

**MINUTES OF REGULAR MEETING OF THE
JACKSON TOWNSHIP BOARD OF ADJUSTMENT MARCH 17, 2021**

The March 17, 2021 Jackson Township Board of Adjustment Meeting was called to order at 7:05 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement and announced that adequate notice has been provided for this meeting.

ROLL CALL: Jeanine Fritch Kathryn McIlhinney, Board Secretary
 Stephen Costanzo Scott Najarian, Board Vice Chairman
 James Hurley Carl Book, Board Chairman
 Toni Ann Comello
 Michelle Russell- Alt #1

Also Present: Sean Gertner, Board Attorney, Evan Hill, Board Engineer, Ernie Peters, Board Planner, Frank Miskovich, Board Traffic Engineer, Jeffrey Purpuro, Zoning Officer, Fran Dibella, King Reporting, and Danielle Sinowitz, Zoning Board Recording Secretary.

Motion to approve a voucher for Francesca DeBella, King Reporting in the amount of \$250.00 for March 17, 2021 & Danielle Sinowitz in the amount of \$150.00 for the meeting of March 17, 2021 by NAJARIAN/ McIlhinney. Yes: Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

Announcements: Mr. Gertner announced there are some changes to the agenda. Mr. Gertner advised it's the understanding that item number 2. **Anthony & Coleen Sgammato, block 9704, Lot 2, 3 Whispering Grove Blvd** on the agenda is being carried. Mr. Purpuro stated it's being carried to April 7th there was issue with notice to the paper. Mr. Gertner announced item 2. **Anthony & Coleen Sgammato, block 9704, Lot 2, 3 Whispering Grove Blvd**, has been scheduled to the April 7th meeting but there will be notice and in addition application number 4. **Strategic Equity Solutions, LLC, Block 6504, Lots 14-16, CPL. Luigi Marciante Memorial Drive** will then be the second matter on the agenda, and thirdly what is application number 5. **WSNP LLC, Block 6401, Lot 22 & 21, 146 S. New Prospect Street** will be the third matter for the evening.

Applications: 1. **Rivka & Ziv Hager, Block 7210, Lot 10, 31 Montana Drive- Rivka Hager- home owner- affirmed-** said she has a corner lot with children, and it would be helpful if the fence could go to the sidewalk so there is more room for them to play. Mr. Book asked if there is a fence there now. Ms. Hager advised there is a fence that goes from the house. Mr. Book asked with looking at the clear point services survey that was provided; dated March 28, 2020, and if someone is standing on Montana looking at the house its highlighted where the fence is desired, is the fence desired to go from the rear right corner straight out to the sidewalk to Brookwood parkway and along Brookwood to the end of the property line which is the back yard and turn and go across the yard until it meets the chain-link. Ms. Hager said she would like the fence to go until there are privacy trees. Mr. Book asked the height of chain link fence. Ms. Hager stated 6'. Mr. Book asked if the fence will go from the 6' fence going along the rear until it meets the chain link fence will it then stop. Ms. Hager mentioned she would like to go in further. Mr. Gertner asked if the requested fence will be replacing a portion of the existing chain link fence. Ms. Hager stated a portion of the back yard has privacy bushes and there is approximately 2 ½ feet where there would be more 6' fence. Mr. Gertner stated there is a note where there is 36.8' from the property line and the purposed fence goes an additional 5 "x's" what is that. Ms. Hager mentioned after that distance there is privacy bushes. Mr. Gertner asked how many feet is that distance from the corner to the bushes. Mr. Purpuro stated with looking at the survey, the section beyond the chain link fence doesn't require a variance. Mr. Gertner stated there is an existing chain link that goes almost from that corner to the back. Ms. Hager advised that was correct. Mr. Gertner stated the reason the corner lot requires variance is because there are 2 fronts. Mr. Purpuro stated the concept is there are 2 fronts, 2 sides, and no rear and anything in the front over 30" requires variance relief. Mr. Gertner advised the request for the privacy fence runs from the technical back corner to the property line and the driveway is close to that, is there a site triangle issue. Mr. Hill stated based on the survey the driveway is approximately 10' from the curb, so assuming a vehicle stops exiting the driveway there should be enough room to see however backing out there should be caution. Mr. Costanzo noted there is concern of the pedestrian traffic on the sidewalk. Mr. Hill stated it will be adjacent to the sidewalk and it would be to the property line, and if there is concern the Board can deliberate if the fence should be further away from the sidewalk. Mr. Costanzo stated there is an adjacent driveway near the applicant and there could be an effect in sight. Mr. Book asked if the fence that is there now facing Montana is part of the application tonight. Mr. Purpuro advised it is not a part of the application. Mr. Najarian asked how high the fence that was installed currently is. Mr. Purpuro advised there was an approval for 6' solid and a 4' open. Ms. Fritch mentioned seeing the property and understands why the fence is desired however backing out raises concern, and that could be hazardous, is there any way the fence could be brought in slightly. Ms. Hager stated if it needs to be moved in it will be. Ms. Fritch asked if there is a fence where the trampoline is. Ms. Hager advised there is currently. Mr. Book echoed Ms. Fritch however the professionals have spoken and there might be a solution provided to fix the safety concern. Mr. Hill stated what is being recommend is to set up the fence along Brookwood being up against the sidewalk it should be a min of 5' from the property line and that will give pedestrians, the applicant and the neighbors adequate site to leave. Mr. Book asked if that would be acceptable. Ms. Hager said yes.

