

**MINUTES**

**NOVEMBER 19, 2013**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:05 P.M. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk.

**MEETING CUT-OFF**

Chairman Behr read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Board of Adjustment not to continue any matter past 11:00 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members then present to extend the meeting to a latter specified cut-off time.

**CELL PHONES AND PAGERS**

Chairman Behr read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll the following were present:

- E. Thomas Behr, Chairman
- Sandi Raimer, Vice Chairman
- Jerry Aroneo, Member
- Edwin F. Gerecht, Jr., Member
- Michael Pesce, Member
- Richard Keegan, Member
- Felix Ruiz, Member
  
- Michael O'Mullan, 1st Alternate
- Michael Pudlak, 2<sup>nd</sup> Alternate
  
- Barry Hoffman, Bd. Attorney
- Thomas Lemanowicz, Bd. Engineer
- Kevin O'Brien, Twp. Planner
- Cyndi Kiefer, Planning & Zoning Secretary

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**EXECUTIVE SESSION**

Chairman Behr indicated that the next item on the agenda was the Resolution of Appointment of Cynthia Kiefer as part time Secretary to the Planning and Zoning Administrator. Motion was made by Mr. Gerecht to go into Executive Session, and seconded by Mr. Ruiz. A voice vote was taken and the motion passed unanimously. The Board members retired to the back room at 8:12 P.M. and reconvened at 8:15 P.M.

**APPOINTMENT**

Chairman Behr asked for a motion to approve the appointment of Cyndi Kiefer as part time Secretary to the Planning and Zoning Administrator. Motion was made by Mr. Pesce and seconded by Mr. Gerecht. Chairman Behr called for a roll call vote. Those in favor: Chairman Behr, Mrs. Raimer, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz. Those

opposed: None. Mr. Aroneo abstained stating that he had not been a part of the Board when discussions concerning this matter were conducted. Motion carried.

**ANNOUNCEMENT**

Chairman Behr stated that the application of Green Hill @ Long Hill LLC has been withdrawn in its entirety at the request of the applicant.

**RESOLUTION OF MEMORIALIZATION**  
**TERENCE GOLDEN**

Walnut Avenue and Poplar Drive  
Block 10512, Lot 1

**#12-03Z**  
**Prelim/Final Site Plan**  
**Use & Bulk Variances**  
**Unimproved Rd. Var.**  
**Design Standard Ex-**  
**ceptions Waivers**  
**Development Permit**

**ZONING BOARD OF ADJUSTMENT**  
**TOWNSHIP OF LONG HILL**

Application No. 12-03Z

**RESOLUTION**

WHEREAS, **TERENCE GOLDEN** has applied to the Zoning Board of Adjustment of the Township of Long Hill for preliminary and final site plan approval in order to construct a building to be used as an office, for storage and for vehicle maintenance for a construction company, together with related site improvements, with such approval also requiring use and bulk variances, design standard exceptions and waivers and a variance to build upon a lot fronting on a street which is not improved to Township standards, as well as a Development Permit under the Township Flood Damage Prevention Ordinance, with respect to property known as Block 10512, Lot 1 on the Tax Map of the Township, located on the southerly side of Walnut Avenue at the intersection of Poplar Drive, which premises are in a B-2 Zone; and

WHEREAS, the Board has held public hearings on the application on July 2, 2013 and October 1, 2013, at which time interested citizens were afforded the opportunity to be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant, has made the following factual findings and conclusions:

1. The subject property is an L-shaped lot owned by the applicant which contains some 70,042 square feet. It is located on the east side of Poplar Drive between Walnut Avenue and Magnolia Avenue. The property is located within the B-2 General Commercial Zone of the Township. Since purchasing the property in

1983, the applicant has used portions of it as a construction storage yard for equipment, materials and vehicles.

2. Pursuant to a Resolution adopted by the Board of Adjustment on May 1, 2001 (Application No. 00-6Z), the applicant was granted use and bulk variances and site plan approval in order to relocate the storage yard from the western portion of the property to the eastern part of the property and for the construction of an off-site parking lot on the western portion of the site (to be utilized by an adjacent Little League baseball complex). Currently, there are some 34 Little League parking spaces on the western portion of the property.

