

**TOWNSHIP OF WALL  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF THE REGULAR MEETING  
HELD IN THE MUNICIPAL MEETING ROOM  
JUNE 16, 2010**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Chairwoman Mary DeSarno at 7:30 P.M. Members present were Chairwoman DeSarno, Vice Chairwoman Wilma Morrissey, Ray Slocum, Kevin Orender, Robert Morris, Nance-ellen Draper, first alternate Mary L. Burne, second alternate Mark Margadonna, Attorney Cramer, Planning Secretary Roberta Lang, Recording Secretary Betty Schinestuhl, Engineers Zahorsky and Gerken, Planner Bergailo, Construction Official Paul Rabenda and Reporter Arnone. Mr. Gray was not in attendance.

**SALUTE TO THE FLAG**

Attorney Cramer announced that all requirements under the Open Public Meetings Act had been complied with for this meeting and read the purposes of the Board of Adjustment.

**CARRIED APPLICATIONS**

**#BOA 8-2010** – Date application complete: April 26, 2010. Carried from June 2, 2010

**APPLICANT:** GREGORY MOLOGY

**PROPERTY:** 1802 Celeste Drive, Block 804.01, Lot 11, R-60 zone

**RELIEF REQUESTED:** Bulk

Entered into evidence:

A-1 Jurisdictional items  
A-2 Proposed pool house plan prepared by Edward M. Weinert dated February 5, 2010  
A-3 Set of architecturals

BOA-1 Engineering plan review prepared by Matt Zahorsky dated June 1, 2010  
BOA-2 Planning plan review prepared by John Hoffmann dated May 28, 2010  
BOA-3 Zoning standards, tax map & aerial images prepared by John Hoffmann and Matt Zahorsky dated May 18, 2010

Sworn by Reporter Arnone:

Gregory Mology  
Matt Zahorsky  
John Hoffmann

Mr. Mology explained he is here for a variance for a pool cabana. He said a 220 s.f. cabana is permitted and he would like one 416 s.f. Landscaping will be also be added. No fences will be taken down. He said he will meet all setbacks.

Chairwoman DeSarno asked what will be inside. Mr. Mology explained some storage of summer equipment. There will be no living space, no running water and no bathroom.

Chairwoman DeSarno said part is closed and part is open. Mr. Mology said yes.

Chairwoman DeSarno asked about a fireplace. Mr. Mology said it will be outdoors.

Chairwoman DeSarno asked Mr. Mology to describe the exterior. Mr. Mology said some of it will be stucco and the fireplace will be brick.

Mrs. Morrissey asked, regarding storage, can any of that be placed in the garage or basement and compromise on the square footage. Mr. Mology said he would prefer not putting it in the basement. Mrs. Morrissey asked if there is a way to make it smaller. Mr. Mology said no, he prefers the 400 s.f. it is more fitting to the backyard.

Mrs. Morrissey asked if there will be a sink. Mr. Mology said no running water.

Mrs. Morrissey asked about landscaping. She asked if he would be willing to put landscaping around. Mr. Mology agreed.

Chairwoman DeSarno asked about the pet enclosure. Can that be moved so it is 10' off the property line? Mr. Mology said that is gone.

Mr. Slocum said there will be no restrooms. Mr. Mology said correct.

Mr. Hoffmann asked Mr. Mology to clarify the storage area. Mr. Mology said it will be used in the summer for recreation purposes. He said he is not going to put doors on it. It will be to store outdoor furniture. He said he would prefer to keep it open.

Mrs. Morrissey asked what percentage is outdoor and what percentage is indoor. Mr. Mology said the entire thing is under a roof. Half will be closed and the other half will be open.

Mr. Morris asked if this is three sided. Mr. Mology said correct.

The application was open and closed to the public.

Mrs. Morrissey made a motion to approve the application subject to it be 50% open and 50% closed. There will be no gas, water or utilities. The applicant shall add some landscaping as per Mr. Hoffmann's letter. Mr. Slocum seconded the motion, which was unanimously approved by a roll call vote. (Mrs. Morrissey, Mr. Slocum, Mesdames. Burne, Draper, Messrs. Morris, Orender and Mrs. DeSarno voted yes.)

