

The meeting was opened by **Chairman Ron Palmieri**.

Mr. Palmieri read a statement of compliance with the New Jersey Open Public Meetings Law as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meeting Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Palmieri then led the meeting in a salute to the flag.

ROLL CALL

Present: Messrs. Palmieri, Rauch, LaValle, Diamond, Baldwin, Lomangino,
& Calvert and Ms. Evangelho

Absent: Mr. Slazyk

Also present: Mr. Hirsch, Board Attorney
Mr. Staiger, Board Engineer
Mr. Gotfredsen, Board Secretary

Mr. Palmieri said a statement of procedural guidelines for the public hearing.

RICHARD & TERRI SHAFFER	BA 2006 – 31
31 TAYLORS RUN	BLOCK 123.01 LOT 14.15
SHED IN FRONTYARD & LOT COVERAGE	

Richard Shaffer, the applicant, came forward.

Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form.

A motion to accept service in the Shaffer matter was offered by Mr. Rauch and seconded by Mr. Diamond. A voice vote in favor was unanimous.

Mr. Shaffer was sworn in by Mr. Hirsch.

Mr. Palmieri asked Mr. Shaffer why he was before the Board.

Mr. Shaffer advised the Board had approved at an earlier meeting the installation of a pool but with the addition of the desired shed, it took the applicant past maximum lot coverage. Also the shed is not allowed in the front yard and the applicants live on a reverse frontage lot. The shed which is to be 8 X 8 feet in size will not be on a permanent foundation. It is needed for storage of pool supplies and equipment.

Mr. Palmieri stated that in the members' packages was the previous resolution that addresses everything related to the pool. And just so we get it on the record, the shed is going to be located to the southeast corner. How close would it be to the property line.

Mr. Shaffer said per code it's 3 feet in from each property line so it will be 3 feet in from each fence. We have a 6 foot high stockade privacy fence. It will actually be further in than that. Our fence is already in from the property line so I think it's a total of 5 feet in from the property line.

Mr. Palmieri stated we have to get this exact, how many feet from the property line.

Mr. Shaffer said I believe it's 8 feet from the property line to the east (Green Grove Rd.) and 3 feet from the southerly property line.

Mr. Hirsch asked can you scale it, Jeff.

Mr. Staiger replied scaling where the box is located in the southeast corner, which appears to be the shed, from the easterly property line, which is the right-of-way line of Green Grove Road, it scales approximately 6 feet. And from the property to the south, it scales around 3 feet.

Mr. Hirsch asked are you asking the Board to approve the shed at an 8 foot setback or a 6 foot setback, from the property line on that corner of the property, 6 foot from the easterly property line and 3 foot from the southern.

Mr. Palmieri said the only other thing left is your variance for lot coverage and based on your calculations, you're saying it's less than one percent.

Mr. Hirsch stated according to the notice, 31.46 percent is proposed and there's 31.25 percent permitted. That's what the application says.

Mr. Palmieri said it says your existing is 29.42. So you're going over just about a quarter of a percent.

Mr. Staiger asked how tall is the shed going to be.

Mr. Shaffer replied 8 feet at the peak.

The Board had no further questions.

Mr. Palmieri opened the floor to the public for comments/questions. There were none.

A motion to close the public portion of the Shaffer application was offered by Mr. LaValle and seconded by Mr. Diamond. A voice vote in favor was unanimous.

A motion to approve the variances in the Shaffer matter was offered by Mr. Lomangino and seconded by Mr. Diamond.

ROLL CALL

Yes: Messrs. Lomangino, Diamond, Palmieri, Rauch, LaValle, Baldwin and Ms. Evangelho

No: None

Abstain: None

A motion to approve accepting the meeting minutes of September 7, 2006 was offered by Mr. Baldwin and seconded by Mr. Diamond. A voice vote in favor was unanimous.

A motion to approve accepting the meeting minutes of September 21, 2006 was offered by Mr. LaValle and seconded by Mr. Rauch. Mr. Palmieri was ineligible to vote. The remaining members voted unanimously in favor in a voice vote.

A motion to adopt the Palumbo Office Bulding resolution was offered by Mr. Baldwin and seconded by Mr. Lomangino. Messrs. Rauch & Diamond and Ms. Evangelho were ineligible. The remaining members voted unanimously in favor in a voice vote.

