

Regular meeting of the Board of Adjustment of the Township of Roxbury was held on February 14, 2011 at 7:00 p.m. with Chairman Edward Data presiding. After a salute to the flag, Mr. Data read the Open Public Meetings Act.

PRESENT: Mr. Crowley, Mr. D'Amato, Ms. Dargel, Ms. Darling, Mr. Data, Mr. Giardina, Mr. Grossman, Ms. Kinback, Ms. Robortaccio.
ABSENT: None.

Professional Staff Present:

Mr. John Hansen, P. E.
Mr. Russell Stern, P.P.
Mr. Larry Wiener, Esq.

Minutes of 01/10/2011

Ms Dargel made a motion to approve the minutes of January 10, 2011. Ms. Robortaccio seconded.

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

RESOLUTIONS:

ZBA-10-015 VALLEY AUTO WRECKERS, Pre-Existing, Non Conforming Use for property located at 217 Berkshire Valley Road, Wharton, Block 7201, Lot 1, 2 in a LI-OR zone. Board granted certification pursuant to NJSA 40:55D-68 for certain uses on site.

In the matter of Valley Auto Wreckers
Case No. ZBA-10-015

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

Approved: January 10, 2011
Memorialized: February 14, 2011

WHEREAS, Valley Auto Wreckers have applied to the Board of Adjustment, Township of Roxbury for certification of a prior non-conforming use pursuant to NJSA 40:55D-68 for premises located at 217 Berkshire Valley Road and known as Block 7201,

Lots 1 & 2 on the Tax Map of the Township of Roxbury which premises are in a "LI/OR"

Zone; said proposal required relief from Section 13-7.7 et seq. 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. George W. Johnson, Esquire represented the applicant.
2. The applicants were seeking to establish the legitimacy of a non-conforming use pursuant to NJSA 40:55D-68. That section of the Municipal Land Use Law provides: "*the prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Application pursuant hereto may be made to the administrative officer within one year of the adoption of the ordinance, which rendered the use or structure nonconforming or at any time to the board of adjustment*".
3. The first public hearing on the within matter was conducted on October 14, 2010. A second hearing was on December 13, 2010. The applicants submitted the following exhibits which were marked for identification:
 - a. A-1 1965 zoning map

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- b. A-2 1965 zoning ordinance
 - c. A-3 various motor vehicle licenses issued to the applicant
 - d. A-4 an aerial photo from March of 1974
 - e. A-5 collection of photographs from various time periods
4. The applicants called two witnesses at the initial hearing.
5. The first witness was Fay Lehr. Ms. Lehr presently resides in Florida. She stated that she and her former husband (Roland Lehr, now deceased) bought the subject premises in 1971. She stated that when they purchased the premises, the premises were utilized as a body shop complete with a paint booth, two bay automotive repair facility, an office with a bathroom, and a junk yard in what was the former quarry area. She stated that junk vehicles, with equipment, were stored in the junk yard area. She stated that sometime in 1984 she and her husband were divorced and she resided at the premises and her husband continued to work the business although he lived in Jefferson. She stated she lived in the single family home that was on-site and that her former husband bought out her interest in the 1990's and she moved to Florida.
6. The applicant's second witness was Ronnie Tutty. Ronnie Tutty is the daughter of Fay Lehr and Roland Lehr. Mr. Lehr passed away in 2003 and Ronnie Tutty was the executor of his estate. She stated that she grew up on the property, was familiar with the property and that the property had been utilized as a single family home, junk yard/auto repair body shop during the entire time period in question. She stated that no one had questioned the use of the property until recently. She further stated that one of her tasks, as the executor of her late father's estate, was to sell the property. She noted there was an on-going environmental issue with the property that involved remediating lead contamination.
7. The within matter was continued at the 1/10/11 public hearing.
8. The applicant recalled Ronnie Tutty. Ms. Tutty presented several additional exhibits:
 - a. A-6 – a compilation of telephone books with adds and licenses
 - b. A-7 – sales tax certificates for Valley Auto Wreckers
 - c. A-8 – a six photo panel showing site conditions circa 1999
 - d. A-9, A-10, & A-11 – page 2 of an application to the State of New Jersey
 - e. A-12 & A-13 – photo of storage racks
9. The Board Planner, Russell Stern, also testified at the public hearing. Mr. Stern presented staff photos that were marked B-1. The applicant conceded those were photos of present conditions on the site.
10. The applicant also called Juan Correa, Jr., the present operator on-site and Danny Piemontesi, a former tenant on-site.
11. Mr. Correa presented exhibits indicating that he had been licensed by the municipality to sell automobiles and boats at the site.
12. As noted, the Board's planner opined that, based upon the testimony and the documents provided, there was credible unrefuted evidence that the core uses at the site had existed since 1965; to wit, junk yard, residence, automobile repairs, and, as noted in the display ad in the 1978 yellow pages, the sale of auto parts of all description, late model cars bought, tires, starters, and rear ends.
13. Mr. Stern went on to state that, based upon numerous site visits by the municipality, it was clear that, over the years and certainly at present, that there had been an expansion both as to uses and intensity on the site. He pointed out the presence of numerous intermodal containers; parts racks; the storage of boats; and the intrusion of numerous items into the front yard. He noted that the 1965 ordinance had a 20' front yard setback and clearly the present uses on-site did not conform to the setback. He noted the applicant did not present any survey of the uses on-site nor were there any existing site plan.