**#BOA 26-2009** – Date application complete: October 15, 2009. Carried from January 20, 2010, April 14, 2010 and May 4, 2010

**APPLICANT:** SEAN & ELIZABETH FINEGAN

**PROPERTY:** 1604 West Pine Tree Way, Block 18, Lots 15 & 16, R-7.5 zone

**RELIEF REQUESTED:** Interpretation/Use

Timothy B. Middleton, Esq. appeared for the applicant.

Attorney Middleton said we have to prove that the two family was created before the Township ordinances were created. One of the issues was what was there as of December 1954.

Entered into evidence:

A-7 Aerial from April 9, 1954 from Monmouth County Planning Board  
A-7B Blown up version of A-7

Mr. Finegan said he is familiar with A-7 & A-7B. He said he recognizes his house and the one at 1606 West Pine Tree Way. He said he lives at 1604 West Pine Tree Way.

Attorney Middleton said, referring to A-4, showing the subject property, is dated 1982. The structure at 1604 consists of five rooms and is one story. Page two describes the back structure. It consists of a living room, bedroom, kitchen and bathroom. As of 1982 1606 West Pine Tree Way the first floor consisted of a kitchen and bathroom and the second floor was an apartment.

Entered into evidence:

A-8 Building permit issued to Ms. Peck to construct a new roof on 1606 – Cost of work \$995.

Attorney Middleton said Robert Crowley issued the building permit. This came from the Building Department records. A C.O. was issued February 13, 1978.

Entered into evidence:

A-9 Deed – Greco to Finegan

Attorney Middleton explained in 1988 Greco took title from Peck two and a half weeks later the Building Department issued to Greco, October 13, 1988, an electrical permit. Service was changed to 100 AMP service.

Entered into evidence:

A-10 Building permit and electrical permit

Attorney Middleton explained before the Township re-located here there was a flood in the old building and lots of files were destroyed. There are no records in the Zoning Department.

Attorney Middleton stated the back building has been rented for the last nine years. Mr. Finegan wanted to separate the electric. He went to get a permit and that is when they found out it was not permitted. There was a permit issued for the rear building for shower stall, toilet and vanity on October 19, 1988.

Entered into evidence:

A-11 Construction permit

Attorney Middleton said he did not find anything in the file regarding zoning. On the tax records it shows the two lots were merged. The site is 32,000 s.f. It is the biggest single lot in West Belmar.

Entered into evidence:

A-12 Survey dated April 9, 2001

A-13 Tax map

Mr. Slocum asked how they got a clear title. Attorney Middleton explained they do not search zoning.

Attorney Middleton asked Mr. Finegan since 2001 have you rented the back house as a two family. Mr. Finegan said yes.

Attorney Middleton asked when you bought this was there a two family structure in the rear. Mr. Finegan said yes.

Attorney Middleton asked what he would do if this was denied. Mr. Finegan said he would have to convert it to single family at that point.

Attorney Middleton said that would be a hardship. Mr. Finegan said it was never designed as a single family. It is a concrete structure. The stairs going upstairs were outside now they are inside. It would take a lot of changes.

Entered into evidence:

A-14 Photo of upstairs and downstairs

Attorney Middleton said there is a kitchen in both flats. Upstairs and downstairs are mirror images. He said it would be very costly to make the changes. Mr. Finegan said yes.

Attorney Middleton said you want to get a permit for another electric meter. Mr. Finegan said correct.

Attorney Middleton said you live in the front house. Mr. Finegan said yes.

Attorney Middleton said you own the back wooded lot. Mr. Finegan said yes.

Attorney Middleton asked Mr. Finegan to describe the type of people that he rents to. Mr. Finegan said they are two professional couples. Attorney Middleton said they are usually newly married people. Mr. Finegan said yes they rent until they can afford a house of their own.

Attorney Middleton said if converted you would rent to a larger family. Mr. Finegan said I would have to get more money.

Attorney Middleton said it would probably cost between \$40,000 and \$50,000 to convert.

Chairwoman DeSarno asked when you change tenants do you get fire inspections each time. Mr. Finegan said yes.