3. The applicant now seeks approval to construct a two-story masonry building on the western portion of the property. The building, which will be 60 feet in width and 50 feet in depth, will contain 3,000 square feet of floor space on its first floor and 1,818 square feet of floor space on its second floor. Following the completion of construction of the proposed building, there will be a reduction to 25 Little League parking spaces, as well as 4 new automobile spaces which will be available to the Little League during off-hours. The applicant will have some 9 automobile spaces and 7 trailer spaces for its own business use of the property.

4. The applicant's proposal is more appropriately depicted on the following plans:

(a) A site plan prepared by Fisk Associates, P.A., Engineers-Surveyors-Planners, dated January 4, 2013 and revised to September 17, 2013, same consisting of five (5) sheets.

(b) Floor plans and elevations prepared by GRA Architects, dated January 21, 2013 and revised to September 26, 2013, same of consisting of a single sheet.

5. In addition to requiring site plan approval, the applicant's proposal involves an expansion of the nonconforming usage of the property pursuant to N.J.S.A. 40:55D-70(d)(2) since the proposed usage is not permitted under Section 122.6(a) of the Township Land Use Ordinance.

6. The applicant also requires the following bulk variances, exceptions or waivers:

(a) In accordance with Section 131, the Schedule of Bulk Requirements in the Ordinance, the applicant requires a bulk variance pursuant to N.J.S.A. 40:55D-70(c) since the allowable lot coverage under the aforementioned Schedule of Requirements is 40%. The existing lot coverage at the property is 41.77% and the proposed lot coverage is 49.29%.

(b) A bulk variance is required since the required front yard setback in the Zone in accordance with the aforementioned Schedule of Bulk Requirements is 50 feet and the proposed new building will be set back 28.4 feet from Magnola Avenue.

(c) A bulk variance is required since the required side yard setback in the Zone in accordance with the aforementioned Schedule of Bulk Requirements is 20 feet and the proposed new building will be offset 16.1 feet from the side yard of the property.

(d) A bulk variance is required since the applicant proposes to have parking located within the front yard in contravention of Section 151.2(c) of the Ordinance.

(e) A design exception or waiver is required from Section 151.2(e) of the Ordinance since the applicant proposes to construct a sidewalk which is flush with the parking lot and Section 151.2(c) of the Ordinance requires that the sidewalk be raised six (6) inches or more above the parking lot.

(f) A design exception or waiver is required since Section 152.2(g) of the Ordinance requires that parking stalls be clearly marked and delineated with "hairpin" striping; and the applicant seeks relief from this requirement within the grass-

surfaced parking area for the Little League. Hairpin stripes will be provided within the new paved parking area.

(g) A design exception or waiver is required since Section 151.2(f) of the Ordinance requires that all parking areas be curbed and paved and the applicant does not propose to have curbing of the parking lot with the grass surface for the Little League. The new paved parking area will be curbed.

(h) A design exception or waiver is required since Section 151.2(a) of the Ordinance requires that access driveways to parking lots have a minimum width of 24 feet for two-way traffic and the access driveway provided at Poplar Drive has a width of 20 feet. This is an existing condition.

(i) A bulk variance is sought from Section 133.7 of the Ordinance, which Section requires that retention basins not be located within the setback area of a lot. This is an existing condition.

7. Pursuant to Section 133.3 of the Ordinance, every primary building shall be built upon a lot with frontage upon a public street improved to meet the Township's standards. The construction storage yard is to be accessed via Walnut Avenue, which is not improved to Township's standards. The applicant seeks a variance from Section 133.3 of the Ordinance and from N.J.S.A. 40:55D-35 in accordance with the standards of N.J.S.A. 40:55D-36.

8. A portion of the property is located within an area of special flood hazard, and, as such, a Development Permit is required from the Board of Adjustment pursuant to the provisions of Section 143.7(c) of the Township Flood Damage Prevention Ordinance.