Opened public comment;

Kim Battle- 34 Brookwood Parkway- sworn- said it's a busy corner and it's a busy street and the fence coming the property line 5', and off the sidewalk, will the cars still be parked in the driveway.
Mr. Book advised there is still full right onto the driveway.

Kim Battle- 34 Brookwood Parkway- said the driveway is going to be crossed, and there is a driveway to 33 Brookwood Parkway
Mr. Peters mentioned if you're standing out on Brookwood Parkway looking at the applicants property the fence will be started from the right rear corner and will go out to Brookwood 40-50' to the property line and will go down the property

Kim Battle- 34 Brookwood Parkway- thanked the Board for the clarification

Seeing no one else use the "raise hand" function, public comment closed;

Ms. McIlhinney made a motion to approve the fence as testified to 5' in from the property line which will take care of the sight issues

2. Strategic Equity Solutions, LLC, Block 6504, Lots 14-16, CPL. Luigi Marciante Memorial Drive- Adam Pfeffer- attorney for the applicant- stated this is an application for time an extension and Mr. Borden will address the technical, and originally there were 2; 1 year extensions and that extension would only take this to May 2021, and there is a 3rd one year extension on the record and that's because this would be back in a few months.

Ian Borden- president with Professional Design Services, professional planner licensed in NJ- credentials accepted- sworn- Mr. Borden stated this is here for an extension, the project/ application has obtained a preliminary final major site plan approval with a D-1 use variance with resolution from 2017 and this is here because that extension expired as of May 2019 and the applicant is seeking preliminary and final major site plan and this is off of county line road across from the old Italian American Club, and the design was dictated by the existing of a large utility easement along the front of the site, and that has been obtained and there have been no changes to the project and the project remains the same in all aspects and as Mr. Pfeffer said there are 3; 1 year extensions and this application was submitted in August of 2020 and the extensions were to be obtain and that would put the project to May of 2021 and since the 3rd year is being sought it would project to May 17, 2022. Mr. Book asked if the easement issue and the pandemic are the issues for the delay. Mr. Borden stated that is correct. Mr. Peters advised there are some new members who may have no heard of a time extension, and when there is an approval for a sub division of a site plan there are certain rights and if something is approved tonight there cannot be a change to what can be done in the zone such as commercial to residential, and when the original approval happened, there was 2 years of protection and there are up to 3; 1 year extensions that can be requested on a site plan approval and there would have to be a time to come before the Board or build the project and there needs to be proof to move forward with the project and because of COVID the state acted to a permit extensions and if there was a valid approval in April 2020 the applicant would seek approval and there is extension from May 2019 to May 17 2022, and Mr. Book asked Mr. Boden for the reason, and they were given and the requirements have been met. Mr. Hurley asked if the basis is based on COVID. Mr. Borden advised it was not only that, the JCP&L access to the easement was also an issue. Mr. Hurley asked if something that is expired can be extended. Mr. Hill stated the approvals are not expired just the zone change protection has expired. Mr. Peters asked if the approval is still valid. Mr. Borden said yes. Mr. Hill stated Mr. Borden and his office have been corresponding to comply with the resolution.