Mr. Orender said without a second means of egress I find it hard to believe it is up to code. Mr. Finegan said there is a deck on the second floor. Mr. Orender said there were two tenants when you purchased it. Nothing here shows there was an apartment on the first floor.

Attorney Middleton said it shows it was a non-conforming use. In the 80's at that point in time the shop was converted to a residential use. It can go back to a shop because there was no evidence showing it was changed from shop to residence.

Chairwoman DeSarno said wouldn't it have been abandoned. Attorney Middleton said you could argue it was abandoned.

Chairwoman DeSarno asked if he can make it more fire safe. Mr. Finegan said he can make entrances in the front and back.

Mr. Orender said make it up to fire code. Mr. Rabenda said on residential only one egress is required. Mr. Finegan said there is a door out back to the deck. Mr. Rabenda said it is compliant as it stands. Mr. Zahorsky explained when tenants change the Bureau of Fire Prevention goes in and they do inspections.

Mrs. Morrissey asked about the exterior stairs. Mr. Finegan said they are now enclosed.

Mrs. Morrissey asked how many square feet would it be. Mr. Finegan said about 1,200 total.

Mrs. Burne asked in 2001 weren't you issued a C.O. Mr. Finegan said no. Mrs. Burne said wasn't it required that a fire code official check out a dwelling when it was being sold. Mr. Zahorsky said they just do an inspection.

Mrs. Burne asked was it ever considered by the town as a two-family. Attorney Middleton said he is not sure.

Mrs. Morrissey said you wanted an electric meter for each apartment and that is why you are here. Mr. Finegan said he didn't want to change anything just add a meter.

Attorney Cramer said A-4, the tax record card, does that show two residents. Attorney Middleton said yes page 2 of 2 describes 1606. The first floor shows a shop and the second floor living space.

Mr. Gerken said both structures have adequate parking and the density complies. There were originally two lots which have been merged. I looked to see if there was an easy way to separate the properties but there would be an irregular lot line.

Ms. Bergailo said if sub-divided you could put four houses on that.

Attorney Middleton said clearly it was a shop. There were two structures on the property in 1954. They pre-dated the ordinance. This is very unusual.

Mr. Slocum said with all we have heard tonight there is a major hardship here.

Chairwoman DeSarno asked if the applicant agrees to a fire inspection. Mr. Finegan said he will schedule it right away.

Mrs. Burne said she can't make a good decision tonight. She said she would be concerned that that second floor tenant would be in jeopardy. She would like to see the report from the fire inspector.

Mr. Orender said this has been used as a two family and I have no objection to that. He said his issue is the fire code. If a fire official says it is ok it is fine with me.

Attorney Middleton said he will put access stairs. Mr. Finegan agreed.

Mr. Morris said he has the same concerns but he can go forward.

Mrs. Morrissey said she has the same concerns.

Mr. Slocum said his major issue is the fire code issues.

Mr. Zahorsky said he knows there is an issue with fire but fire sub-code does not have jurisdiction. Attorney Middleton said they will agree to the inspection anyway.

The application was open and closed to the public.

Mr. Orender made a motion to approve the application subject to the second floor being safer, a second egress and smoke detectors being installed. Mr. Morris seconded the motion, which was unanimously approved by a roll call vote. (Messrs. Orender, Morris, Mesdames. Burne, Draper, Morrissey, Mr. Slocum and Mrs. DeSarno voted yes.)

8:55 P.M. the Board recessed.

9:05 P.M. the meeting resumed.

Chairwoman DeSarno and Mr. Slocum recused themselves on the Sims application.

**#BOA 25-2008** – Date application complete: September 9, 2008. Carried from November 5, 2008, January 14, 2009, April 1, 2009, June 3, 2009, August 5, 2009, October 21, 2009, February 2, 2010, April 21, 2010 and May 5, 2010

**APPLICANT:** DAVID & CATHERINE SIMS

**PROPERTY:** 1634 Martin Road, Block 943, Lot 8, R-60 zone

**RELIEF REQUESTED:** Use

Timothy B. Middleton, Esq. appeared for the applicant.

