

**MINUTES
OF THE
ZONING BOARD OF ADJUSTMENT
CRANBURY TOWNSHIP
CRANBURY, NEW JERSEY
MIDDLESEX COUNTY**

APPROVED April 10, 2008

TIME AND PLACE OF MEETING

The regular meeting of the Cranbury Township Zoning Board of Adjustment was held at the Township Hall (Old School Building) Main Meeting Room, 23-A North Main Street, Cranbury, New Jersey, on February 6, 2008, at 7:30 p.m.

CALL TO ORDER

Dale Smith, Chairperson, of the Cranbury Township Planning Board, called the meeting to order and acted as the Chairman thereof, and, Josette C. Kratz acted as Secretary of the meeting.

STATEMENT OF ADEQUATE NOTICE

Pursuant of the Sunshine Law adequate notice in accordance with the Open Public Meetings Act was provided of this meeting's date, time, place and agenda was mailed to the news media, posted on the Township's Bulletin Board, mailed to those requesting personal notice, and filed with the municipal clerk.

MEMBERS IN ATTENDANCE

Glenn Johnson, Adrienne Kemp, Mel Lehr, Matthew McCarville, Frank Shea, Dale Smith

PROFESSIONALS IN ATTENDANCE

Steven Goodell, Esquire, Zoning Board Attorney; Virginia Guinta, Court Reporter; Josette C. Kratz, Board Secretary

MINUTES

Upon a motion to approve and seconded, the minutes for October 3, 2007, October 4, 2007, December 5, 2007, and January 9, 2008, were unanimously approved.

RESOLUTIONS

**ZBA 149-07 Daniel & Megan Pease
Block 33, Lot 34, Zone V/HR
4 Scott Avenue**

Bulk Variance to allow for an addition

Mr. Lehr motioned for the approval of the resolution. Mr. McCarville seconded the motion.

VOTE ROLL CALL

AYES: Mr. Johnson, Ms. Kemp, Mr. Lehr, Mr. McCarville, Mr. Smith
NAYS: None
ABSTAIN: None
ABSENT: Mr. Gerberich, Mr. Hebert, Mr. Patterson
INELIGIBLE
TO VOTE: Mr. Shea

MOTION CARRIED

APPLICATIONS

ZBA 102-05 **Rajesh Wadhwa**
 Block 18.02, Lot 4, Zone V-HR
 2709 Route 130 South
 Use Variance, Bulk Variance, Preliminary & Final Site Plan

REPRESENTATIVES: Barry Wham, Engineer
 Dr. Rajesh Wadhwa, Applicant
 Donald S. Driggers, Esquire

Notice was properly given and the board had jurisdiction to hear the matter this evening. Both Mr. Wham and Mr. Wadhwa were sworn.

Mr. Driggers argued that when the underground storage tank was removed twenty (20) years ago the removal met environmental requirements of that time. The Environmental Commission (EC) wanted additional testing performed, such as monitoring wells provided. Mr. Driggers felt that the EC was surpassing its jurisdiction and playing the role of the DEP & EPA.

Mr. Wham already performed a site inspection, took soil logs in several locations, cataloged the soils for drywells, and tested water samples on water that had remained above the area of the tank removal. The ground water samples had tested below drinking water standards. There was no indication that there had been a problem there.

The soil standards are parts per million and ground water standards are parts per billion. He felt it was very difficult to have a leaking tank and get a clean water sample. To get a clean water sample in the area of a tank would lead one to believe that the area was very good. The test results showed the water in that area was cleaner than the water draining off the street.

Mr. Gallagher, Chairman of the EC, having been sworn, indicated that they were concerned with the lower aquifer.

Mr. Driggers said he did not want to disrespect the EC, but that the tank was removed 20 years ago and that he felt they should not apply today's standards to a tank that was removed 20 years ago.

Mr. Wham felt that this site would have gotten a letter of no further action.

Mr. Gallagher, Chairman of the EC, sworn, apologized for the misunderstanding but indicated it was not the EC's intent to replace the DEP. He added yes, the regulations had changed, but after reviewing and analyzing the reports provided, the EC could not find any evidence to the absence of contamination.

Mr. Shea questioned Mr. Gallagher on his thoughts concerning whether the testing was performed appropriately. Mr. Gallagher commented that it was not demonstrated that contamination does not exist at the site. He said that the DEP did not have the advantage of seeing the imprint of the tanks taken out of the ground, the conditions of the tanks, was there staining, etc. It appears that there were samplings taken at the four corners of the excavation.