Opened public comment; seeing no one use the "raise hand" function, public comment closed.

Motion to approve by NAJARIAN/ McIlhinney. Yes: Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

Mr. Pfeffer stated he is here for application **6. Thomas D' Amore, Block 23108, Lot 29.02, 440 Basso Street**, and it would be asked that the application be carried as the site plan is not completed and it will be re noticed. Mr. Book asked if the applicant is seeking to carry to another date. Mr. Pfeffer stated that is correct so, Mr. Borden can complete the site plan and once completed there will be notice so the applicant is asking for a carry not a date. Mr. Gertner announced for members of the public, application number **6. Thomas D' Amore, Block 23108, Lot 29.02, 440 Basso Street** will be carried at the request of the applicant, and the application does waive the time requirement and that after has not been formally re shielded and there will be re notice when there is a new date set.

3. Luxor Drive 1462 LLC, Block 13401, Lot 2.02, 4.04, 15, 16, 24, 26, Green Valley Road- Adam Pfeffer- attorney for the applicant- stated this is a request for interpretation and there is an application for the Planning Board and there was question by Mr. Peters, and this is in the R-3 and R-1 zone it's over a 30 acre tract and the majority of the tract is in the R-3 zone and there was question raised for density in the R-1 zone, and if that is correct the is way that application is presented, that would have to come before the Zoning Board and rather than go before both Board's, the idea was to come for the interpretations first.