Attorney Middleton stated the Board has six members this evening and he needs five affirmative votes.

Attorney Middleton said this application was started from building code violations regarding some of the activities at the property. We tried to come up with an application that would mirror the violation issues. There are variances requested. It is a flag lot. The garage was constructed not in accordance with the building permits. There is a request for a carport in the front setbacks with solar panels on it. The wind turbine is 63' in height. Regarding the home professional use the applicant needs to get a use variance.

Mrs. Morrissey said the huts they are no longer there. Attorney Middleton said they are gone. The applicant had several meetings with Paul Rabenda. The garage was re-constructed and that variance is no longer needed. Mr. Sims said he was going to clean up the site. The remaining issues relate to wind turbines. The law has changed over the last few years. The other issue related to the home professional use. We have heard testimony saying him and his wife work out of their house. There are no more than two employees at the home. There is no storage of vehicles. Mr. Rabenda has been out to the site. It has been cleaned up. The carport is no longer there. There are two variances required one for the turbine and one for the professional office use.

Sworn by Reporter Arnone:

Matt Zahorsky  
Paul Rabenda

Mrs. Morrissey asked Mr. Rabenda to summarize his report. Mr. Rabenda said the report of February 10, 2001 deals with all matters and they start in 1985. The report holds all the documents. Mr. Sims applied for a radio tower and put the wind turbine on top. We have gone to court. He has turned the garage back to what it was originally approved for. There are still a number of issues. Regarding the ground mounted solar panels on the rear of the house Mr. Sims needs to get a permit he does not need a variance but he never got a structure permit. He did get a permit for the tower and footing inspection. He never got a final inspection and there has been no approval. The carport with the solar panels is gone.

Attorney Cramer said so that leaves the issue with respect to the business and the wind turbine tower. Mr. Rabenda said the application is asking for a height increase for the turbine.

Mr. Gerken asked Mr. Rabenda when the last inspection was done. Mr. Rabenda said Tuesday. Mr. Gerken said he stated no business equipment, no assembly. Is there any evidence of that? Mr. Rabenda said yes but they are Mr. Zahorsky's issues.

Mr. Orender asked how many panels he has. Mr. Rabenda said quite a few on the house. I don't know how many kilowatts.

Mrs. Morrissey asked what is outstanding. Mr. Rabenda said the ground mounted solar panels in the rear of the house. That needs to be permitted. There are a number of panels on the house that never got building permits. If approved for the tower we have to change inspections.

Attorney Middleton said for the panels on the house that is more of a zoning issue not this Board. Mr. Rabenda said they would not require variances he has to come for permits.

Mr. Zahorsky said the property has been cleaned up but there are still things on the site that are not permitted. I am holding off until I see what the Board does. I encourage Mr. Sims to clean up the property. He can get permits for the solar panels. The commercial vehicles exist. There is evidence of a business being operated there. We will wait for the Board to deal with that matter before I take action.

Mr. Gerken said address the items he is trying to get variances for. He needs a use variance and a variance for the tower. We need to hear testimony regarding that and the height of the tower.

Ms. Bergailo said the conditions of the conditional use of home occupation you can't be closer than 200' and there can't be any exterior evidence, no evidence of the business, vehicles, etc.

Paul Moore, Spring Street, asked if this was for home office or office use. Attorney Middleton said home office. Mr. Moore said it was advertised as office use. Does it make a difference? Attorney Cramer said no.

Mr. Moore said if you meet the conditional use then it would be office use. Ms. Bergailo said he has applied for approval as a home office. He does not meet the conditions. Mr. Gerken said looking at it as a home office use they do not meet the requirements.

Mr. Fitzpatrick was previously sworn. Mr. Fitzpatrick said the tower is 63.3' and steel framed. The nearest property line is 75'.

Using the aerial survey Mr. Fitzpatrick pointed out where the tower is located. It is located east of the home.

Attorney Middleton said this is a flag lot. Mr. Fitzpatrick said yes.

Attorney Middleton asked about the driveway. Mr. Fitzpatrick said it is 11' wide.