EXHIBIT EC-1 Two sketches drawn by J. Gallagher (attached)

Using the sketches, Mr. Gallagher delineated extensive views with regard to the sampling performed and the scenarios that could exist.

Mr. Smith thought that there was a gas station located at the property in the Mid 70's. We know the tanks were pulled around the late 1980's and has not been an active station on the property for about 30 years. At a minimum, the tanks have been out for 20 years.

Mr. Gallagher, dealing with the subject of the tests, indicated that there was some discharge on the site; it could have been service spillage or it could have been a hole at the bottom of the tank.

Mr. Smith asked about the likelihood of any contamination. Mr. Gallagher felt there was a possibility of contamination at the ground water level depending on how much of the product leaked.

Mr. Smith asked if it would be anything serious enough that we should have solid evidence after 20 years. Mr. Gallagher explained that if it were surface spillage, it would be very limited.

Mr. Smith said Mr. Wadwha was caught in a circle. When he came before us he believed he had a clean site and the request to go before EC became more of an issue than originally anticipated. It was the board's decision on what it chose to make of this. He asked if this was the type of risk where the community needs to be protected. He felt fortunate to have had this level of expertise on the EC to safeguard the Village, but the responsibility now falls on the Board to make a decision based on this report. He had experience dealing with DEP and would not blindly get anyone involved with DEP. He had not heard, after 20 years, that there was a situation on this site that was threatening the community health.

Ms. Kemp said she was struggling with the same thought; how much burden can we put on an applicant where the levels of contamination were below standards? Mr. Smith indicated that he was not aware of any public wells within the area.

Mr. McCarville felt that the application needed additional insight to make a decision. He felt Mr. Gallagher's testimony today shed light on what was and what was not there. He said that he did not see a whole lot of risk to the community based on the change of use.

Ms. Kemp said that the impact of the project would not exacerbate any contamination or risk.

Mr. Smith wanted to hear from the applicant's engineer on whether he thought this type of construction or use would make any existing situation worse.

Mr. Smith commented that after he read EC's memo, which asked for a preliminary assessment, he was not sure what that consisted of. Mr. Gallagher explained that the EC only focused on the storage tanks, but that there were other concerns with service stations such as oil, floor drains, and other potential hazards. When a preliminary assessment was performed, it would look back, use area photographs, DEP records, and try to piece together the information from the past. He had requested that an inspection be done in conformance with the technical requirements for site remediation in accordance with State standards for building investigations, including monitoring wells.

Mr. Smith questioned the cost impact. Mr. Gallagher described it was a "wait and find." If they find something, the cost will go up. Based on what we know right now, Mr. Wham would be in a better position to answer that question.

Mr. McCarville voiced concern over the possible risk and the level of responsibility which should be bestowed upon of the previous owners and regulatory agencies/commissions for environmental concerns that had already taken place. Mr. Gallagher said that he was not an attorney so he did not know the legal aspect.

Mr. Goodell mentioned that Mr. Wham testified that in his opinion that this letter (Mr. Sadat's) would qualify as a "no further action letter" from the DEP and asked Mr. Gallagher if he agreed with that. Mr. Gallagher answered that he believed the date it was presented to the DEP that they would not have issued a "no further action letter."

Mr. Goodell asked Mr. Gallagher if he knew what, if anything, would trigger DEP jurisdiction over this property. Mr. Gallagher commented that was a question for an attorney.

Mr. Goodell asked if he knew, based on the reports that he saw, if the property was cleaned to the existing standards at the time when the tanks were pulled in the 1980's. Mr. Gallagher said that he would have to research the information and knew standards have changed over time.

Mr. Goodell asked if the procedures that were used at the time were the standard procedures for dealing with underground storage tanks. Mr. Gallagher repeated that he did not know the regulations at the time. There should be visual inspection with sampling.

Mr. Goodell summarized that Mr. Wham testified about his experience with Sadat Associates, then questioned Mr. Gallagher's experience with that company. Mr. Gallagher informed Mr. Goodell that he knew Mr. Sadat worked for DEP for a long time, testing.

Mr. Goodell asked Mr. Driggers if Mr. Wham provided a report of his recent testing. Mr. Wham said that he did submit a report. Mr. Goodell felt that would be helpful for the record.

Mr. Driggers said that the information on the various procedures Mr. Sadat carried out was in the report, in which, Mr. Sadat concluded that there was no petroleum hydrocarbon contamination. Mr. Smith commented that it could be likely that it was not submitted to DEP because it was not a requirement at the time.