Christine Nazzaro- owner of the Cofone consulting group, and has been a licensed planner for 25 years and has been before the Board's in Jackson and several other Board's across the state- credentials accepted- sworn- stated the hope would be to have a straight forward situation, as Mr. Pfeffer indicated there is a line share in the R-3 and R-1 zone, and the most simplistic way to have this presented it to purpose lot 24.01 and 26.01 would be assigned to the R-1 density which would comply, and there is a section in the Jackson ordinance, chapter 244-44 zone boundaries which recognizes there is a zoning split and the line can shift and there an allowance for 20' of shifting and it makes sense to assign the dominate land area where the lot sits, and the sub divisions could be drawn for compliance and there could be land drawn down and it makes the most sense to bring the cul de sac known as Luxor Drive and apply in the way where the conforming subdivision would support the ordinance recognition, and it makes sense to shift the line slightly, and the density in this area is in compliance. Mr. Book mentioned reading through the letter, and the assumptions to Mr. Peters words, there is hesitation to call the shot and make policy and with reading those sections there is confusion of what the intent was, how is this supposed to be approached, there is a question as to what exactly is being asked to be interpreted. Ms. Nazzaro stated the question is to interpret the zoning ordinance, and the application to the R-1 or the R-3 zone as its split thought the parcel, and unlike other cases where variances rise and fall an interpretation will be binding and follow, and the interpretation will be how the zoning is applied on a split parcel. Mr. Peters stated at the end of the day there is no exception to what was said and there could have not been lots across zone boundaries and the exhibit should be brought closer to show the zone boundaries and see what is in split zones and see what the zoning requirements are in those zones. Mr. Pfeffer mentioned there is a printout being provided of what's on the screen, and looking at what's being provided, everything to the north is R-3, and the red line through the paper shows everything in the R-3 which is 39 acres. Mr. Hurley asked if the questions was weather this should go before the Planning Board or the Zoning Board, because on the density issue if it's a dentistry violation it goes to one Board and if there is no density violation it goes to the Planning Board. Mr. Pfeffer stated that is correct. Mr. Peters stated part of the interpretation would be assigning zoning requirements to the lots in the split zone and it would indicate whatever lot is in whatever zone will have standards for that zone. Mr. Hurley mentioned that density is based on number of units for gross land, and this is talking about the units in R-3 and R-1 and the only unit is the one lot is that correct lot 2.05. Ms. Nazzaro said no, it would be part of 2.05. Mr. Hurley asked if that lot will have a dwelling unit. Ms. Nazzaro said yes, and advised that lot 2.05 is where the zone line is, and the dwelling units were on lots 24.02 and 26.02, and the zone line spilt the lot not the unit. Mr. Hurley asked if the dwellings were moved back would it be in the zone. Ms. Nazzaro advised there are wetlands areas that cannot be touched, and that question was asked and there are constraints. Mr. Costanzo noted if it can't be moved back can it be moved forward. Ms. Nazzaro stated it can be moved into the R-3 zone which would eliminate the issue, and the R-3 standards would have to be complied with. Mr. Hurley asked if the house were moved to the R-3 zone where all accessory uses would comply, if that is done there would be no density violation. Ms. Nazzaro stated that would apply the R-3 standards to all units in the R-3 zone, and that would resolve the issue. Mr. Costanzo asked with that mind set if the future home owner were to install a structure how would that person be effected with the main dwelling in the R-3 zone with the structure in R-1. Mr. Hurley noted that would be a legal conclusion, and if there's an accessory structure, the bulk requirement would be to the structure. Mr. Gertner stated with following up and

what would be suggested is that the applicant carry this applicant therefore the Board doesn't have to reach the question, and if the application can be resolved and there can be a request to withdraw the application, the application can go before the Planning Board so if the vote was in favor there would

Be the concern that Mr. Costanzo mentioned, and asked if that is a workable solution. Mr. Peters agreed, and mentioned that if the Planning Board didn't think something it could be carried and there can be specification of what the Zoning Board should ask and at this point the issue has been taken care of and now it would be proper to proceed back to the Planning Board and if this was to be carried it would serve the purpose. Mr. Pfeffer stated the is concern is if the Planning Board disagrees this would have to come back before the Zoning Board and the theme is that if the residential unit is in the zone there would be a preference that would be ruled on so this wasn't coming back and forth. Mr. Gertner agreed that's a fair request so the applicant goes back to the Planning Board with an affirmative resolution with how the Board interpreted, and based upon the application presented the Board interprets that the applicable zoning ordinance to calculate density based upon the location of the primary residence and that alleviates the concerns of the chair to some extent and as to this applicant there is an affirmative statement as it applies to the application. Mr. Hurley stated if lot is relocated to be in the R-3 there would be no density variance. Mr. Najarian noted there were wetlands mentioned, and asked what the severity is. Mr. Pfeffer stated it's a repairing buffer and the house is outside the 300' line.

Opened to the public; seeing no use the "raise hand" function, public comment closed

Mr. Hurley made a motion to approve based to interpretation, and the question that has been presented that weather or not a D-5 variance is presented, and as long as the dwelling unit on 2.05 is moved completely into the R-3 zone there is no density issue.

Motion to approve by HURLEY/ Najarian. Yes: Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

Recess taken at 8:11 p.m. reconvened by Mr. Book at 8:25 p.m.

