

Board of Adjustment 04/12/10

A regular meeting of the Board of Adjustment of the Township of Roxbury was held on April 12, 2010 at 7:00 p.m. with Chairperson Gail Robortaccio presiding. After a salute to the flag, Ms. Robortaccio read the Open Public Meetings Act.

**Board Members Present:** Ms. Dargel, Mr. D'Amato, Mr. Giardina, Mr. Crowley, Ms. Kinback, Ms. Robortaccio, Kenneth Grossman, Ms. Darling Absent: Mr. Data

**Professional Staff Present:**

Mr. John Hansen, P.E.  
Mr. Thomas Potere, Zoning Officer  
Mr. Larry Wiener, Esq.

**Minutes of 03/08/10**

Ms. Kinback made a motion to approve the minutes of March 8, 2010. Ms. Dargel seconded. Roll call: Ms. Kinback, yes; Ms. Dargel, yes; Mr. D'Amato, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Robortaccio, yes.

**RESOLUTIONS:**

**ZBA-10-003 Kula Yoga & Wellness, LLC, Use Variance for property located at 120 Ledge Landing Road, Landing Block 10020 Lot 5 in a R-1 zone. Resolution of Denial.**

In the matter of Kula Yoga & Wellness, LLC

Case No. ZBA-10-003

**RESOLUTION OF FINDINGS AND CONCLUSIONS  
BOARD OF ADJUSTMENT  
TOWNSHIP OF ROXBURY  
RESOLUTION**

Approved: March 8, 2010

Memorialized: April 12, 2010

**WHEREAS**, Kula Yoga & Wellness, LLC have applied to the Board of Adjustment, Township of Roxbury for permission to obtain a use variance to permit a mixed use consisting of a yoga facility with related office and two apartments for premises located at 120 Ledge Landing Road and known as Block 10020, Lot 5 on the Tax Map of the Township of Roxbury which premises are in a "R-1" Zone; said proposal required relief from Section 13-7.1001.A of the Roxbury Township Land Use Ordinance; and

**WHEREAS**, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. Daniel McCarthy, Esquire represented the applicant.
2. The applicants are purchasers under contract of the subject premises.
3. The applicants were proposing to change the office use to a commercial use (yoga studio) within the existing building and expand the commercial use on-site. The applicants were further seeking site plan approval to amend a 5/19/80 Corvo Engineering Site Plan to the 12/30/09 plan submitted by Careaga Engineering attached to the application.
4. Applicant received a letter of denial dated 1/7/10 from Joseph McDonnell, the Zoning Officer.
5. The principals of the LLC, Joseph Kolaya and Linda Brekardt testified at the public hearing. They identified two exhibits – A-1 which was a colorized rendering of the basement or lower floor area and A-2, a colorized rendering of the middle or first floor.

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The purpose of the two exhibits was to demonstrate the re-configuration of yoga, residential, and office space.

6. The site, itself, is a somewhat unique site in that it is immediately adjacent to a commercial use (hardware store) while being zoned in the R-1 district. The 2002 application that came before the Board was to confirm a non-conforming use. A copy of that memorializing resolution is attached to this resolution as exhibit A-1.
7. The applicant presented a site grading plan prepared Careaga Engineering consisting of one sheet, dated 12/30/09.
8. The applicant did not present any expert testimony at the time of the public hearing. The applicant's proposal involved re-locating and formalizing the use of the driveway and access to the rear of the premises. During colloquy with Board members, it was apparent that the applicant's own engineer picked up the presence of nearby wetlands and wetlands buffer areas. It seemed to be in conflict with the applicant's proposed use of the premises. In addition, it was clear that the applicant's proposed yoga use could quickly inundate the parking located to the front of the structure.

**WHEREAS**, the Board has determined that the relief requested by the applicant cannot be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The burden of proof in any application always rests with the applicant. In this particular instance, the applicant's proposal is a true use variance. As such, the applicant needs an enhanced burden of proof as set forth in the Medici case. Here the applicant did not present any proof as to why this site was particularly suited or compatible with the applicant's somewhat eclectic mixture of a yoga studio and yoga meditation area on two separate floors combined with an office, a residence, and a studio apartment. The applicant clearly did not establish that there was adequate parking or that a workable site plan could be configured to provide reasonable on-site access. The only designated way to the rear of the property was an unimproved narrow lane immediately adjacent to and perhaps in conflict with wetlands and wetlands buffer areas.
2. Having fallen far short of both the affirmative proofs and noting the substantial potential negative impact, the Board has little choice but to deny the application for failing to present any legal basis for the grant of a variance.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township Roxbury on the 8<sup>th</sup> day of March, 2010 that the within application is denied.