Mr. Smith opened the floor to the public for comment. There were no public comments made.

Mr. Smith, assuming that the applicant agreed to do the preliminary assessment, questioned if DEP would have gotten involved.

Mr. Gallagher said he did not know if they would have necessarily gotten involved.

Mr. Smith felt this board could not consider themselves an enforcement arm, nor did he feel the EC was asking the ZBA to become an enforcement arm to the DEP. Mr. Gallagher said that they were merely looking at enforcement from the environmental angle.

Mr. Smith addressed the applicant on what the cost would be for a preliminary assessment. Mr. Smith voiced that he would feel differently about this if he knew it was \$100 undertaking versus a \$10,000 or more undertaking. Mr. Wham said to do a preliminary assessment he would have to determine the amount of ground water flowing and dig 15 feet or beyond, then he would have to install monitoring wells, etc. He felt the cost could be at least \$5,000 to possibly \$10,000 or more. He added that this was no different from the residential properties in Cranbury as he had removed many oil and gasoline tanks from residential properties.

Mr. Goodell charged the board that this was an application that was initially before the ZBA. The issue was a use variance. The property is in a residential zone. This was an application for commercial use in a residential zone and there was evidence that there had been previous commercial uses on the site. The main issue before the board was whether or not special reasons could be proven to justify any commercial use continuance on this site and whether or not the negative criteria had been proven by the applicant.

Cranbury has an Environmental Commission and one of the powers that the EC has is to review applications that come before the Planning and Zoning boards. He added that when the matter was heard a year ago, it had not been to the EC before the board actually heard the application. The best practice is to have applications go before the EC before they come to the ZBA so the board has the report when they make their decision. The ZBA made the variance conditioned upon the review and approval by the EC.

In this instance, the EC completed its review and submitted a report. The report had conditions that the applicant felt were onerous and should not be applied. Therefore, the decision on how to proceed is up to the Board. Mr. Goodell indicated that the real issue was if the board had this report before its review of the application, would it have changed its decision and how? The EC is not the DEP, nor the ZBA. However, the ZBA does have certain powers in the Land Use Law to make sure that this site is particularly suited to the proposed use and that the variance that is granted will not cause detriment to the neighbors, the Master Plan or the Zoning Ordinance.

The EC makes a point that it was their determination that the reports do not say that there is no contamination. Mr. Goodell said that Mr. Driggers makes the point there was a clean up performed in the 1980's that was done to the standards applied at the time.

Mr. Wham said they might have proposed a crawlspace. Mr. Wadwha clarified there was a crawlspace. There was a note that there may be a basement under the older portion. Mr. Smith said that they would have to take the applicant's word tonight that there was a basement.

Mr. Smith felt this was not the old service building; it looked more like something that was built in the 70's. It was Arnold's Bakery and then a computer repair store.

Mr. Shea asked if the board was being asked to vote so the application may go forward without any additional testing. Mr. Smith said that was correct. He felt that if there was a basement, they would be excavating down to the levels equivalent to the diagram shown. Mr. Smith asked if the applicant would have the soils engineer or appropriate environmental engineer on-site when the excavation was completed, and before any additional work was done, to visually inspect and verify that the area was not contaminated with hydrocarbons and be willing to file a report at that time. At least there would be an idea if there were anything perched at that level.

Mr. Driggers said yes.

Mr. Gallagher said it would provide more data but did not feel that it necessarily closed the gap.

Mr. Smith said this would give us additional information. It would be a situation if there was anything major going on he felt they would see it. The ZBA chose to enforce this requirement, that the site must be visited at the time of the excavations being completed and before any backfilling or foundation work performed, to view the open excavation of the trench.

Mr. Driggers said they were willing to uncover the soil and look at the situation. If we can smell something we know there was a problem, but they were not going to dig an additional two feet to send samples to DEP.

Ms. Kemp said Mr. Wham testified that he has an obligation to do something if he smells something at the bottom of that hole.

Mr. Driggers felt since Dr. Wadwha was a health professional he would want to know that.

Ms. Kemp motioned for the approval to allow proceeding to construction without further testing of the site, but would have an environmental engineer on site during excavation to investigate and visually inspect the trenches. If anything were found during the excavation, he would immediately report it, per the discussion, to the Zoning Board and simultaneously to the Environmental Commission. Mr. McCarville seconded the motion.