WHEREAS, the Board has determined that the applicant has made a case for certification of some of the existing uses on-site as noted below:

1. The Board finds the uses set forth in the 1978 yellow pages to be valid non-conforming uses on-site. Those uses were succinctly stated in the yellow page display ad: Auto Parts Of All Description; Late Model Cars Bought; Tires; Starters; Rear Ends.
2. The Board finds the applicant did not establish that there was an existing survey or site plan locating those permitted uses. The Board, thus, is left with circumscribing those uses within the dimensional requirements of the zone prior to the 1965 change in the Township Land Use Ordinance. A review of the aerial maps and pictures taken by the Lehr family contrasted with the photographs taken by the professional staff clearly depicts that other uses and intensity of uses were added to the site. The Board notes the presence of the residence and the fact that there may have been dual tenants on-site. Nevertheless, other than the additional residential component on the site, the presence of automobile repairs, junk yard, and the specific uses outlined in the yellow page ad – those are the only uses permitted.

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3. The applicant, thus, has to either bring the site into compliance with the dimensional requirements of the zoning ordinance and eliminate any of the added uses or, alternatively, seek "D" variance approval for the expansion of a non-conforming use together with site plan approval.

Mr. George Johnson, attorney for the applicant, asked to be heard briefly, and wanted this matter tabled to the next available meeting date to get better clarification. He felt the Board may have improperly limited the pre-existing uses on the property in this resolution. Mr. Wiener stated that the resolution reflected what took place at the last meeting. Mr. Johnson stated the resolution talks about being able to buy cars, in order to buy cars you have to have a used car license which authorizes you also to sell cars. Mr. Data stated that it was determined at the last meeting the license gives you the ability to buy and sell but the Boards approval was just for the purchasing of automobiles for the use of their parts. There was a discussion on the ad that was interpreted for this decision. Mr. Johnson stated the difficulty will be an enforcement problem and this is putting the applicant in a difficult situation in the way that it is worded in the resolution. Ms. Robortaccio stated that the applicant did not want to submit a site plan, so the Board had to vote on what was before them and this finding was based on the evidence presented to the Board.

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

ZBA-09-00012 WDIFTK, LLC, D Variance / Minor Sub Division for property located at Hillside Avenue, Succasunna, Block 5203 Lot 46, in a R-3 zone. *AMENDED RESOLUTION*
 In the matter of WDIFTK, LLC
 Case No. ZBA-09-00012

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

**Approved: September 13, 2010
 Memorialized: October 14, 2010
 Amended: February 14, 2011**

WHEREAS, WDIFTK, LLC has applied to the Board of Adjustment, Township of Roxbury for permission to obtain a minor subdivision in connection with a D variance for premises located at Hillside Avenue and known as Block 5203, Lot 46 on the Tax Map of the Township of Roxbury which premises are in a R-3 Zone; said proposal required relief from Section 13-7.701 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. Ronald Heyman, Esquire, represented the applicant.
2. The applicant is the owner of the subject property. It is an improved four-acre parcel containing a pre-existing non-conforming two-family home. There is also a detached three bay two story garage.
3. Prior to the public hearing, the Board received the following documents:

Prepared by Frederick C. Meola

- Sheet 1, Cover Sheet, undated, revised 3/13/09, revised 10/10/09, 12/13/09, 2/15/10
- Sheet 2, Existing Conditions, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 3, Subdivision Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 4, Grading Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 5, Landscape Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10

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- Sheet 6, Sight Triangle, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 7, Soil Movement Calculations, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 8, Steep Slopes Map, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 9, Sanitary Sewer Profiles, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 10, Road and Driveway Profiles, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 11, Soil Erosion Plan, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 12, Detail Sheet, original 5/21/07, revised 3/13/09, 10/10/09, 12/13/09, 2/16/10
- Sheet 1 of 1, Tree Study Plan, original 8/3/09, revised 12/13/09, 2/15/10

Prepared by Charles Schaffer Associates, LLC

Sheet 1 of 1, Front and Street elevations, dated 2/18/10

Prepared by Environmental Technology, Inc.

Environmental Impact Statement, dated October 2008

1. The Board received the following memorandums:
 - a. Russell Stern, Township Planner, dated 4/30/09, updated 9/11/09, 11/5/09, 1/7/10, updated 2/26/10
 - b. John Hansen, Board Engineer, dated 5/7/09, updated 9/9/09, 11/5/09, 1/7/10, 3/3/10
 - c. Michael A. Kobylarz, Township Engineer, dated 10/23/09, 12/17/09, 1/7/10
 - d. Historic Advisory Committee, dated 4/8/09 and 11/2/09
 - e. Environmental Commission, dated 3/1/09
2. The applicant's engineer, Frederick C. Meola, walked the Board through the plans that he prepared, dated 3/13/09. Mr. Meola reviewed the highlights of the plan noting the proposed dwellings would be located approximately 40' from the road; total limit of disturbance would be 35,882 sq. ft.; new impervious coverage would be 7,650 sq. ft.; disturbance of slopes greater than 25% would be 17%; the retaining walls would be approximately 850' in length with heights of 47'; the homes would have individual driveway openings, there would be approximately 500' of undisturbed frontage; a historic wall (commented upon by the Township Historic Advisory Committee) would remain in place.
3. During the course of the 5/11/09 hearing, a consensus was reached that the application needed more refinement. The applicant agreed to take another look at the project and have a staff meeting to further discuss ways of improving the original plan.
4. The matter was subsequently carried and heard on 9/14/09. Mr. Meola had submitted an alternate plan dated 8/25/09. The Board had also received updated reports from Russell Stern, Township Planner, dated 9/11/09 and John Hansen, Board Engineer, dated 9/9/09.
5. Mr. Meola had prepared what was described as an alternate proposal to the original plans. He resumed his testimony and characterized the key differences from the 3/13/09 to the 8/25/09 plan as follows:
 - New dwellings are closer to one another
 - f. Proposed dwellings are located approximately 75'-80' from the road
 - g. Total limit of disturbance is 39,000 sq. ft.
 - h. New impervious area is approximately 11,200 sq. ft.
 - i. Disturbance of slopes greater than 25% is 27%
 - j. Retaining walls approximately 1,200 linear feet with heights of 4-8 feet
 - k. Individual driveway openings
 - l. Approximately 620' of undisturbed frontage