Attorney Middleton said the wind turbine is 73' from the closest property line. Mr. Fitzpatrick said 75'.

Attorney Middleton said if this wind turbine falls it would fall within the property. Mr. Fitzpatrick said correct.

Attorney Middleton asked Mr. Fitzpatrick if he attended any of the meetings regarding the Shield application and read the resolution of denial. Mr. Fitzpatrick said he attended some of the meetings and he read parts of the resolution.

Attorney Middleton said this would meet the requirement regarding the fall zone. Mr. Fitzpatrick said yes.

Attorney Middleton asked if there is any negative impact on the surrounding properties. Mr. Fitzpatrick said no.

Attorney Middleton said it is surrounded on all three sides by trees. Mr. Fitzpatrick said that is correct and wetlands.

Mr. Gerken asked about the additional 30'. Attorney Middleton said his original notice requested 63' we are not asking for additional footage.

Mrs. Morrissey asked about the house being in jeopardy. Mr. Fitzpatrick said the turbine is 20' from the house.

Attorney Middleton said, regarding the home use, sometimes there is a benefit for the Board to approve something like this so they can attach conditions. One of the issues is the aesthetics of the property. Mr. Fitzpatrick agreed.

Attorney Middleton said Mr. Zahorsky was here tonight regarding maintaining this property if approved for the office use conditions there would be additional enforcements. Mr. Fitzpatrick agreed.

Attorney Middleton said if the Board approved this with many conditions they would have to comply with those conditions. Mr. Fitzpatrick said yes.

Mr. Orender said statute states you need 150% of the height for a fall zone. Ms. Bergailo explained it should not exceed 150% but should be 125%. The statute also stated this would be permitted in an industrial zone not residential.

Ms. Bergailo also stated that it was testified that there would be no negative impact but neighbors say they can hear it. She asked how many kilowatts it generates. Mr. Sims said about 22 kilowatts.

Ms. Bergailo said the solar panels don't create any noise. If the solar panels generate the supply for the house what purpose is the wind turbine? Mr. Sims said his goal is not to use any fossil fuels.

Attorney Middleton asked the panels create enough solar power to do your house why do you need the wind turbine. You produce more than enough and then it goes out to the grid. Mr. Sims said the panels only create three kilowatts.

Attorney Middleton said, New Jersey, before 2020, wants to reduce their energy use. Mr. Sims said yes with wind and solar. He said his goal is to use nothing that is burned.

Attorney Middleton said on 50 acre farm solar panels and ten windmills on the farm that would make sense because they would be going to the grid. Mr. Sims said yes. The windmill is not high enough to generate a sufficient amount of energy.

Mr. Orender said your windmill is just there for demonstration. It doesn't produce enough electric. Mr. Sims said it needs to be higher. 120' is required.

Mr. Orender said you just said you are looking to make it higher. Attorney Middleton said we are here for 63' not 120'.

Ms. Bergailo said if this is an energy generating site it would need to be approved in addition. Attorney Middleton said one issue is house covered with solar panels that does not need a variance it is permitted. The home office use is separate from the energy use and requires a variance.

Attorney Cramer said the solar panels generate 22 kilowatts. Ms. Sims said the actual electricity is measure in kilowatt hours. Attorney Cramer asked how many kilowatt hours from the wind turbine. Mr. Sims said less than 1,000 a year.

Mrs. Draper asked how much wind is necessary to run the turbine. Mr. Sims said 7 MPH.

Mrs. Draper said about solar panels what happens when you have an entire week of rain and no wind and are you storing you energy. Mr. Sims said it goes directly to the grid.

Mrs. Draper said she likes the idea of wind turbine and solar panels but in the right place.

Attorney Middleton said more people get hurt with falling trees than towers.

Mrs. Draper said if approved for 63' would you come back for a higher tower. Attorney Middleton said he doesn't know.

Mrs. Morrissey said this application will be carried to October 6, 2010.

Attorney Middleton waived the time limits.

There being no further business to come before the Board, a motion was made, seconded, and unanimously approved to adjourn the meeting at 10:10 P.M.

Respectfully submitted,

Betty Schinestuhl  
Recording Secretary