4. WSNP LLC, Block 6401, Lot 22 & 21, 146 S. New Prospect Street- Adam Pfeffer- attorney for the applicant- stated this is an application to convert the single family dwelling to a house of worship, and the use is permitted however the house doesn't meet all the standards and there is a traffic light almost directly in front of the property, and there are residents surrounding the site, and across the street there is a dental office and a standalone building and to the right, there is a small strip center, as indicated the use is permitted however the closest house of worship is approximately 2 miles away in Lakewood and there is no synagogue in this vicinity for people in the area and so everyone understands those practicing cannot drive during Sabbath and do have to walk, and that is why this house of worship is being requested.

Glenn Lines- professional engineer/ planner, licensed in the state of NJ. Mr. Book asked if Mr. Lines has been before this Board before. Mr. Lines said yes. Mr. Book asked if Mr. Lines will be testifying as a planner or engineer. Mr. Lines advised mainly as a planner and some engineer. Mr. Book stated there are newer members and they should have the benefit of hearing credentials. Mr. Lines advised he graduated in 1981 with an engineering degree and has been practicing since. Mr. Book advised Mr. Lines credentials have been accepted.

Mr. Lines stated the application is for the conversion of existing house to a synagogue which is permitted as long as there is compliance with chapter 244-47 section C-2 which is in regard to lot area, width, frontage, and buffer requirement, and there was some background and to go through. Mr. Lines advised there is a membership lists to the synagogue, and all members live within a mile of the synagogue either north or south and the main development is to the north, and the other is where the Hickory Hill development is, and to the south and there are some members who live on South New Prospect and they are within 1 mile walking distance, and there are 115 members on the list and the other thing about the areas is that around those homes there is 876 residential properties so 13% of the houses in this area are occupied by members of the synagogue and for this area there is greater percentage compare to some other areas in town, and during the week there is morning prayer at 6:30 a.m., and 7p.m there are benign prayers which is attended by the most members and there is 10 a.m. morning prayer which is when most of the men pray while at work which is not un common, and one issue in the letter was the vehicular access to the site and that is currently at the traffic signal, and to do the site plan there will be widening to the existing driveway to accommodate 2 way traffic and there will be Ocean County Planning Board approval, and most pedestrians travel from the sidewalk, and to the south there is a foot path and this is the east side of lot 23 and that does along South New Prospect. Mr. Costanzo asked if there were exhibits prepared. Mr. Lines mentioned he was not aware that this would be done in person. Mr. Gertner stated the notice and the requirements are to pre mark exhibits 48 hours in advance so the public can have access, and to some extent that is not a basis for not having the exhibits available they should've been available 48 hours prior. Mr. Book mentioned that creates a certain technical issue, there are numerous members of the public who cannot be present and if they the exhibits were submitted and uploaded they would then be able to view what is being presented and without them being here there is somewhat of a caution on how to proceed, can that be addressed because the foot paths at a minimum are a critical safety issues, Board members live here and drive and see that folks are taking their lives at limb walking here and at some point in time there will be proposal for a safety way for those people to get here safely for Sabbath. Mr. Pfeffer stated these are existing walking paths that are off the property, there is a development that is behind this site and to the left and there is fencing. Mr. Gertner stated representations are being made and one reason the Board would like to see a google image is to see the lot and the foot paths to the specific site, and to continue moving forward and there will be questions based on the verbal testimony and there is a reputation to opening to the public and the applicant can see the questions and comments and whatever exhibits would be helpful to make the application. Mr. Pfeffer advised he wanted all the facts out there, and these are existing walking paths that go from this site to Brewers Bridge Road and there is a corner property that is UN developed. Mr. Book asked if the foot paths run along south new prospect road. Mr. Pfeffer advised that was correct. Mr. Gertner stated the municipality has a pedestrian safety fund and these are footpaths that are practically paved and would part of the request of application be to approach the township to utilize some funds for a sidewalk. Mr. Pfeffer mentioned this is where pictures are worth 1,000 words and there was a question asked and there were 2 answers given, and its UN sure who paved the property. Mr. Hurley stated this is an application for D-3 conditional use, however for which lots. Mr. Pfeffer stated this application has been around for a while and there was submission for this some time ago and there was an issue raised of a recorded easement and whenever this was subdivided, and the conditional use on lot 21 is not being sought, the items have been joined and the house for lot 22 is on both peoples. Mr. Hurley mentioned that lot 21 is a single family dental use that is existing and lot 22 has a dwelling that crosses over into 21 and the point is there is an easement to continue that structure however that easement goes back a long time, and it allows for one residential property and it doesn't allow for the use to change and since lot 21 is included why is there no variance for 2 principal buildings on the same lot. Mr. Pfeffer stated as far as the assessment goes, the easement doesn't say only residential purposes, and the assessment should be **Exhibit A-1**, it's an agreement recorded in 1997. Mr. Hurley asked if the term house can be interpreted as residential, there will be 2 principal structures on one lot which will be lot 21. Mr. Pfeffer stated Jackson changed the lot numbers, and as far as the principal uses as a technically there is a section in the corner of the residential house, and there is an easement