A motion to adopt the Wawa, Inc. resolution was offered by Mr. Baldwin and seconded by Mr. Rauch. Not eligible to vote were Messrs. Calvert, Palmieri, Diamond, and LaValle. All eligible voted in favor in a voice vote.

WORLD VOLKSWAGEN BA 2006 28
4075 STATE HIGHWAY 33 BLOCK 147 LOTS 2, 3.02 & 13
REQUEST FOR RE-CONSIDERATION OF CONDITION OF APPROVAL

Mr. Gotfredsen advised he had just received a cell phone call from Peter Falvo, attorney for World VW, who stated he was held up at another hearing in Red Bank and would be unable to attend tonight's hearing for World VW.

Mr. Hirsch reviewed the affidavit of publication and proof of service and found them to be in order as to form.

A motion to accept service in the World VW matter was offered by Mr. LaValle and seconded by Mr. Baldwin. A voice vote in favor was unanimous.

The Board agreed to carry the World VW application to the February 1, 2007, with no further notice required.

An objector, John Golden, Shark River Road, wished the Board to note his appearance at the hearing.

At this time the Board took a short recess.

SUZANNE BERGER 27 PEGASUS DRIVE	BA 2006 – 28 BLOCK 62.01 LOT 12
LOT COVERAGE VARIANCE	

Mr. Hirsch advised he had reviewed the affidavit of publication and proof of service and found them to be in order as to form. He advised that there might be some other variances involved but the notice was only for lot coverage.

A motion to accept service in the Berger matter was offered by Mr. LaValle and seconded by Mr. Baldwin. A voice vote was unanimous in favor.
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Marc Leber, Two River Engineering, Colts Neck, the applicant's engineer, and **Suzanne Berger**, the applicant, were both sworn in by Mr. Hirsch.

Mr. Leber said he was retained by Ms. Berger to do an engineering plan for a lot coverage variance. He advised he had two exhibits, a plan and photos, and will be providing testimony as to the improvements currently on the property.

Mr. Hirsch stated why doesn't the Board address the concerns of Mr. Staiger right up front, that he sees the possibility of other variances.

Mr. Staiger advised he received the application today and was requested by Mr. Gotfredsen to take a look at it. The dimension that he had taken are scaled dimensions because they were not called out on the plan. The variances he see are one, a small section of patio on the northern side, isolated by itself – supposed to have a 15 foot sideyard setback. The scaled dimension is approximately 10 feet. The second variance is for the pool's water surface dimension – supposed to 20 feet from the rear property line. The scaled dimension is approximately 18 feet.

Mr. Palmieri asked is that at its closest point.

Mr. Staiger replied it is. Looking at the pool on its southeast side, there is a circular shape. Just to the left, you have a curve that approaches the rear property line. It is at that curve where I scaled the dimension of 18 feet. And that's to the water surface of the pool. The third variance would be for the patio around the pool. 15 feet is required. The scale dimension is 13 feet. And that dimension is a little to the left of where the leader is for the dimension of 72.48. It's that curve which gets closer to the property line. The fourth variance is coming around to the other side of the house itself, there's a dimension

of 34.05 feet for the sideyard setback for the house. In Tinton Falls, setbacks are measured from utility easements. There's a drainage easement located on the southerly side, parallel to the property line. So that dimension should actually be 24.05 feet for the setback where a sideyard setback of 25 feet is required.

Mr. Rauch asked would that be any variance that the Planning Board had approved.

Mr. Hirsch pointed out that he thinks Jeff said he didn't know where it was or not. If it doesn't meet the Ordinance, there may have been a prior variance for that.

Mr. Staiger stated the application had indicated that no prior application was made for variances. Now typically when you get a major subdivision that comes in before either the Planning Board or the Zoning Board, a lot of times you just see a square rectangular box that's on the plans. That's not the actual dimensions of the house. Whether a variance was granted when the whole major subdivision came in or not, I'm not privy to that information. And lastly, the driveway located on the northern side, the portion of the driveway closest to Pegasus Drive that butts out around the turnaround area is approximately 4 feet from the property line whereas 5 feet is required. One other thing, it appears as if the lot area used, 30,011 square feet, was used as the total lot area for the base for the lot coverage. The Ordinance says that the areas located within easements should be excluded from that area. Taking the dimension of the easement, 10 feet, just running it the length of the property, it would be slightly different because the other property lines are not at 90 degree angles. It's not a perfect rectangle but pretty close to 2,067 square feet. That should come off of the 30,011. So the lot area would 27, 944. So providing the other calculations for the other impervious areas are correct, that would bring the lot coverage percentage up to 30.7 or 31 percent.