Ms. Dargel made a motion to approve the Resolution of Denial, Ms. Kinback seconded. Roll call: Ms. Dargel, yes; Ms. Kinback, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Robortaccio, yes.

**APPLICATIONS:**

**ZBA-09-00028 METRO, PCS LLC**, Use Variance & Site Plan Approval for property located at 7 Orben Drive, Ledgewood Block 8602 Lot 17 in a LI/OR zone.

Mr. Joseph O'Neill, Esq. represented the applicant, Metro, PCS. They are here this evening to discuss the Structural Analysis Report that was provided at the last meeting and to answer any questions regarding that. There was a discussion on the engineering testimony from the last meeting in reference to the original report that did show that the tower needed to be worked on in order to handle this insulation. The revised Structural Analysis Report dated November 6, 2009 prepared by Semaan Engineering Solutions summarized the results of the structural analysis

performed on the 125 ft EEI Monopole with a proposed 10ft extension. The structure was originally designed to extend to 160ft. The 10ft proposed extension shall be fabricated from a 3/16" thick galvanized steel flange (Fy = 65 ksi). It will match the shape and taper of the exiting pole. The extension shall be fabricated by and its connection to the existing pole designed by the original pole manufacturer. The tower was analyzed using Semaan Engineering Solutions, Inc. Software. The analysis assumes that the tower is in good, undamaged and non-corroded condition. The analysis was performed in conformance with TIA/EIA – 222 REV F and local building codes for a basic wind speed of 75 mph and ½" radial with reduced wind speed (fastest mile). This is in conformance with the IBC 2006: Section 1609.1.1, Exception (4) and Section 3108.4. All transmission lines are assumed running inside of the pole shift. All new access holes shall be reinforced with welded rims that are compatible with the pole, and to be sized and supplied by the pole manufacturer. The existing monopole is structurally capable of supporting the existing and proposed antennas. The maximum structure usage is: 59.5%. The base plate will be at full capacity. There was a discussion on the additional flange to be added to the base plate of the tower, and that a drawing was provided to the Boards' expert Mr. Hansen. Mr. Hansen stated that he did receive the report Mr. O'Neill is speaking of and required more back up calculations than had been provided in the report. He spoke with the engineer at Semaan Engineering Solutions who did the structural analysis and gave him the additional back up calculations needed. He also had a few conversations with one of their engineers, and his conclusion was that as designed it has a factor safety of 1.5 which is acceptable. There was a discussion on the flange and drawings of the base plate that were provided to Mr. Hansen, also on the additional flange to be added to the pole for safety.

Open to the Public: No on stepped forward. Closed to the Public.

Mr. Crowley made a motion to approve this application with the condition that Mr. Hansen gets all the specifics of the plan and that it meets with his approval, with no further disturbance around the base, subject to addressing the other comments of the professional staff including internal conduits and subject to the terms and conditions of the prior resolution not specifically over ruled. Ms. Kinback seconded.

Roll call: Mr. Crowley, yes; Ms. Kinback, yes; Ms. Dargel, yes; Mr. Giardina, yes; Ms. Robortaccio, yes.

