be recorded in a permanent log at such time intervals as specified by the department.
- (c) The data shall be maintained for a period of not less than one year and shall be available for review by the department.

Mr. Powell felt the only way to clarify Section 3E of the ordinance was to comply with the section should there be a complaint filed.

Mr. Rodman noted there is potential for a variance from the northerly property line as it scales 200' and the requirement is 200'. He suggested at least a 5' variance should the distance scaled be slightly inaccurate.

Mr. Morgenstern reviewed the variance relief as follows:

- Side yard setback (southerly) 200' required; 72.2' provided
- Side yard setback (northerly) 200' required, approximately 200' provided

Mrs. Galante arrived at the meeting at this point and Mr. Morgenstern provided a summary of the testimony and hearing.

Suggested conditions of approval:

- Comply with all NJDEP standards.
- OWF will be located a minimum of 226.2' from the street, not in the front yard.
- OWF will be located a minimum of 72.2' from the southerly property line.
- OWF will be located a minimum of 190' from the northerly property line.
- OWF is to be operated in accordance with NJDEP regulations including: NJAC 7:27-3.1 and Sussex County Board of Health regulations.
- Affidavit of Knowledge must be signed prior to building permit issuance.
- Any subsequent property owner shall obtain a permit to operate the OWF.
- OWF can only be operated from October 1st to May 1st.
- Building permit and a Certificate of Compliance is required.
- Height of the chimney shall be a minimum of 5'.
- Applicant shall comply with the report of the Board Engineer dated 7/15/13, paragraphs 2 and 5.
- Applicant shall file a revised site plan indicating the side yard setbacks.
- All other standard conditions applying.

At this point, this portion of the meeting was opened to the public. There being no public present this portion of the meeting was closed.

Mr. Stachura made a **motion** to grant the variance relief for the OWF, conditions applying, seconded by Mr. Sarni.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Powell, yes

Mr. Sarni made a **motion** to carry the application to August 26, 2013 for the memorializing resolution, seconded by Mr. Stachura.

Roll Call Vote: Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Powell, yes

The Board briefly discussed including recommendations regarding an OWF and smoke emission requirements in its Annual Report to the Planning Board.

There being no further business, Mr. Sarni made a **motion** to adjourn the meeting at 8:25 p.m., seconded by Mr. Stachura. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Eric Powell, Chairman