Mr. Hirsch asked what's allowed.

Mr. Staiger replied allowed is 22 percent in an R-1 Cluster Zone.

Mr. Hirsch asked anything else, Jeff.

Mr. Staiger replied I just had some questions on the impervious coverage but as for the variances noted that I saw, yes, that's it.

Mr. Hirsch asked Mr. Leber, do you have any information at all about the other non-conformities Mr. Staiger just mentioned.

Mr. Leber replied no, I do not.

Mr. Hirsch said okay, this is where we're at, procedurally. You have these structures already existing so you're not coming here asking to build them. You're asking for them to be legalized so to speak. You have properly noticed for a lot coverage variance although the lot coverage may be more than what you thought because of the calculations Mr. Staiger just went through...but I don't really have a problem with that, if that was the

only issue. I mean you've noticed for lot coverage and we can deal with that. But, as you can see, you've got setback issues under the Ordinance both with the walkway and the water. I mean even if we just focus on the pool. Forget about the house and the driveway, do you follow me, at this point. So the Board could proceed to hear your application tonight as to lot coverage. Okay, based on the new information we have from our engineer, we could hear your case on all of that. And even assuming the Board were willing to grant it, you would still then have to come back before the Board with an application for these other variances. I don't know the history of how the house is set back there and the driveway and maybe even find that out. Maybe there were prior variances or something that we don't know about on that. But certainly not for the pool because that's why you're here. For the setbacks on the pool, you're going to need to amend your application and re-notice because the public doesn't know that the pool not only violates coverage but it also violates setback requirements. Quite frankly, we're not naïve, we know when you do that notice, we'll probably have the same amount of people in the audience that you have tonight. But I can't avoid what the statute requires us to do. Do you follow me...and it says that you have to notice the public of all the variances. So, #1, even if the Board were willing to go ahead tonight and consider the coverage variance, you may rather say why don't we carry this. Let me re-notice. Let me find out the history of whatever else happened on my property...and at the very least, let me re-notice for the rearyard setback for your walkway around the pool and your surface water of the pool. That's two setbacks in addition to your lot coverage. And these other variances, maybe you can find how these other things came about...unless you got a variance. If not, you have a lot of other non-conformities on this lot that you heard Mr. Staiger go through. We don't have an answer for those. That's not to say that the Board might not be willing to grant all those variances. I don't want you to panic about that. They may or may not. You may have good reasons for them. So, it doesn't necessarily mean "oh, my God, I have to tear my house down." But, it just means that legally we have to deal with them. That's all. Okay. If you do have a preference, you'd rather ask the Board if it wants to consider just the lot coverage variance tonight.

Mr. Palmieri said I just want to ask some quick questions about the calculations that were made. Basically with the porch and patio, does that include the concrete walkway, the driveway, or is that just the calculation for the patio and the walkway to the rear of the house, or does that include, all impervious. I just want to make sure we have all the total numbers.

Mr. Leber replied it includes everything. Every piece of patio on the property and every walkway including the service walk.

Mr. Palmieri stated obviously Ms. Berger, you have to make the decision to go forward.

Ms. Berger said I think I'd like to come back.

Mr. Hirsch stated you'd like to try and do it all at one time.

Mr. Leber said my only request would be that I receive a letter from the Engineer's office indicating each non-conformity that he's identified in addition to any other comments that he has at this time so that I can make sure I address every individual comment.

Mr. Hirsch stated yeah. Unfortunately they get the applications at the last minute to review them. That's not a problem. He can do a report. Mr. Staiger, can you let them know what the variances are and the calculations are on the overall property.

Mr. Staiger replied yes.