9. Terence Golden and three (3) experts testified in support of the application. Mr. Golden noted that he has owned the property for over 30 years and that he has utilized the site for his construction company as a storage yard for about 25 years. He stated that approximately seven (7) employees arrive at the property at

6 to 6:30 am and are dispatched to job sites. Three (3) to four (4) office personnel arrive at the property later in the morning, with business hours being between 8am and 4pm. Mr. Golden stated that the proposed new building will enable his company to maintain its vehicles in the building and some items now stored outside will be able to be stored in the building. He agreed to remove a temporary storage trailer which had been on the site. Testifying with respect to the revised plans for the property, Mr. Golden stated that he wished to have the door of the building face Walnut Avenue. In response to questions from the Board and its consultants, the applicant agreed to place the exterior lighting of the yard on timers so that illumination does not continue all night. In addressing the stormwater management plan for the property, the witness noted that the detention basin which has been installed following his 2001 approval is working properly. Mr. Golden said that it was his intention to continue to provide a parking area for the Little League even though his agreement with that organization has expired. He said the Little League can utilize the parking until such time as he may sell the property in the future. The Little League and the Planning Board will be notified of any such change in the applicant's understanding and that, if necessary, he would return to the Board before discontinuing his commitment to provide parking for the Little League. The applicant said that it was his intention to install a wood-carved sign identifying his construction business in conformity with the Township Land Use Ordinance.

10. Robert Gazzale, an engineer with Fisk Associates, P.A., testified as the applicant's engineer expert. Mr. Gazzale reviewed the proposed site improvements and agreed to add additional buffering as requested by the Board's consultants. He stated that the detention basin on the property has been sized so as to provide for storage of runoff from the excess coverage of the site by impervious surfaces. He noted that the variance requested for parking within the front yard is necessary due to the fact that the property fronts on three (3) streets. The engineer agreed to have the pavement of the parking lot extend until the entrance to the building. In general, he was amenable to complying with all of the recommendations made by the Township's Engineering and Planning Consultants.

11. James Ramentol, the applicant's architect, reviewed the proposed floor plans and elevations for the newly proposed building. The building will have a brick veneer on three (3) of its sides. It will have a maximum height of 34. 23 feet

12. Christina Nazzaro, testified as the applicant's professional planner. She noted that a use variance is required to expand the nonconforming usage of the property so as to allow for construction of the proposed 3,000 square foot building. The planner stated that the Board of Adjustment had already found in its previous Resolution that the site is particularly suited for this usage, and she opined that the applicant's development proposal will improve the aesthetics of the property and will provide for a more efficient operation. She stated that several purposes of the Municipal Land Use Law will be advanced by the proposal, including the providing of a desirable visual appearance of the property and the appropriate location for the usage. Ms. Nazzaro noted that there are a variety of commercial uses that are located within a short radius of the applicant's property. She felt that the L-shape of the property and the fact that it fronts on three (3) streets creates a hardship to the applicant. The planner described the proposal as one which serves as a good transitional use for the area.

13. No public comments were submitted in connection with the application.

14. The Board has received and considered reports on the application from the Township Planning Consultant, the Board's Engineering Consultant, the Township Traffic Safety Officer, the Chief of the Stirling Volunteer Fire Company and the Morris County Planning Board.

15. The Board is of the opinion that special reasons have been shown to justify the grant of the applicant's use variance. The proposed new building on this site will make for a more attractive commercial operation than exists at present. The applicant is to be commended for his commitment to provide parking for the Little League. In its Resolution adopted in 2001, the Board found that the Little League parking would be a benefit to the community and would be a low impact usage for the property. With regard to the requested bulk variances, exceptions or waivers, the

Board concludes that the applicant has sustained his burden of showing that the strict application of the zoning regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of the subject property. The L-shape of the property and the fact that it fronts on three (3) streets necessitates the grant of most of the requested relief. In any case, the variances are, for the most part, for existing conditions on the property.

16. The Board also finds that the applicant has demonstrated that the requested relief 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. The Board has previously found the usage to be one which will not substantially impact the neighborhood and will serve as an excellent transition between the existing land uses in the area.

17. The Board also concludes that the applicant has met his burden of proof with respect to the criteria for a variance from Section 133.3 of the Ordinance and from N.J.S.A.40:55D-35. The Board is satisfied that there will be adequate access for vehicles, including emergency vehicles, to the site providing that the applicant continues to maintain the paving for Walnut Avenue as previously required by the Board in its 2001 Resolution.