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6. There was a discussion between the applicant and the Board as to the merits of Plan A versus Plan B. Some of the discussion centered on whether or not it was appropriate to divide this property into three as opposed to two lots.
7. The matter was carried to the 11/9/09 public hearing.
8. The applicant presented two comparison plans. One was referred to as Plan One (sheet 8 of 12). Mr. Meola reviewed the details of sheet 8 of 12. During the course of his testimony with the Board, it was apparent that some of the calculations would change as a result of certain proposed improvements. As such, the applicant asked for the matter to be carried to a future hearing so as to ensure that accurate information would be supplied to the Board.
9. The matter was carried to the 1/11/10 public hearing.
10. Mr. Meola was recalled to the stand and reviewed the latest version of his plans, which had a revision date of 12/13/09. Mr. Meola noted the salient feature of the new plan was to leave the historic single-family home as pretty much intact. The house, obviously, would remain in its location and the existing driveway would be used and there would be no reason to impinge upon any of the historic infrastructure in the walls.
11. The new lots would be created on the ends of both properties fronting on North Hillside Avenue. Those properties would meet the bulk requirements of the zone but, would, nevertheless, require relief from the steep slope ordinance. The two-family home would be on a 2.41-acre lot. The lot to the south would be 36,516 sq. ft. and the northerly lot would be 51,335 sq. ft. The R-3 Zone contemplates a minimum lot size of 15,000 sq. ft.
12. As noted by the Township Planner, the following variance relief is needed:
 - m. A D(2) variance is necessary from §13-7.701, which prohibits any nonconforming use, such as the two-family dwelling, to be changed in any way other than a conforming use.
 - n. A variance is necessary from §13-7.818 as the application exceeds the maximum allowable area of steep slope disturbance in all slope categories.

Steep Slope Category	Area	Maximum Area of Allowable Disturbance	Proposed Area Of Disturbance	Maximum Area of Allowable Disturbance	Proposed Percentage Of Disturbance
15-19.99%	18,360 s.f.	6,426 s.f.	7,674 s.f. 7,525 s.f.	35%	41.8.7%** 40.9%**
20-24.99%	26,330 s.f.	3,950 s.f.	4,944 s.f. 4,454 s.f.	15%	18.7%** 16.9%**
25+%	100,003 s.f.	3,000 s.f.	18,013 s.f. 17,186 s.f.	3%	18%** 17.2%**

** Variance required

13. The application also requires the following design waivers:
 - o. historic value and A design waiver is necessary from §13-8.602A, as a 33' wide half-width right-of-way is required while the applicant proposes 25'. Relief is also needed, as a 20' wide half-width cartway is required, while the applicant proposes to leave the current paving intact at an approximate 14' half-width.
 - p. A design waiver is necessary from §13-8.610A, as a sidewalk is not provided along the entire North Hillside Avenue road frontage.
 - q. A design waiver is necessary from §13-8.612E, as the residential driveway grades exceed 6% within 25' of the right-of-way.
 - r. A design waiver is necessary from §13-8.804B, as street trees are not located within the North Hillside right-of-way.
14. The within application was continued to the 3/8/10 public hearing.
15. The principal of the within application, Kenneth Parks, testified at the hearing. The applicant's engineer was not present due to illness. Mr. Parks identified a streetscape

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depiction showing how the houses would appear looking at them from the street. During the course of discussion, it was apparent that Board members opined that not enough detail and scale gave them an adequate feel for what the elevations would look like.

16. The applicant agreed to re-visit the streetscape so as to make same conform to the Board's request for a more accurate and meaningful drawing.
17. Richard Cramond, from the Township Historical Advisory Committee, also testified at the public hearing. Mr. Cramond noted that it was his personal opinion (which would be reviewed with the other members of the Historic Advisory Committee) that the applicant's plan, as presented, respected the historic nature of the two family house as well as the various associated infrastructure including an old wall. He opined this had maintaining same would be consistent with the town's goals relative to historic sites.
18. The matter was continued to the 6/14/10 public hearing.
19. The applicant called its architect, Charles Schaffer. Mr. Schaffer presented a two sheet architectural rendering dated 5/11/10:
 - s. A-2 – Design A Left Side of the property
 - t. A-2 – Design B Right Side of the property
20. Each of these drawings depicted one of the two new proposed homes. Mr. Schaffer noted the homes would be approximately 3,000 to 4,000 sq. ft.
21. Mr. Schaffer testified that the design of the homes was an attempt to make them architectural compatible with the historic two family building.
22. Richard Cramond, from the Township Historical Advisory Committee, appeared at the hearing and generally endorsed the proposal. He asked for some minor modifications to the window treatments, which the applicant agreed to Mr. Cramonds testimony is strictly from the view of the historic society.
23. The matter was carried to a further public hearing since there was not a full seven member board at the 6/14/10 hearing.
24. The final public hearing for the within matter was on 9/13/10.
25. The applicants attorney gave a summation; several questions were asked by the Board; the meeting was opened to the public; there were no further public comments.