Mr. Calvert said I have a question. I know Jeff brought up about the setback requirements for the driveway and the house itself. Jeff brought up the fact that this was an approved subdivision. Now, I don't think it's her responsibility to justify those setbacks for a house that was built.

Mr. Palmieri replied you might be right. It might be in a planning...when they did the whole development, they might have said "oh, you have a little problem with this lot" and they already gave them the variances to build it the way they want. I was talking with Ms. Berger during the break that we had a house that was built here and they put the driveway in too close to the property line. They came in front of the Board. The builder did that and they had to fix it, if I remember correctly. So this might have something, 4 foot, 5 foot. It wasn't caught but if we're going to have to address other variances that are located on here, you might as well as take care of all of them, or research them all, especially with the easement that's there. That might already have been approved based on what the Planning Board had said about this piece of property. See, we don't know that.

Mr. Hirsch said I think what he's saying is, so you understand, a subdivision can be approved. Okay, the lots can be approved but, as you said, the houses aren't determined very often. Sometimes they're custom homes. The Planning Board isn't approving this house necessarily. They're approving a subdivision with homes that can be built within the building envelope. Now, if somebody comes in and builds a house that violates the Ordinance, that could create a variance. How that happened, I can't speak to that. There would have had to be building permits. Somebody should have picked up that they were building something that was out...we don't know. They may have got a building permit that said they were going to meet the setbacks and some builder came in and built it over the setbacks. We don't know any of that.

Mr. Calvert asked so how do you get a C.O. then.

Mr. Hirsch replied that's something we don't know. We don't know any of that yet.

Mr. Calvert stated it seems like the error is on the Borough's part.

Mr. Hirsch said we don't know that yet. That's the point. None of us know that yet. You maybe right. They may have gotten variances for that and these maybe non-issues but we don't have enough information to know that right now. But, regardless of those variances, the pool, which is clearly the subject matter of the application, needs at least two more variances.

Mr. Calvert stated I understand the pool. I understand the variances on the pool. But I don't understand the questions on the house and the driveway and I think it's incumbent on us to determine. You know, we're the people...when I say "we", the Borough...we give C.Os. We give building permits, etc, etc,. And now we're going to the applicant and saying "why was it built this way."

Mr. Lomangino asked is this a new development.

Mr. Calvert replied yes. I just think this is wrong and we're putting the onus on here where the house and the driveway, the way it was built, that's not her fault.

Mr. Hirsch stated you don't know that. That's the problem. You may be right but we don't know that right now.

Mr. Rauch said the driveway, it's hard. When you get a C.O., they're out there measuring exactly whether it's 5 or 4 feet. Jeff, I have a question. With the buildings, if this was subdivided and I know our Ordinance takes the building setback from the easement and not the property line.

Mr. Staiger replied it takes it from utility easements.

Mr. Rauch asked now on the filed map, the building envelope, the setback lines, shouldn't that on the file map show on those lots that have the utility easement there.

Mr. Staiger replied right. On lots which are encumbered by utility easements, detention basins, wetlands, steep slopes, all items that the Ordinance list as items that you measure the setbacks from, that's where the building envelope should be developed...not from the property line. So if there were easements on all four sides, all the setbacks should be measured from all those easements, therefore reducing then the building envelope for that property.

Mr. Rauch asked now if the file map shows the setback line from the property line instead of the easement, would a variance still be...in the approved subdivision.

Mr. Staiger replied I think on the file map the setback lines are more for information purposes on there versus the actual creation of the lots and the easements within the subdivision.

Mr. Hirsch asked what is the sideyard setback, by the way, for the house.

Mr. Staiger replied 25 feet is required.

Mr. Hirsch said so it's a relatively minor variance. And as I say, none of this means that the Board would grant any or all of these variances. It's just that we're trying to get the record straight. And there is some history and certainly the Board could ask Doug to check with Planning or Building or Jeff can do to find out what is the history of this. The Board can certainly do that also...to see what information the Borough has on it. We can find out was this all legitimized at some prior time. Not the pool, of course, but the rest of it. Was there some other approval for this that somehow was taken into account by somebody previously. And, if not, we can get it all straightened out and these issues won't come up again. There'll be a record of it...if there's not already.