18. Finally, with respect to the requested Development Permit, the Board concludes that good and sufficient cause exists for granting a Permit. The applicant has sustained his burden of proving that his proposal can, in all reasonable likelihood, be implemented without causing an increase in flood heights or additional threats to the public safety.

WHEREAS, the Board took action on this application at its meeting on October 1, 2013, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g):

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Long Hill, on this 19<sup>th</sup> day of November, 2013, that the application of Terence Golden for use and bulk variances, preliminary and final site plan approval, design standard exceptions or waivers, a variance to build upon a lot



fronting on a street not improved to Township standards, as well as for a Development Permit under the Township Flood Damage Prevention Ordinance, all as aforesaid, be granted subject to the following conditions:

1. Applicant shall submit proof of payment of real estate taxes through the fourth quarter of 2013.

2. Applicant shall obtain approval or waiver from the Morris County Soil Conservation District.

3. The plans shall be revised in the following respects, or calculations or data shall be supplied, all of which shall be satisfactory to the Board Engineer (and/or, where noted below, to the Township Planning Consultant):

(a) Coordinate the architectural and engineering plans with respect to floor areas and amend the parking calculations accordingly, and coordinate the architectural and engineering plans with respect to building height. This shall be done to the satisfaction of the Board.

(b) Revise Sheet A-1 of the architectural plans to show the rear facade as having a stucco finish. This shall be done to the satisfaction of the Township Planning Consultant.

(c) Slide parking area five (5) feet to the south so as to provide for curbed islands across the frontage, same to be satisfactory to the Board Engineer.

(d) Maintain a three (3) foot walkway in front of the building, same to be satisfactory to the Board Engineer.

(e) Curb the parking lot including channelization islands at Walnut Avenue, same to be satisfactory to the Board Engineer.

(f) Stripe and cross-hatch the open space between the building and the parking lot, same to be satisfactory to the Board Engineer.

(g) Move the proposed inlet along the Walnut Avenue frontage to the northwest corner of the parking lot, same to be satisfactory to the Board Engineer.

(h) Raise the detention basin berm so as to allow for 12 inches of freeboard over the 100-year design storm elevation. The berm addition shall be blended into the surrounding grades so as to look as natural as possible. This shall be done to the satisfaction of the Board Engineer.

(i) Note that the applicant shall continue to maintain the pavement of Walnut Avenue for a distance of twenty (20) feet from Poplar Drive.

(j) Provide for either landscaping of the parking lot island or the placement of decorative gravel in the parking lot island, same to be satisfactory to the Township Planning Consultant.

(k) Place a full cutoff light fixture on Walnut Avenue, same to be satisfactory to the Township Planning Consultant.

(l) Time the yard lights to switch off no later than 6:30pm on regular business days, same to be satisfactory to the Township Planning Consultant.

(m) Time the yard lights to switch off no later than 1:00am during extraordinary Township events at the Little League Field, same to be done to the satisfaction of the Township Planning Consultant.

(n) Note on the plans that a Knox Box will be placed on the building at a location satisfactory to the Fire Department or, if no preference is made by the Fire Department, then at a location satisfactory to the Township Planning Consultant.

4. Applicant shall post performance bonds and inspection fees with the Township as determined by the Township Engineer and with the form of the

guarantees to be acceptable to the Township Attorney. Same shall be posted prior to any further construction at, or disturbance of, the property.

5. Applicant shall post funds with the Township to satisfy any deficiency in the developer's escrow account.

6. Except as specifically modified by the present Resolution, all conditions in the Board of Adjustment's Resolution adopted on May 1, 2001 for Application No. 00-6Z shall remain in full force and effect.

Except as otherwise specifically set forth above, all conditions shall be satisfied prior to signing of the plans by the Board Officers and prior to issuance of any building permit or other municipal permits.

The Zoning Board of Adjustment memorialized the Resolution of Approval on motion by Mr. Aroneo and seconded by Mr. Gerecht. A roll call vote was taken. Those in favor: Chairman Behr, Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz. Those opposed: None. Abstentions: Mrs. Raimer. Motion passed.

