

# TOWNSHIP OF MARLBORO

## ZONING BOARD OF ADJUSTMENT

1979 TOWNSHIP DRIVE

MARLBORO, NJ 07746-2299

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### Chairperson

Michael Shapiro

### Vice-Chairperson

Matthew Weilheimer

### Secretary

Alan Zwerin

### Members

Frank Yozzo

Ira Levin

Jennifer Bajar

Ibrahim El-Naboulsi - Alt #1

Stacey DiGrande - Alt # 2

### Zoning Board Clerk

Yvonne Cautillo

### Attorney

Weiner Lesniak

Ronald D. Cucchiaro, Esq.

### Engineer

Birdsall Engineering

James Priolo, P.E.,

### Planner

T & M Associates

Richard Cramer, P.P.

### Traffic Engineer

French & Parrello

Mark Kataryniak, PE, PTOE

### Administrative Officer

### Zoning Officer

Sarah Paris

## MINUTES

### ZONING BOARD OF ADJUSTMENT

AUGUST 21, 2012

8:00 p.m.

### SALUTE TO FLAG

### SUNSHINE LAW READ

**PRESENT:** Michael Shapiro, Alan Zwerin, Jennifer Bajar,  
Matthew Weilheimer, Ira Levine,  
Stacey Di Grande, Ibrahim El Naboulsi

**ALSO PRESENT:** Ron Cucchiaro, Esq, Board Attorney  
Sarah Paris, Administrative Officer  
Elissa Commins, P.E., Birdsall Engineering, Inc.  
Mark Kataryniak, Traffic Engineer  
Richard Cramer, P.P.

**ABSENT:** Frank Yozzo

The minutes of August 7, 2012 meeting were approved:

Offered:	Michael Shapiro	Ayes:	6
Seconded:	Alan Zwerin	Nays:	0
		Absent:	1

No one signed up for Public Session.

ZB12-6452 – Levine, Jeffrey and Marni

Public Hearing for approval of accessory structure having insufficient side and rear yard setbacks and retain a paved terrace located in setback on property located at 4 Foursome Drive, Marlboro, Block 360, Lot 31 in an R-80 Zone.

Jeffrey Levine, owner of 4 Foursome Drive was sworn in. Mr. and Mrs. Levine reside here with their three children; and he is before the Board because of the setbacks. The pool was applied for with permits. Survey showed pool, surround and fence are on my neighbor's property. We were advised to remove concrete and fence, leaving shed to be removed. If variance is not granted we will not be able to sell our home.

Additional evidence of color photographs taken August 21, 2012 showing current setbacks.

The Board took jurisdiction. The following evidence was entered:

- A – 1 Petition on Appeal
- A – 2 Denial by Zoning Officer
- A – 3 Indemnification and Hold Harmless Agreement
- A – 4 Disclosure Statement
- A – 5 Tax Collector's Certification
- A – 6 W-9
- A – 7 Notice To Adjoining Property Owners
- A – 8 List of Property Owners within 200 feet
- A – 9 Certified White Receipts and Green Cards
- A – 10 Affidavit of Publication
- A – 11 Affidavit of Service
- A – 12 Affirmation of Local Pay to Play Ordinance
- A – 13 Owners Affidavit of Authorization and Consent
- A – 14 Application Affidavit of Completeness
- A – 15 Survey of Property for Block 360, Lot 31, prepared by Frank DeSantis, PLS, MidAtlantic, Dated 7/24/12.
- A – 16 Revised Survey of Property for Block 360, Lot 31, prepared by Frank DeSantis, PLS, MidAtlantic, and Dated 8/06/12.
- A – 17 Report prepared by James Priolo, PE, Birdsall Services Group, 611 Industrial Way West, Eatontown, NJ, Dated 8/14/12.
- A – 18 Color Photograph, presented by Jeff Levine, taken 8/21/12
- A – 19 Color Photograph, presented by Jeff Levine, taken 8/21/12
- A – 20 Color Photograph, presented by Jeff Levine, taken 8/21/12

Mr. Ivan Gelb, 10 Country Club Lane, is sworn in. Mr. Gelb owns the property where concrete and fence were partially removed. He is also attempting to sell home.

Mr. Shapiro inquired if the pool company offered an explanation. Mr. Levine said the pool company did come and we may have moved the pool a little to the left to observe the children.