Mr. Palmieri stated I don't know if there's any testimony Mr. Leber can give for the applicant relating to the lot coverage but I know there's going to have to be some re-calculation. I don't know if there's any evidence that you want to give to the Board at this time related to the lot coverage or do you just want to hold off and wait.

Mr. Hirsch said I think that's what the applicant indicated. She'd rather come back and deal with it all at one time.

Mr. Leber asked can you schedule us for another hearing.

Mr. Hirsch replied yeah, we accepted service but here's the problem. I can only accept service on the coverage so you have to re-notice the other things. We can give you a date. Normally when we carry an application, you don't have to re-notice but because you're going to be noticing, even if you don't need any of those other variances related to the house, if you find out that they were previously granted, you still have to re-notice for the two variances for the pool, the setbacks.

Mr. Rauch said what you might want to do is contact Erin Swartz in the Planning Board. You want this subdivision, the Willowbrook subdivision, so you can look at the records of the Willowbrook subdivision.

Mr. Hirsch asked do you know how old that one is.

Mr. Rauch replied Willowbrook is not that old. Five or six years old.

Mr. Hirsch asked did you buy this house new.

Ms. Berger replied yes.

Mr. LaValle asked from which builder. There were two builders there.

Ms. Berger replied it was U. S. Homes, now Lennar.

Mr. Lomangino asked was the pool there.

Ms. Berger replied no. I had the pool put in by Sylvan Pools. My other question is they claimed to have come to the township.

Mr. Hirsch said you should have got a building permit.

Ms. Berger asked where do I begin.

Mr. Hirsch replied you could check with Lori Paone or whoever else in the Building Department to see if they have a record of the building permits issued for this lot. That's what should have happened so you wouldn't be in this position.

Mr. Palmieri said they would have put a survey in or just have told the Building Department they were putting in a pool and gave them the dimensions of the pool, this is where it's going to be located.

Ms. Berger stated exactly and everything was measured and re-surveyed.

Mr. Palmieri said so if you have things on file with the town showing that you went through and nobody said to you "oh, yeah, we have a setback problem" or you should get all that stuff put together and bring it with you.

Mr. Hirsch stated remember, the Engineer is scaling this from your survey so, if your survey is not accurate, maybe that's the problem. If the survey's accurate, then somebody screwed up somewhere but yeah, there should be a building permit and that obviously will say that they're showing that the pool is going to be 15 feet or 20 feet and if it ended up not being that, maybe you should talk to your pool company about the additional cost that you're going to be incurring as a result of their failure to build the pool where the building permit said they were supposed to build it.

Mr. Rauch said Lori Paone at the town can help you...because that would have gone before Lori.

Mr. Lomangino asked did you get one of those little yellow slips to put in your window when they were doing the pool.

Ms. Berger replied sure...when we were doing the pool, my basement, for everything.

Mr. Hirsch said that's what I mean. Sometimes people just end up doing stuff without building permits and they find out it violates...."well, I didn't know that". : "Well, did you apply for a building permit." "No." That's why you didn't know it violates anything. But, if you, or your company did all the right things.

Ms. Berger stated that's why I hired Sylvan Pools. I just figured with their reputation, they should know.

Mr. Hirsch said well, you might want to double-check everything. You get the building permit. You look at that and then double-check your calculations. I mean, your survey, if this is where the pool actually is though, that's what scaled. So, the plan might have been approved for the right setback but they may have, when they put it in, mismarked, so to speak.

Mr. Palmieri stated it's been known to happen.

Mr. Hirsch said but if they did, I can't give you legal advice about that. You may want to talk to somebody.

Mr. Staiger asked also for the lot coverage calculations, the different areas that you have broken out...the porch/patio area, if you can just highlight that differently on the plan. Use a different shading. Just so that stands out. The other ones are pretty self-explanatory. You know, the pool/patio, the house, the shed, the side patio but the porch/patio area, to me, it seems like a large area. I don't know if that includes the driveway in there as well or where that comes from. So if you can use a different hatching, that would be great.

Mr. Hirsch said alright, this will get worked out.

The Board and the applicant agreed to carry the matter to February 15, 2007.

A motion to adjourn was offered by Mr. Lomangino and seconded unanimously.

Respectfully submitted,

Doug Gotfredsen
Zoning Board Secretary