## **DISCUSSION**

### **PROCEDURAL RULES OF THE BOARD OF ADJUSTMENT**

Chairman Behr noted that the Board had had time to review the initial draft he presented. Since that time, Mr. Pesce made a number of helpful additional suggestions and recommendations.

Chairman Behr stated that there are two (2) different documents. One is an amendment to the announcement made to the public regarding what the Board does and how the public participates. This document is not on the agenda for this meeting.

The second document, the "Draft Board of Adjustment Rules—Revised November 19, 2013". Chairman Behr suggested that he comment on the document as the author and then open it up to the board members to ask questions. Once the board members are satisfied about what is being discussed, they would proceed as is done during deliberations and have each board member briefly state his or her thoughts on each rule. There were no comments on this suggestion from the board members.

After discussion, the Board voted to adopt the "Impartiality and Transparency, Section #1" rules:

#### **Impartiality and Transparency**

1. In order to ensure the requisite impartiality of Board proceedings:
  - Board members shall not discuss the substance of any pending application with each other except within the specific context of a properly noticed public board hearing.
  - Board members may discuss procedural matters relating to a pending application or seek clarification of the legal issues impacting a given application, so long as that conversation does not touch on the specific merits of the application.
  - No board members may discuss any matter pending or before the Board with any applicant, interested party, member of the public or elected official except within the specific context of a properly noticed public board hearing.

Mr. Gerecht made a motion to adopt the rules. Mr. Pesce seconded the motion. A roll call vote was taken. Those in favor: Dr. Behr, Mrs. Raimer, Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz. Those opposed: None.

After discussion, the Board voted to adopt the “Impartiality and Transparency, Section #2” rules:

2. Board members are encouraged to visit the subject property prior to the hearing of an application. In doing so, however, the board members shall not engage in any substantive conversation with the owners or residents of the property concerning the pending application.

Mr. Pesce made a motion to adopt the rules. Mr. Gerecht seconded the motion. A roll call vote was taken. Those in favor: Chairman Behr, Mrs. Raimer, Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz. Those opposed: None.

After discussion, the Board voted to adopt the “Disqualification, Section #1” rules:

### **Disqualification**

1. Any member of the Board of Adjustment shall disqualify himself/herself from sitting on the hearing of any matter in which he or she has a disqualifying interest such as, but not limited to, the following situations:
  - a. Where the board member owns property within 200 feet of the property affected by the action.
  - b. Where the applicant or their attorney is the employer, employee, or partner of a board member, or is a corporation in which the board member is a shareholder or has other financial interest.
  - c. Where the board member or a member of his or her immediate family has a direct or indirect financial or personal involvement that might reasonably be expected to impair the board member’s objectivity or independence of judgment.
  - d. Where the board member has any other personal or pecuniary involvement or interest that might reasonably be expected to impair the board member’s objectivity or independence of judgment.

Mr. Gerecht made a motion to adopt the rules. Mr. Pesce seconded the motion. A roll call vote was taken. Those in favor: Chairman Behr, Mrs. Raimer, Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz. Those opposed: None.

After discussion, the Board voted to adopt the “Disqualification, Section #2” rules:

2. Any member who is disqualified shall not sit with the Board or participate in meetings or hearings related to the matter in question, nor may that board member participate as a member of the public by testifying either for or against the relief sought by the applicant.

Mr. Gerecht made a motion to adopt the rule. Mr. Pesce seconded the motion. A roll call vote was taken. Those in favor: Chairman Behr, Mrs. Raimer, Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz. Those opposed: None.

Chairman Behr read “Disqualification, Section #3, which he indicated was verbatim from Cox as follows: “When a member fails to disqualify himself, any interested party may move the Board for an order or determination that such member is disqualified to act. The motion shall contain a statement of facts upon which it is based, and the Board may thereupon hold a hearing on the matter or take whatever action it may deem appropriate.”

Mr. Pesce asked if a board member is considered an “interested party” and could therefore force another Board member’s recusal.

Mr. Lemanowicz stated that that was what the passage said.

Mr. Aroneo wanted a definition of “interested party”.