**Motion to Workshop:**

**Offered By: Michael Shapiro**

**Seconded By: Jennifer Bajar**

**Mr. Shapiro said it was his opinion if the shed were removed, and fence corrected, this should satisfy everyone.**

**Ms. DiGrande stated the shed was still there as of this date. Messrs. Levin and Zwerin agreed that as long as the shed and fence are off the neighbor's property they are okay with.**

**Mr. Weilheimer is not sure the neighbor is comfortable with the scenario.**

**Ms. Bajar said that one issue is there are no monuments to work off of; she also said contractors should know that when there is a change made, they must come in to the township to change. She also said that when this is corrected, she too agreed. Mr. EI Naboulsi also agreed.**

**Mr. Levin also said specific details should be made available to the neighbor should he sell.**

**Mr. Cucchiaro said this would be put into the resolution. The encroachment of the paved area that was removed should be made known, along with the provisions for the pool equipment.**

**Ms. Bajar added that monuments should also be provided.**

**Motion Out of Workshop:**

**Offered By: Michael Shapiro**

**Seconded By: Ibrahim El Naboulsi**

**Mr. Levine stated that the buyer said they are okay with removing the shed. The placement is eighteen inches from the property line, with the pool equipment also about eighteen inches.**

**Mr. Gelb stated he wants to make sure that it is not on my property. He would like another inspection done afterward by another surveyor.**

**Mr. Cucchiaro said that we cannot compel them to use someone specific; but our professionals will review when completed. Our engineer will verify there is no encroachment on property.**

**Mr. Shapiro stated the shed must definitely be removed. Mr. Gelb also requested the foundation be gone.**

**Mr. Weilheimer asked with the house in contract, can we expedite. Mr. Cucchiaro said that as soon as the encroachments are complete, we will do the resolution.**

**Mr. Shapiro stated the resolution will be ready for September 4, 2012.**

**Motion to Approve with removal of encroachments and the engineer approving.**

**Motion to Approve**

**Offered: Michael Shapiro**

**Seconded:**

**Ibrahim El Naboulsi**

**Ayes: 7**

**Nays: 0**

**0**

**Absent: 1**

**Recused:**

**0**

**Motion Approved.**

**ZB12-6438 – FSP–Marlboro, LLC**

**Continued Public Hearing for approval to construct a three story, eighty-six unit Assisted Living Facility with associated parking where Assisted Living is not a permitted use in the OPT II Zone located at 23 Route 520 and 53 Route 520, Marlboro, NJ, Block 176, Lots 38, 39, 40 and 41.**

**Ira Levin recused himself.**

**Mark Policastro, Esq., on behalf of the applicant, stated that as a result of the previous hearing, the size has now been reduced.**

**Mark Vincent, Esq., on behalf of the twenty objecting families, is not present.**

**Larry Bozik, P.E. of Dresdner Robin, Hanson Engineering Division, 7 Doig Road, Suite 1, Wayne, stated the goal was to reduce. There were originally was 86 units, now reduced to 79 and with three less parking stalls.**

**Additional evidence was entered into the record:**

- A – 42** Traffic Engineering Assessment prepared by Shropshire Associates, LLC, 662 Main Street, Suite B, Lumberton, NJ, Dated 8/08/12.
- A – 43** Correspondence from David R. Shropshire, PE, responding to Traffic Engineering Review No. 1 by Mark Kataryniak, dated April 12, 2012.
- A – 44** Second Planning Review dated August 16, 2012 by Richard Cramer of T & M Associates.
- A – 45** Traffic Engineering Report No. 2 from Mark Kataryniak of French and Parrello, dated August 20, 2012
- A – 46** Preliminary Site Plan for Assisted Living Residence for Shelbourne Health Development Group, LLC, Block 176 Lots 38, 39, 40 & 41 by Lawrence E. Bozik, Dresdner Robin, Hanson Engineering Division, 7 Doig Road, Wayne, NJ, Dated 2/22/12. Sheets 1 – 4 revised August 3, 2012.

**Mr. Bozik explained the preliminary site plan showing the reduction of front yard setback, while increasing the side yard set back. The height is one foot less, the FAR and the building coverage is less. Buffer is increased and the residential buffer also increased. Paving also scaled down with circular drive away.**

**No questions from the Board.**

**Questions from the Public:**

**Mr. Herb Green, 15 Bluffs Court, is not represented by Mr. Vincent. Last time it was said that about 400 trees would survive out of 600, has this increased?**

**Mr. Bozik answered that with the larger buffer, we should be able to save more trees. If the use is granted, the site plan will address the landscaping.**

**Mr. Frank LaQuinta, 8 Bluffs Court, is represented by Mr. Vincent, who is not here. Mr. Green asked the question if the circular drive changed. Mr. Bozik answered that the driveway should remain the same.**

**Ms. Carol Vargo, owner of the Goddard School, stated the property abuts my fence; will there be an additional buffer. She said she does not object, but the school is next door. The height of the building is her biggest concern in case of fire.**

**Mr. Bozik stated that the building itself is a minimum of seventy-nine feet from the Goddard school.**

**Second witness:**

**Mr. Paul Donaldson, the project Architect, is sworn in. He is a twenty year architect, having worked on similar projects throughout country.**

**He has prepared the plan, with the third story having the extended care. He stated that the building is built to withstand fire.**