WHEREAS, the Board has determined that the relief requested by the applicant can 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 within case is unique in several ways. But for the fact that the existing historic home is a two family home (a prior legal non-conforming use), this matter would have been before the Planning Board. It is also conceivable, if the two family use were abandoned, the applicant would have been able to theoretically done a conforming subdivision that would have resulted in a yield of more than the three lots that are created as a result of this approval before the Zoning Board of Adjustment.
2. The core issue to the grant of this D variance, to expand a non-conforming use (the expansion really consisting of subtracting the two lots being created to construct single family homes), turns on the non-conforming use being of historic and special quality. In this regard, the recommendations and testimony of the Township Historic Advisory Committee and its chairman, Richard Cramond, are critical to the Boards evaluation. As noted by Mr. Cramond, maintaining the status quo of the house and preserving much of the existing infrastructure is something that the Township Historic Advisory Committee has strongly recommended to the Board. The alternative, to the owner and developer of the property, is to remove and/or abandon the non-conforming use and simply develop the property with single-family conforming homes.
3. In analyzing the situation, the Board finds the instant proposal with the D variance (and related slope variances/design waivers) is a better planning alternative than simply saying to the applicant to go ahead and develop the property with the subdivision in a conforming manner. The benefits to maintaining the existing two family structure and the reduced density of only

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creating two additional lots is consistent both with the intent and purpose of the Municipal Land Use Law as well as the Township's zoning ordinance. Thus, the approval, in this particular instance, is extremely fact sensitive.

4. Given the lowered intensity of use and the maintenance of the two family home, the impacts of this proposed subdivision would clearly be less than the impact of a straight conforming subdivision.
5. The conditions noted below will further reduce the impact and limit any further development of the site.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 13th day of September, 2010 that the approval of the within application be granted subject, however, to the following conditions:

GENERAL CONDITIONS

1. Subject to the review and/or approval of all other governmental agencies with joint and/or concurrent jurisdiction over the within application.
2. Payment of all fees, sureties, and escrows as required by Township and/or other governmental agencies.
3. The approved subdivision plan is the Frederick C. Meola plan, dated 5/21/07 with a revision date of 2/16/10. Subject to further conditions and any necessary revisions needed to incorporate the conditions of approval.
4. The two new homes to be constructed shall be constructed and located as depicted in the Charles Schaffer architectural renderings presented at the 6/14/10 public hearing bearing a date of 5/11/10.
5. There shall be no further subdivision of any of the lots created by this application. The applicant shall record the restrictions on development in the chain of title of the subject property.
6. The historic two family house shall be maintained in its present condition. Any improvements to same shall be reviewed and approved by the Historic Advisory Committee. The existing walls and infrastructure shall be maintained and the maintenance of same shall be a continuing obligation of the owner of the property.
7. The applicant shall file a conservation easement for those areas of the property encumbered by steep slopes or other non-developable areas.
8. The subdivision Deeds must be filed within 190 days of the date of adoption of this resolution or the approval shall expire.
9. Demolition of the existing dwelling will require approval by the Zoning Board and a building design to compliment the historic character of the property.
10. Prior to site work and the issuance of building permits, the applicant shall contact the Police Department to coordinate construction activities that may impact North Hillside and may obstruct the flow of traffic or conflict with school activities. Where a Police Officer is needed for traffic control, the Township shall be compensated in accordance with established procedures.

PRIOR TO THE SIGNING OF SUBDIVISION PLANS

1. Delineation of the conservation easement shall be reviewed and approved by the Board's Engineer and Planner.
2. The applicant shall obtain Morris County Soil Conservation District approval and approval of the Morris County Planning Board.
3. Applicant shall file a Tree Removal Permit application. The tree study plan shall be consistent with the application as well as the subdivision plans. If necessary, the documents shall be revised to incorporate same. Additional replacement trees shall be located on the drawings. Street trees required by ordinance or street trees located within the applicants property cannot be counted as replacement trees. Size and species of street trees shall be provided. The Township Planner shall review and approve this condition.