VOTE ROLL CALL

AYES:	Mr. Johnson, Ms. Kemp, Mr. Lehr, Mr. McCarville, Mr. Shea, Mr. Smith
NAYS:	None
ABSTAIN:	None
ABSENT:	Mr. Gerberich, Mr. Hebert, Mr. Patterson
INELIGIBLE	
TO VOTE:	None

MOTION CARRIED

Mr. Smith wanted the EC to understand that this board did support the EC.

**ZBA 148-07 Thomas & Tiffany Richardson
 Block 23, Lot 23, Zone V/HR
 127 Plainsboro Road
 Fence Variance**

Mr. Richardson being sworn and given adequate notice for the Board to have jurisdiction to hear the matter.

The applicant had purchased the fence, ill advised, under the assumption that it would be okay to erect the fence. The applicant picked this type of fence to hide the view of their dogs, where a four-foot fence would not give them an opportunity to avoid distraction of the dogs.

There was existing vegetation in the back yard. Along the property's right side was Wheatfield Road. There was a neighbor directly behind them and directly to the left. None of the fence would be visible from Plainsboro Road. Only a small portion would be visible from Wheatfield Road.

The board asked the breed of the dogs. The applicant stated they had a Great Dane, Yellow lab, Boarder Collie, and Australian Pit Terrier.

There was one house to the west. The closest house was to the right on Plainsboro Road which sits back about the same distance as the applicant's house, which was in front of where he wanted to locate his fence.

Mr. Goodell explained that a variance was needed for the Type 5 fence. Type 5 fence could only be erected in the rear yard, behind the house. The purpose was to make sure tall, solid fences were not in the front where they would have a "wall like" appearance or obstruct views. The only reason why this was a problem was the property technically had two front yards; one on Plainsboro Road and one on Wheatfield Road. This fence was in the rear from the perspective of Plainsboro Road, not so from Wheatfield. Therefore, the board was trying to establish that no one would be affected by the appearance of the fence that lived on Wheatfield Road. In addition, a variance was needed for the length of the Type 5 fence.

Mr. Richardson indicated that he did speak with his neighbors.

Mr. Shea motioned for the approval to allow the applicant to erect the fence as discussed. Mr. McCarville seconded the motion.

VOTE ROLL CALL

AYES:	Mr. Johnson, Ms. Kemp, Mr. Lehr, Mr. McCarville, Mr. Shea, Mr. Smith
NAYS:	None
ABSTAIN:	None
ABSENT:	Mr. Gerberich, Mr. Hebert, Mr. Patterson
INELIGIBLE TO VOTE:	None

MOTION CARRIED

ZBA 150-07 Blake & Cynthia Coppotelli
Block 20.02, Lot 10, Zone RLD-1
4 Scottsdale Court
Variance to permit a pool in the front yard

Mr. and Mrs. Coppotelli were sworn. Mr. Coppotelli explained that the application was to allow the erection of a pool in their backyard which was also considered a front yard.

Mr. Goodell asked if the exterior fence was part of the application. Mr. Coppotelli said it was not part of the original application but something the landscape architect drew and submitted to the board as part of the landscape plan. Mr. Goodell said the board could not consider the exterior fence because notice was not given for the fence.

If required to have a separate variance for the exterior fence, they would do that at another time.

The applicant proposed a 4.5 ft aluminum fence around the pool as required by code.

Ms. Kratz asked if it was not assumed that construction of a pool requires a safety fence around the pool itself. Mr. Smith said if it was a “pool safety fence,” that was one in the same. If the applicant was wanting a fence around the property it was a different issue. He felt a requirement of pool construction was erection of a safety fence around the pool. Mr. Smith added that he could not see how the ZBA could approve a pool without the safety fence for the pool.

Mr. Richardson said that the pool’s fence would go along the curve of the edge of the concrete apron. Fence would be aluminum 4.5 feet high, the standard design.

Mr. Goodell said that this would be a hardship variance. The hardship would be that this was a corner lot with three front yards, which precludes them from meeting the normal lot requirements. The negative criteria would be where you want to look at the landscaping as screening. Last question, would be whether the pool was an appropriate residential use.

Ms. Kemp motioned for the approval of the pool and the pool-fence per the Board’s discussion. Mr. Shea seconded the motion.

VOTE ROLL CALL

AYES: Mr. Johnson, Ms. Kemp, Mr. Lehr, Mr. McCarville, Mr. Shea, Mr. Smith
NAYS: None
ABSTAIN: None
ABSENT: Mr. Gerberich, Mr. Hebert, Mr. Patterson
INELIGIBLE
TO VOTE: None

MOTION CARRIED

ADJOURNMENT OF MEETING

There being no further business, on a motion duly made, seconded, and carried, the meeting was thereupon adjourned 9:30 p.m.