**Additional evidence:**

**A – 47 Character Sketch for Formation-Shelbourne, Senior Living Services, LLC, Perkins & Will, Level 1 Floor Plan, Level 2 Floor Plan, Level 3 Floor Plan and Site Section, Dated August 6, 2012.**

**The Plan is an “I” shape building; they want to give the neighborhood appeal, not an institutional feeling.**

**Mr. Policastro asked if there can there be a flat roof. Mr. Donaldson said it will be less aesthetically appealing and it will loose the residential appeal.**

**Mr. Weilheimer inquired about the two stories. Mr. Donaldson answered that two stories are possible. It would be about forty units. It would be called flat and have a fake façade.**

**Ms. Bajar asked about the flat roof, with a crown. Mr. Donaldson stated it attempts to show just that. The top of the roof is at forty-four feet, with a pitched edge. You only lose about one foot. He said you can make it completely flat.**

**Mr. Cucchiaro said he is familiar with the development in Madison, NJ. Mr. Bozik said this is a much larger building footprint. The FAR is 22,000 square foot per floor. If it were two floors, it would be a large “X”. Setbacks would be much smaller.**

**Ms. Commins, PE, Birdsall Services, asked if the parking could be expanded in the wetlands.**

**Mr. Donaldson stated that a more compact floor area is better for seniors.**

**Mr. Shapiro asked if it makes more sense to have two floors.**

**Ms. Bajar inquired how many rooms on the top floor (27 units). She also asked if you can keep the width and extend the length. She was told it would be one third longer.**

**Mr. Joseph F. McElwee, Partner with Shelbourne Healthcare, remains under oath. He stated that the contract price cannot be ignored and they require 72 units. The second story was presented as an alternate with a different side yard setback and with a lot more trees taken down. The longer length does make for longer hallways for the inhabitants.**

**Mr. EI Naboulsi inquired about the dining areas. Mr. McElwee said the dining areas are on both ends with the second floor going downstairs.**

**Mr. McElwee stated that aesthetically you want to build what is best for the neighborhood.**

**Ms. Bajar stated that she believes three stories are not as appealing as two stories. She also inquired if there is separate staff for the third floor.**

**Mr. Cucchiaro stated that this is a highly regulated industry and there may be restrictions with the state. We also need to assess what the buffers would be.**

**Questions from the Public:**

**19 Bluffs Court, Mr. Fiorca inquired how many have been built, where they are squeezed between a school and residential properties.**

**Mr. McElwee said he recently did in a Chicago suburban area.**

**Mr. Fiorica also inquired if a lighting study was done and if outside lights be left on a twenty-four hour basis. Mr. Policastro answered that this would be part of the site plan. Mr. Cucchiaro also confirmed this will be addressed at this time.**

**Mr. Herbert Green of 15 Bluffs Court asked if there might be other properties where this would fit.**

**He also inquired how far you can go back with an elongated building.**

**Traffic Expert – David Shrobshire, PE, PP and Traffic Engineer remains under oath and accepted as expert witness. He stated his package was distributed to the Board and he was addressing the report received from French & Parrello.**

**Mr. Shrobshire stated that the number of beds is 95, with 79 units.**

**He stated that there are no appreciable changes on Robertsville Road. It is not an intense use here and there is no detriment to the public or to the master plan if a use variance is granted.**

**Regarding the left turn, it is showing only one car in lane. There is not a high demand for this left turn and it should work with Monmouth County. The site distance will be moving out of site. Mr. Kataryniak suggested taking a few more measures restricting left hand movements out of site. Mr. Shrobshire said that looking to east; they can make sure it is sufficient for a left turn in.**

**Mr. Shrobshire said the parking spaces will turn over one time during the day. The employees that are not on the main shift and those not hourly, is a very low shift (three to six pm). The control of food deliveries (timing) and trash pickup need to be worked on. He also said you cannot predict possible accidents**

**There was a remainder of comments which can be addressed to the site plan. See no major issues from a traffic standpoint.**

**Mr. Shapiro said his concerns are with the weekends and holidays.**

**Mr. Kataryniak asked Mr. Shropshire to elaborate on the gap study. Mr. Shropshire said the gaps in traffic are actually counted. The study did not include Saturdays.**

Mr. Kataryniak said the real issue is how traffic interacts with traffic on the street. The left turns must be evaluated. Traffic peaks around 2:00 to 3:00 pm Saturdays. This should be further looked into with the site plan.

Mr. Kataryniak stated there should be configuration of parking lot in the service areas and also food services areas.

The lighting might affect Bluffs Court residents; a retaining wall around this area might alleviate the noise level.

There may also be a County Road jurisdiction where requirements may be restricted.

**Public Questions:**

Mr. Green, 15 Bluffs Court stated that young children live here; there will be additional traffic.