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Mr. O’Brien offered the definition stated in the M.L.U.L. Section 40:55 D-4 as, “Any person whether residing within or without the municipality whose rights to use, acquire, or enjoy property is or may be affected by any action taken under this act or whose rights to use, acquire, or enjoy property under this act or under any other law of the State or of the United States have been denied violated or infringed by an action or failure to act under this act.” He added that it was an extremely broad definition.

Mr. Gerecht wanted to make sure that as board members they had the right to force recusal of another board member. He felt that board members need to be specifically included.

Mr. Aroneo felt that board members should not be included for numerous reasons. First, he cited politics. One board member might want to have another board member removed to change an outcome. Subsequently, the Board would hold a hearing to determine if there is an *appearance* of a conflict which, he felt, could probably be found.

Mr. Lemanowicz stated that the Board decides whether there is or isn’t conflict.

Mr. Aroneo did not agree when it’s a board member who is accusing another member.

Chairman Behr said that in fifteen (15) years on the Board, he had never seen a situation even close to the scenario being discussed. He felt that the Board as a whole has to be trusted to act in a reasonable responsible way and that Mr. Aroneo’s scenario assumed the whole Board was politically charged.

Mr. Aroneo still felt that one politically motivated board member could affect the outcome. He said that a challenge coming from outside the Board was acceptable however; board members should not challenge each other.

Mr. Aroneo stated that any hearing relating to an Applicant on a conflict of interest must be in *public*. During the public hearing, information may come out about that application that neither the Applicant nor the Board wants. It might taint the vote of the Board.

Mr. Gerecht felt that knowledge as to why a board member should disqualify himself would not taint Board. Whether information comes from another board member or from the public, it would not rise to the level of tainting the vote of the Board.

Mr. Aroneo felt that the public hearing process itself might cause an unsuccessful Applicant to feel that the accused board member should not have been allowed to continue even though the decision of the Board was to allow him to stay.

Mr. Pesce stated that it is the Board’s responsibility to make decisions such as whether or not there is a conflict of interest.

Mr. Aroneo felt that it was up to the accused board member to decide whether there is a conflict either real or apparent since only that board member has all the information necessary to make a decision concerning conflict of interest. The rest of the Board would hear only that information that someone else wanted it to hear.

Mr. Aroneo felt a Board could be stacked to rig a big application He was concerned about the political risk.

Mr. Ruiz felt that a Board member who feels he might have a conflict should speak to counsel and make the decision himself. He stated that the Board should not police itself. The Board was there to take care of the town.

Mr. Ruiz felt that was the reason why “interested party” included the whole world *except* for board members.

Chairman Behr then asked Mr. Hoffman for his interpretation of “interested party”. Did that include board members? Should the Board reserve the right to question when a board member fails to recuse himself when there would seem to be the possibility of a conflict?

Mr. Hoffman felt that “interested party” includes just about everyone. It was broad enough to include anybody, including a board member, who questions the existence of a conflict.

Chairman Behr asked Mr. Hoffman if a board member *should* have the ability to challenge another board member.

Mr. Hoffman answered that that was moral or ethical question, not a legal one.

Mr. Gerecht felt that as a Board, they could not limit what the law could allow.

Mr. Hoffman indicated that “board member” should not be added to the language. It has been his experience that these scenarios work themselves out appropriately and the board member in question steps aside in the best interest of the Board, even when he disagrees.

Mr. O’Brien asked for clarification as to whether the hearings would be private or public.

Mr. Hoffman stated that usually when the performance level of municipal employee is called into question, the choice is given to the party charged with the alleged wrongdoing or conflict.

Mr. Aroneo asked Mr. Hoffman if a public hearing could affect the Applicant or application in any negative way. Could any information be disclosed that could taint the process or the entire Board?

Mr. Hoffman stated that it was conceivable that this proceeding could be harmful to the underlying application so perhaps the hearing should remain private and confidential until the conclusion of the underlying proceeding.

Mr. Aroneo then asked if a board member could then be removed for political reasons in what could be perceived as “the back room”.

Mr. Hoffman pointed out that personnel matters are one of the notable exceptions to the “Open Public Meetings Act”. It is difficult to strike a balance since on one hand, the rights of the individual must be protected if they so want, and on the other hand, there is the question as to whether this would take on a life of its own which overshadow the merits of the application.