Mr. Hansen left at 7:25pm

**ZBA-10-004 Matthew Bader** Bulk Variance for an expansion of an open front porch & second floor for property located at 14 Condit Street, Succasunna, Block 3401 Lot 30 in a R-2 zone. Mr. Matthew Bader was sworn in. He proposes to remove the current exterior front steps which are substandard, and replace them with a 4ft. deep by 10ft. wide bump out. This will allow him to rebuild the existing interior staircases. The interior staircases are not to code and create a safety hazard. The staircases will be rebuilt to current code and will provide a safe landing at the base of the stairs. Exhibit A1-8 are photos showing all the steps in the house. There was a discussion on each picture, the size of the steps and their location in the house. This addition will be enclosed under a covered front porch. This will increase the architectural interest of the house while adding to the aesthetic appeal and creating a more welcoming atmosphere. Also it will create a protected area when entering the house. The existing building is 32.7ft. from the front boundary and the proposed additions would require a new setback of 24.75ft. due to the new porch. The existing second floor of the house will be removed and rebuilt in a new configuration that will be to current code. And the driveway will be widened in order to create easier access. This proposal should be granted due to several safety hazards that exist within the house. Both

the interior and exterior staircases are too steep and narrow to conform to current code and more importantly create a falling hazard. Mr. Crowley questioned will the new porch be inline with the houses to the left and right of Mr. Baders' house. Mr. Bader stated that most of the houses are older homes and some sit closer to the road then his house does. There was a discussion on the affordable housing fee (1.5% of the total value of the new addition).  
Open to the Public: No one came forward. Closed to the Public.

Ms. Dargel made a motion to approve this application, Mr. D'Amato seconded.  
Roll call: Ms. Dargel, yes; Mr. D'Amato, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Kinback, yes; Ms. Robortaccio, yes.

**ZBA-10-006 James & Michelle Iannicelli** Bulk Variances for an attached garage for property located at 4 Bass Drive, Succasunna, Block 1601 Lot 45 in a R-3 zone.

Mrs. Michelle Iannicelli & Mr. James Iannicelli were sworn in. Mr. Iannicelli stated that they would like to construct a single car garage with some storage area to the easterly side of their house. The house is a corner lot which is why they need three variances (1) rear yard setback, (2) impervious coverage, and (3) building coverage. The 17' X 20' structure would be one story with a height of 16ft. The garage will provide off street parking which will be more inline with Section 13-8.700 of the Township Ordinance. This will enable them to keep their vehicle off the road and they would be able to enter the house through the garage. Exhibit A-1 shows seven houses in the neighborhood with attached garages. Ms. Dargel questioned the size of the driveway and if it will remain the same. Ms. Iannicelli stated that the driveway will stay as is. There was a discussion on the drainage from the roof of the new garage and if it would create a problem with runoff.

Open to the Public: No one stepped forward. Closed to the Public.

Mr. D'Amato made a motion to approve this application, Ms. Dargel seconded.  
Roll call: Mr. D'Amato, yes; Ms. Dargel, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Kinback, yes; Ms. Robortaccio, yes.

**ZBA-10-007 Robert & Taimi Reip** Bulk Variances for a detached garage and addition to house for property located at 6 Condit Street, Succasunna, Block 3401 Lot 26 in a R-2 zone. Mrs. Taimi Reip & Mr. Robert Reip were sworn in. Mr. Reip stated that they are proposing a 24" X 24" detached garage and a 3" X 5" addition to their house for more storage space. Ms. Dargel questioned why not attach the garage to the house. Mrs. Reip said that she does not want to lose the light from the two windows that would be blocked by attaching the garage to the house. The lot is 100' X 100' which is small and unique, the same as neighbors who also have detached garages. Exhibit A-1 are photos taken recently that show a side view of the houses on each side of their house. Exhibit A-2 are pictures of houses in the neighborhood with detached garages. Mr. Unneberg built these houses in 1935 without garages, by adding this proposed two car garage to the existing property it will bring the property more inline with Section 13-8.700, off street parking ordinance. Mrs. Reip stated that they would like to also keep their shed. Ms. Robortaccio explained that two accessory buildings are acceptable. Mr. Reip stated that the small 3" X 5" addition will be a bump out to square off the corner of the existing house which will allow for closet space.

Open to Public: No one stepped forward. Closed to the Public.

Ms. Dargel made a motion to approve the application, Ms. Kinback seconded.

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Roll call: Ms. Dargel, yes; Ms. Kinback, yes; Mr. D'Amato, yes; Mr. Giardina, yes; Mr. Crowley, yes; Ms. Robortaccio, yes.

The meeting was adjourned by motion at 7:50 p.m.

TOWNSHIP OF ROXBURY BOARD OF ADJUSTMENT  
Dolores Tardive, Board Secretary