Mr. Shropshire stated they want to maintain left turn into site. We are trying to make sure there is no impact to Bluffs Court.

Mr. Kataryniak cannot speak specifically to what the County will approve.

Mr. Shropshire took all of this from the study.

Mr. Zglobicki, 51 Route 520, stated there are single families across the street that currently has a problem going in and out.

Mr. Cucchiaro stated that 2<sup>nd</sup> and 3<sup>rd</sup> floor comparisons should be shown.

Mr. Green asked if they could bring their Planner. The answer is yes.

Mr. Shapiro gave a date of September 18, 2012. Mr. Policastro agreed and signed Extension of Time.

ZB12-6450 – Royal Pines at Marlboro, LLC

Public Hearing for approval to construct a 300 square foot utility shed where an accessory structure requires setbacks to be a minimum of twice the distance from any street line on property located at 362 US Highway 9, Englishtown, Block 299, Lot 3 in a C-3 Zone.

Johnathan Heilbrunn, Esq., Heilbrunn, Pape representing Royal Pines., seeking approval of a 300 square foot shed as an adjunct to the facility. A variance is required for the 7.2 acre property where 0.30 FAR is permitted; our ratio is 0.3009. The front yard setback is the second variance. The purpose of the shed is to keep the lawn care and snow removal equipment on site; it is currently offsite.

The Board took jurisdiction. The following evidence was entered:

- A – 1            Petition on Appeal
- A – 2            Denial by Zoning Officer
- A – 3            Indemnification and Hold Harmless Agreement
- A – 4            Disclosure Statement
- A – 5            Tax Collector's Certification
- A – 6            W-9

- A – 7 Notice To Adjoining Property Owners
- A – 8 List of Property Owners within 200 feet
- A – 9 Certified White Receipts and Green Cards
- A - 10 Affidavit of Publication
- A – 11 Affidavit of Service
- A – 12 Affirmation of Local Pay to Play Ordinance
- A – 13 Owners Affidavit of Authorization and Consent
- A – 14 Application Affidavit of Completeness
- A – 15 Completeness Checklist for Use Variance Application for Royal Pines at Marlboro, LLC.
- A – 16 Reduced Variance Sketch prepared for Royal Pines, Block 299, Lot 3, By Lorali E. Totten, Crest Engineering Associates, Inc., 100 Rike Drive, Millstone, NJ, Dated 6/27/12.
- A – 17 Sealed Variance Sketch prepared for Royal Pines, Block 299, Lot 3 By Lorali E. Totten, Crest Engineering Associates, Inc., 100 Rike Drive, Millstone, NJ, Dated 6/27/12.
- A – 18 Report prepared by John Borden, Fire Sub-Code Official/ Fire Official, 1979 Township Drive, Marlboro, NJ, Dated July 3, 1012.
- A – 19 Report prepared by Richard Cramer, PP, T&M Associates, Eleven Tindall Road, Middletown, NJ, and Dated 7/24/12
- A – 20 Memorializing Resolution for Preliminary and Final Site Plan Approval for Block 299 Lot 3, ZB#05-6198.
- A – 21 Memorializing Resolution for Brownstone Commons, Block 299, Lot 3, Dated 12/22/04.
- A – 22 Report prepared by James Priolo, PE, Birdsall Service Group, 611 Industrial Way West, Eatontown, NJ, Dated August 14, 2012.

Lorali E. Totten, Planner Crest Engineering Associates, Inc., 100 Rike Drive, Millstone, NJ, has previously testified and her credentials were approved. **The shed will be located adjacent next to the pump station and detention basin.**

**Additional evidence was presented:**

- A – 23 Color rendering of the variance sketch, dated 5/15/12, and revised 6/27/12.

It was noted that an accessory structure must be twice the principal setback.

**She noted there is not much room around the perimeter and this will not interfere with parking or access.**

**The shed is about 275 feet more than permitted. It is 20' x 15' with a height of 12 feet. The positive criteria are that it is especially suited with no detriment to the public good.**

**Additional landscaping can be installed. This site, she believes, can accommodate without impairing the site.**

Motion to Approve

Offered:	Michael Shapiro	Seconded:	Jennifer Bajar
Ayes:	6	Nays:	0
Absent:	1	Recued:	1

**10:30 p.m. adjourned.**

## **MEMORIALIZATIONS**

### **ZB12-6447 – McLaughlin’s Auto Service Center, Inc.**

**Memorialization of a resolution for approval of expansion of a non conforming use for an auto service station at 139 Route 9 South, Morganville, Block 275, Lot 50 in a C-3 Zone.**

### **ZB12-6440 – Piccone, Paul & Beth**

**Memorialization of a resolution for approval of a preliminary and final major site plan for property located at 240 Valley Road, Morganville, Block 147, Lot 4.03 in an LC Zone.**