and with that this is not seeking the house of worship use for lot 21, the application is only seeking for lot 22 and added lot 21 into the application due to some case law because this was part of an original subdivision to make the application. Mr. Hurley had concerns with making the decision, if lot 21 has a single family dwelling and the owner wants to demolish the house and build a larger home he or she will have the problem that this Board granted 2 structures on the same lot, how does the Board deal with this, it will create problems in the future. Mr. Book asked if the client owns both lots. Mr. Pfeffer advised the

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client does not or there would be less requests. Mr. Book asked what the possibility is of drawing a new line. Mr. Pfeffer stated there are other issues that would be created however there would be no objection exploring that option and to Mr. Hurley's train of thought when this subdivision was approved the house existed and there were already 2 principal uses existed, and how is that different then what is being purposed tonight. Mr. Hurley mentioned the problem is that there are 2 principal structures on the same lot which is a D-1 variance which is different from a D-3 and when the presentation is complete there will be conditions and there is detrimental impacts on this and the chairman suggested a subdivision and that might be a solution or reduce the size of the building or destroy the other building on the other lot and both of those would be un reasonable conditions. Mr. Pfeffer stated these are new issues raised, and were not in the resorts and in conjunction with the exhibits there is the desire to get further however there are good questions being asked and there are people on zoom in support and others who would like to give comments, and it would be best to carry the application. Mr. Gertner stated the analysis is that the application creates a situation where the D-1 is triggered or if they add a minor subdivision will it serve the bulk requirement, and its fundamental and this is why applications come to the Board for new questions to be raised and the applicant has not had a chance and there hasn't been enough testimony for a base for the public comment and there are members listening for and against, and the applicant based on a new citation the application is seeking a legitimate carry. Mr. Book asked when the public is invited to comment or raise question that is required that the questions and comment be confined to the testimony given. Mr. Gertner advised that is the process and the rules in that, and is difficult to comment on issues that have yet to be presented. Mr. Book mentioned that the inclination is not open to the public. Mr. Costanzo agreed that public testimony would have to be directed on what was testified too and it's premature, it's welcomed however it's premature. Mr. Gertner asked what time frame is needed to make this analysis as indicate the subdivision potential. Mr. Pfeffer mentioned that it was recommended to reach out to the property owner for a lot line adjustment and the other things would be subject to 30 days. Mr. Gertner stated the next meeting is April 7th which is in the middle of Passover, and 30 days would be to the April 21, 2021 hearing. Mr. Purpuro noted that May 5th would be better. Mr. Pfeffer stated that would allow for more time for the most answers. Mr. Gertner announced for members of the public application number **4. WSNP LLC, Block 6401, Lot 22 & 21, 146 S. New Prospect Street-** will be carried to the May 5th meeting, and the public is directed to the municipal website for exhibits and zoom information.

Motion to adjourn by Costanzo at 9:03 pm. Yes: Unanimous by all those present.

Respectfully submitted,

Danielle Sinowitz,
Zoning Board Recording Secretary