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4. Applicant shall detail the wall material for the retaining wall along North Hillside Avenue as well as the interior lot retaining walls. The type of material shall be reviewed and approved by the Township Planner
5. Applicant's proposed tax lot numbers shall be reviewed and approved by the Tax Assessor.
6. Applicant shall comply with the comments of the Township Engineer, Michael A. Kobylarz, in his memorandums dated 10/23/09, 12/17/09 and 1/7/10. Those memorandums are attached to this resolution for purposes of clarity.
7. Metes and bounds descriptions and closure calculations must be reviewed and approved by the Board Engineer.
8. An operation and maintenance manual for the drywell systems must be submitted for review and approval by the Board Engineer.
9. Applicant shall pay any past and current outstanding sewer bills associated with the existing two family dwelling.
10. Board Engineer to approve driveway turnarounds on lots 46.01 and 46.03.
11. Applicant shall obtain sewer capacity allocation from the Governing Body.
12. Fire Hydrant location shall be reviewed and approved by the Township Engineer and Fire Official.
13. The applicant shall contact the Township Planner for further landscape comments. A revised landscape plan shall be submitted for review and approval by the Township Planner. Plants less desirable to deer shall be utilized.

PRIOR TO THE FILING OF SUBDIVISION DEEDS

1. A copy of said Deeds shall be provided to and reviewed by the Board attorney.
2. The applicant shall install the sidewalk as determined by the Township Engineer and street trees as determined by the Township Planner, and the stormwater management structures for the remaining two-family home and driveway. A pre-construction meeting, with the Township Engineer, must be scheduled and concluded prior to the commencement of any construction of said improvements. Street tree location shall be staked in the field and approved by the Township Engineer and / or Planner prior to installation. The installation may be waived where location is in conflict with existing vegetation. Plans should be noted accordingly.
3. The portion of the existing driveway that crosses proposed Lot 46.03 shall be removed. The area shall be stabilized in accordance with soil conservation requirements. Curbing and paving along the applicants road frontage will be repaired / replaced at the direction of the Township Engineer.
4. The two front staircases associated with the existing dwelling shall be removed.
5. Applicant shall also pay a tax map lot line revision fee in accordance with Township ordinance.
6. Applicant shall pay a monetary contribution for the portion of the sidewalk not constructed on the remainder of their North Hillside Avenue frontage. This contribution amount will be calculated by the Township Engineer.
7. A notice shall be added to the deed of proposed lot 46.02 that informs subsequent owners that grading and disturbance of a portion of that property is required in order to construct a dwelling on proposed lot 46.03.
8. Applicant shall pay their pro rate share of providing off tract and off site improvements as determined by the Township Engineer.
9. Applicant shall pay a mandatory development fee in accordance with Township ordinance.
10. The applicant shall obtain signed subdivision plans.
11. Additional street lighting shall be provided if requested by the Township Engineer. Details shall then be required and the applicant shall comply with section 13-8.707B for "contribution fixtures".
12. Replacement trees shall be installed and a monetary contribution provided in accordance with section 13-11.106G for replacement trees that cannot be located on the properties. Performance

guarantee shall be provided in accordance with Section 13-11.13c Stump removal is prohibited until a Soil Movement permit is issued.

13. The existing home and garage shall be cleaned / painted / resided.

PRIOR TO THE ISSUANCE OF ANY BUILDING PERMIT

1. The subdivision deeds shall be filed to create the lots.
2. Applicant shall obtain the necessary Soil Movement Permits for each proposed home site.
3. The retaining wall design calculations and details shall be provided to the satisfaction of the Township Engineer in accordance with Section 13-8.809L.
4. Applicant shall provide individual lot grading and drainage plans for review and approval by the Township Engineer.
5. Architectural drawings for all houses shall be reviewed for consistency with architectural exhibits and approved by the Township Planner.
6. Conformance to R-3 zone building height shall be verified.

The resolution was amended to correct the lot numbers per the Tax Assessors review.

Ms. Dargel made a motion to approve the amended resolution. Mr. Giardina seconded.

Roll call: Ms. Dargel, yes; Mr. Giardina, yes; Mr. Grossman, yes; Mr. DAMato, yes; Ms.

Robortaccio, yes; Ms. Kinback, yes; Mr. Crowley, yes; Mr. Data, yes.