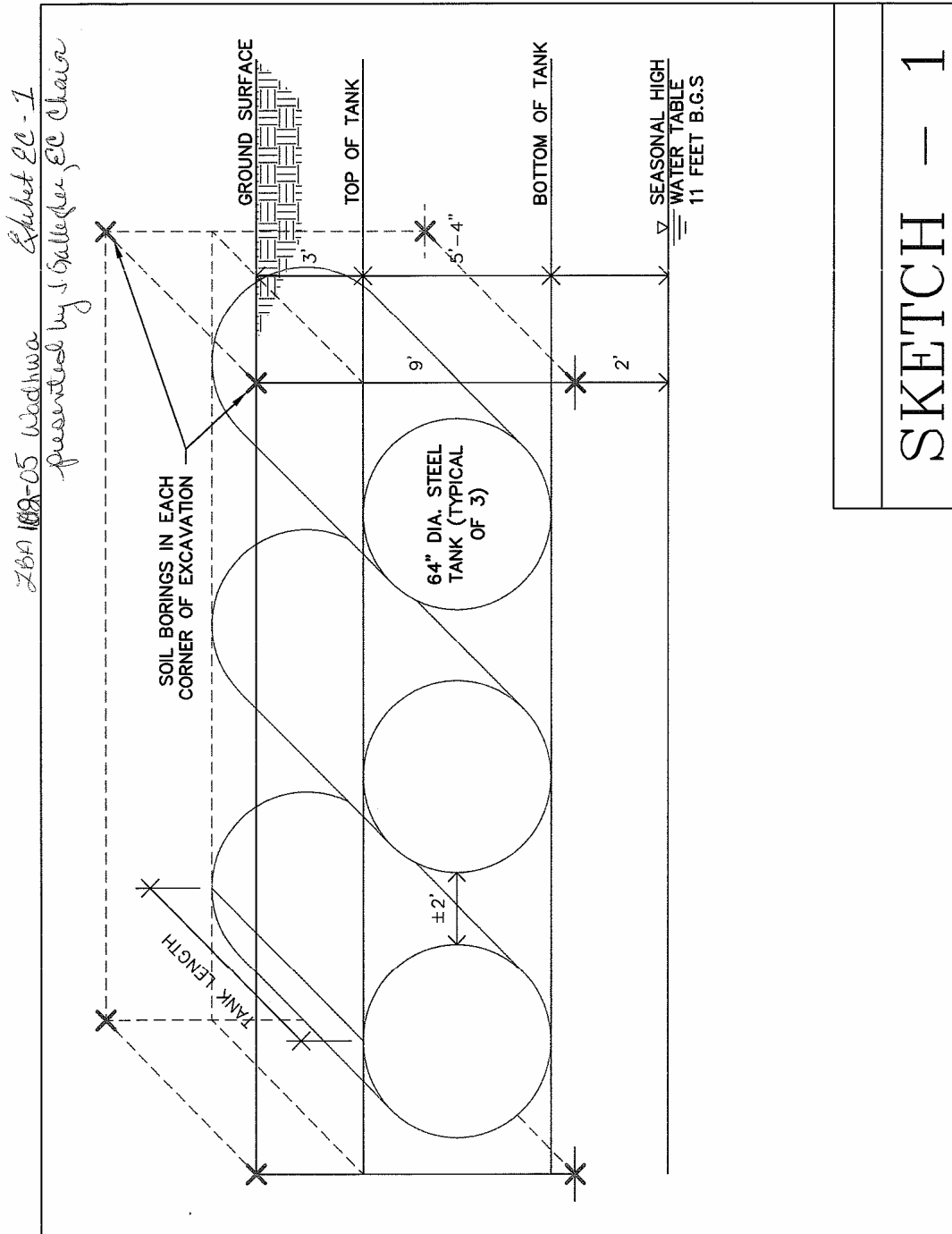
CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify; that I am duly elected and acting secretary of the Zoning Board of Adjustment and, that the foregoing minutes of the Zoning Board of Adjustment meeting, held on February 6, 2008, comprised of 11 pages, constitute a true and correct copy of the minutes of the said meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name of said this April 10, 2008.

Josette C. Kratz, CPS

/jck



SKETCH - 1

ZBA 102-05 Wachwa Exhibit EC 1
 Presented by J. Gallagher, Esq.