Mr. Aroneo also added the Board must protect the rights of the public.

Mrs. Raimer stated that there have never been procedural rules in place. By putting these rules in place, should a rare circumstance occur where board members are not sure how to proceed, they will serve as guidance. These rules are broad and vague but they still provide helpful guidance.

Mr. Lemanowicz suggested the following modification, “...the Board may thereupon hold a hearing on the matter or take whatever action *a majority of the Board* may deem appropriate.” He felt that Mr. Aroneo’s concerns were valid however, this Board has not historically been politically appointed and protection against unfair disadvantage to an individual member is provided if a majority of the Board has to agree that there is a problem and something must be done. To trust that the majority of the Board is going to act in a wise way is protection against the hypothetical situation of an individual member acting in an unwise or inappropriate way.

Mrs. Raimer stated that there have been situations where a member had a financial interest and neglected to recuse himself. When the potential of how it might affect the final ruling, that member was enlightened and recused himself because it was unclear to that person that there was a potential conflict until it was brought to his attention. These rules are meant as guidance in situations like this.

Mr. Ruiz agreed with Mrs. Raimer. He stated that he didn't feel that Paragraph 3 was necessary since no one could recall an instance where a board member refused to recuse himself.

Mr. Hoffman stated that leaving Paragraph 3 in gives the Board a mechanism for having the issue determined sooner rather than later. If this is left out, the only way to adjudicate the situation would be in court which would take time and be costly.

Mr. Gerecht pointed out that it shows the public that the Board is proactive and interested in addressing these issues.

Mr. Pesce indicated that if a board member truly had an issue with another board member, they could find someone from the public to raise that concern on their behalf.

Mr. Aroneo pointed out that that board member would then have broken the rules by speaking about an application outside of a public meeting.

Mr. Gerecht disagreed saying that that would not be discussing the *merits* of an application. The interest lies with that person.

Mr. Pesce felt that the question at hand was whether a Board member can initiate the process against a fellow board member.

Mr. Hoffman stated that Paragraph 3 gives the Board that remedy. Whether a Board chooses to take it is up to that Board.

Mr. Pesce was still not sure that the "interested party" definition encompassed the board members. It did talk about "within and without" but then it got specific and talked about people with an interest in the subject property and that would likely not encompass any of the board members.

Mr. Aroneo stated that by definition, if a person was an "interested party" he could not be part of the application as a board member.

Mr. Pesce felt that this scenario was rare but there should be rules in place to guide them should it arise. He stated that he still felt that board members should have this right rather than taking it away.

Mr. Pesce was in favor of having the "majority of the Board to initiate..." rather than just one individual board member.

Mr. O'Brien indicated that that would require a motion of the sitting Board.

Mr. Pesce added "excluding the party with the alleged conflict".

Mr. Aroneo asked why the accused would be excluded. He then stated that he was most concerned with a rogue board member refusing to step down, ignoring the wishes of everyone else.

After discussion, the Board voted to adopt the "Disqualification, Section #3" rules:

3. When a member fails to disqualify himself, any interested party or a majority of the members of the Board of Adjustment may move the Board for a determination that such member is disqualified to act. The motion shall contain a statement of facts upon which it is based, and the Board may thereupon hold a hearing on the matter or take whatever action a majority of the Board may deem appropriate.

Mr. Gerecht made a motion to adopt the rule. Mrs. Raimer seconded the motion. A roll call vote was taken. Those in favor: Chairman Behr, Mr. Raimer, Mr. Gerecht, Mr. Keegan, Mr. Pesce. Those opposed: Mr. Aroneo, Mr. Ruiz. Motion passed 5-2.

Mr. Aroneo stated that he voted no because he was fundamentally opposed to having board members challenge others on eligibility and he preferred the language that was there before the amendments to it.

Chairman Behr suggested that a sub-committee be formed consisting of himself, Mrs. Wolfe, and, as needed, the consultants to review Cox and return to the Board with additional rules. Mr. Gerecht was asked to chair this committee and he accepted. Mr. O'Mullan also agreed to join the committee.

Meeting was adjourned at 11:04 P.M.

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CYNTHIA KIEFER  
Planning and Zoning Secretary