APPLICATIONS:

ZBA-10-010 LaRoy, Use Variance & Site Plan Approval for property located at Ledgewood Landing Shipping Port Road, Landing, Block 10101, Lot 18, 19 & 20, in a B-1A zone. *Carried to March 14, 2011, with no further notice.*

ZBA-11-001 Clay Oven / Ashirwad Foods, Use & Bulk Variance for property located at 1140, Route 46 East, Ledgewood, Block 6501, Lot 17 in a B-2 zone.

Allen Hantman, Esq. appeared before the Board representing the applicant. He gave a short overview; of the application. The Clay Oven is a restaurant that is attached to one of the local motels, which was destroyed as a result of a fire and is being rebuilt. A variance is requested for floor area ratio because the applicant wants to enclose a vestibule so that people can walk in and out with a little bit of a protection from the weather. This results in a floor area increase of 1/100th of one percent, an increase from .254 to .255. This will make the proposed plan more aesthetically pleasing and provide better ingress and egress to the patrons of the restaurant. The second variance is for signs. The way the building is constructed there is a major sign that faces Route 46. The entrance is around the corner so they want a small sign over the new entrance to show where you enter. That is the entire application.

Mr. Stern stated that they will be eliminating pavement to beautify the site and create landscaped islands.

Mr. Dharam Mehta, 248 West Main Street Rockaway, NJ, Architect for the applicant, was sworn in and accepted. Mr. Mehta explained to the Board with a Site Plan that was done by Stewart Surveying & Engineering, dated January 25, 2011(dated rev 10 – 01-31-06) marked in as Exhibit A-1, and shows on page S-1, the proposed first floor new vestibule area (48 sq ft) also showing the impervious coverage that is going to be made green with new landscaping to be approved by the Township Planner. The proposed enclosed vestibule is in the vicinity of a former open canopy entry. Impervious coverage will be reduced from 59.6% to 58.99% by replacing pavement along the restaurant with curbed planting beds. In creating the landscaping they will be pulling the parking spaces away from the building still leaving enough driveway to get in and out

of the parking area with the exit point remaining at 24 ft. They would like a sign above the door of the restaurant to identify the restaurant entrance. Exhibit A-2, sheet 1, shows the right side elevation of the existing restaurant with the proposed new covered entry and vestibule including signage. Exhibit A-2, sheet 2, shows the landscaping and parking. Mr. Stern stated that parking would have to be reviewed by the Township Engineer and handicap parking may be needed. The second variance is necessary because one wall sign is permitted, and they would like a second wall sign measuring 8.84 sq ft above the foyer entrance. The background of the new sign will be the same color as the sign on the building that faces Route 46. Exhibit A-3 shows two pictures taken by Mr. Mehta; first picture shows what the restaurant looks like now under construction. The second shows the old building before construction with five signs, one being permitted by code. There was a discussion on the other four unauthorized signs, one being a non conforming roof sign. Mr. Stern stated the new structure will have one sign on the side of the building and signage above the entrance foyer. This will improve the area promoting a desirable visible environment that is energy efficient. Mr. Mehta stated in reference to Mr. Sterns report there will be no drainage impacts. Handicap parking and signage details will be provided to the Township Engineer and Construction Official. Belgian block curb construction detail will be provided. Parking stalls will be re-stripped as needed. A landscape plan will be provided for the proposed planting islands. A lighting detail will be provided. Damaged board on board fence and gates associated with the trash/recycling enclosure shall be replaced. Mr. Stern stated these conditions should be completed prior to the issuance of a certificate of occupancy of the restaurant, except for weather related items. Open to the Public: No one stepped forward. Closed to the Public.

Ms. Robortaccio made a motion to approve the application, and have enforcement check items (e) and (f) on Mr. Sterns report. Ms. Dargel seconded.

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

ZBA-09-00036 GEDICKE'S / LAKE'S END MARINA, Preliminary Major Site Plan for property located at 91 Mt. Arlington Boulevard, Landing, Block 10101, Lot 48 in a B-1 zone.

Thomas Brady Jr., attorney for the applicant, was here this evening for the completion of an application that had been made by a prior owner of this property for C variances that would accompany the intended use that was granted under the D variance to the former owner. In 2006 the former owner obtained from this Board a D variance for the use of the property to build a building with a showroom and repair shop for boats. The property itself would be utilized for the purpose of storage and sale of new boats some to be exhibited in the front of the property between the building and the street. The D variance also contemplated that the uses involved with it would be rather unique on seasonal basis, the main season being April thru November. In granting the D variance it was his understanding that the Board took into consideration the overall master plan in Roxbury Township and the recreational use of Lake Hopatcong which this lot is associated with. The marina that they intend to build there is one that will service property owned by the applicant across the street from the subject lot.

Mr. David Gedicke, 5 Mulberry Court, Succasunna, is the owner of property, block 10101, lot 48. He purchased the property two years ago and understood that a approved site plan would be needed. The property is approximately 55,000 square feet he intends to build a building for boat storage and sales of boats. The building will be 2,600 square feet with a mezzanine level (1,112 square feet) for parts storage only. This building will also accommodate an office, a showroom

and two bays for boat repairs. They have five part time employees and business hours during the season will be 7:00am to 7:00pm. Eight to ten parking spaces for employees and customers is sufficient. Right now on the lot there are seventy five boats being stored. New boats are and will be delivered to this location. All repair and maintenance work on the boats will be done inside the building, there will be no on site storage of fuel. There was a discussion on off season storage and the number of boats that will be able to be stored after the building is built. Mr. Stern stated that the way the use variance was approved was that the outdoor storage yard is only for boats, boat trailers and similar accessories. Open to the Public: No one stepped forward: Closed to the Public.

Mr. Kenneth Fox, AIA, 546 Route 46 West, Ledgewood, NJ was sworn in and qualified. The property encompasses 55,500 square feet (1.27 acres) the site is vacant and has been used for car and boat parking. There is a ten-foot wide easement along the easterly property line which provides access to Valiante Construction. Located to the north is Weichert Realtors, to the northeast across Mt Arlington Boulevard is Lake Hopatcong & Lake End Marina, to the southeast is Lakeland Deli, to the south is Valiante Construction, to the west is Canal Street which is utilized for the train station parking. Sheet S-3 on the site plan is submitted as Exhibit A-1, showing the landscaping plan and sign detail. Exhibit A-2 is seven photos, 1 and 2 were photos taken today showing a panorama view of the property, photos 3 thru 7 were taken at the time of the previous application. Previously in 2006 the Board granted the applicant a use variance with the approval conditioned upon the applicant obtaining preliminary, final site plan, all necessary C variances and design waivers. There was a discussion on the left hand side entrance to the property, that is paved and how trucks would enter and exit. Sheet S-3 shows the entrance, all the parking and how it will be utilized. For safety reasons there is a paved area at the end of the parking lot, the purpose is so that automobiles and trucks will not have to back out on to the street. There was a discussion on the parking area that would be paved and what will remain as gravel. The entire rear end of the property will be fenced in. It slopes down and the fence at the bottom of the property will help to maintain the area better. Seven parking spaces are proposed on the gravel area in the rear of the property. There was a discussion on trees that may need to be removed when the fence is installed. There was a discussion on a sidewalk across the front of the building as shown on Exhibit S-1 page 2 (there will be modifications to be made on this plan). Impervious coverage is a concern and any outdoor display is considered coverage. All this has been included in calculations they will work together with the Board Engineer to make this work. Exhibit A-3 shows the modifications to be made, an overview of this landscape island is to be used to separate the property from adjoining property. The easement is a shared driveway with Valiante Construction this is to be made wider and will be upgraded. Another upgrade to be made is the fence along the easement to help stop people from using it as a short cut from the train to the deli. New landscaping and curbing on both sides of the property lines and a new easement will be made with Mr. Valiante. There was a discussion on the concerns of the water drains that may over flow with storm water. The storm water must go to the back of the property. How storm water exits the property will be worked out with the Township Engineer. The applicant should not need a steep slope permit. There was a discussion on the impervious coverage. The site is unique. Open to the Public: No one stepped forward. Closed to the Public.

A staff meeting needs to be scheduled to address the impervious coverage issues and new plans will be needed. This application is to be carried to the May 9th 2011 meeting no further notice required, with an extension to the end of May.

Board of Adjustment 02/14/11

Motion to adjourn the meeting was made at 8:29 p.m.

Dolores Fardive,
Board Secretary
February 14, 2011