

Township of Hillsborough – BOARD OF ADJUSTMENT

APPROVED Regular Meeting Minutes

March 15, 2023 – 7:00 pm

Chairman Herbert called the March 15, 2023 Board of Adjustment meeting to order at 7:01 p.m. and led the flag salute.

NOTICE OF MEETING

Chairman Herbert announce the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 (“Sunshine Law”). Notice of the 2023 Annual Meeting Schedule has been provided to the officially designated newspapers, the Township Clerk, posted on the Township’s website and available at the Hillsborough Township Municipal Complex.

Application documents have been made available on the Township’s website <https://hillsboroughnj.civicclerk.com/>. Complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

ROLL CALL

Frank Herbert, <i>Chairman</i> - Present	Jim Wohlmacher, <i>Vice Chairman</i> - Present
John Stamler - Present	Frank Valcheck - Present
Helen Haines - Present	Tom Ramsey (<i>Alt#1</i>)- Present
Jarrett Dewelde - Present	Scott Scherer (<i>Alt#2</i>) - Absent
Catherin Payne - Present	

Also in attendance: Marcella McLaughlin, *Zoning Officer/Board Secretary*; Mark Anderson Esq., *Board Attorney (Woolson Anderson Peach, P.C.)*; Drew Di Sessa, PE, *Board Engineer (Pennoni Associates)*; Christina Restuccia, CCR, *Covering Board Court Reporter*.

CONSIDERATION OF MEETING MINUTES

- None

CONSIDERATION OF RESOLUTIONS

- Bilkoo Construction, Inc. (2022 Amended Application) – File BA-19-21
Mr. Stamler made a motion to approve, seconded by Ms. Payne.
No further discussion.

Roll Call:

Yes - Ms. Haines	Yes - Mr. Valcheck
Yes - Mr. Stamler	Yes - Vice Chairman Wohlmacher
Yes - Mr. Dewelde	Yes - Chairman Herbert
Yes - Ms. Payne	

Motion carries.

BOARD OF ADJUSTMENT BUSINESS

- Certification of Absent Members for Cyzner Application – meeting date 02/16/22
 - Chairman Herbert states four Board members were absent for the February 16, 2022 application meeting. All four members have submitted their Certification forms.
- **Rescheduling of Milena Neves & Scott Gamache – File BA-22-14**
 - Chairman Herbert gives a brief summary of the application from the March 1, 2023 meeting which resulted in it being carried to April 19, 2023.

BUSINESS FROM THE FLOOR

(Open to public comment for matters not on the agenda)

None

PUBLIC HEARING - APPLICATIONS

- **Salvatore and Bernice Romano – File BA-21-16 – (TOD 04/28/23 ext.)** – Block 8, Lot 19.03 – 3 Sycamore Lane. Applicants (*originally submitted under William / Gourley*) – Block 8, Lot 19.03 – Sycamore Lane. Applicants seeking ‘c’ bulk variances, and waiver from proposed disturbance withing the Hillsborough Township Stream Corridor, to construct a new single-family dwelling., garage, and associated improvements, on property in the AG, Agricultural Zone. ***Adjourned from the January 18, 2023 agenda with notice, being heard at the 3/27/23 EC meeting and requested to be adjourned to the May 3, 2023 agenda with notice.***
 - 1) Chairman Herbert call for a motion to move the application to May 3, 2023
 - 2) Mr. Stamler motions to move the application to May 3, 2023 without notice, seconded by Ms. Payne. All were in favor, none opposed. Motion carries.
- **Irv Cyzner – File BA21-20 – (TOD 4/30/23 ext.)** – Block 11. Lots 44, 44.01 and 44.02 – Amwell Road and Mill Lane. Applicant is seeking “d” use and “c” bulk variances and minor subdivision approval for three existing lots to be reconfigured into two building lots 44.03 & 44.04 along Mill Lane and Amwell Road and requesting access for both lots from Mill Lane. Both dwellings are to be serviced by public water on property in the AG, Agricultural Zone. Adjourned from June 1, 2022 agenda with notice.

Participants: CherylLynn Walters, Applicant’s attorney; Michael Ford, P.E. – Applicant’s Engineer; John Hughes, Applicant’s Property Manager; John Taikina, P.P., Applicant’s Planner; Irv Cyzner, Applicant (as needed).

- 1) CherylLynn Walters, attorney for the applicant, introduces herself gives a summary of the February 16, 2022 meeting and history of the application and property.
- 2) Ms. Walters distributes curtesy copy handouts of all exhibits to the board and makes extras available for the public.
- 3) Ms. Walters notes the change of order of the exhibits in the packet specifically referencing exhibit A-3 the Witness and Exhibit list which indicates the application information, names of the witnesses, identifies exhibit marks from the prior hearing and identifies this evening’s exhibits. And explains they will be walking through exhibits A-1 and A-2 during testimony.
- 4) Ms. Walters reviews the witness list, their intended order of testimony, the variances, and waivers they are requesting.
- 5) Ms. Walters addressed the two questions raised by the Board at the February 19, 2022 meeting relating to the 2003 Planning Board Subdivision and the potential issue of the Doctrine of Merger.
- 6) Ms. Walters states as it pertains to the 2003 Subdivision, the application proposed to consolidate the three lots then re-subdivided into two lots; one three-acre lot with frontage on Mill Lane and a 32-acre lot which was intended to be deeded to the municipality for permanent preservation through a Farmland Preservation Grant. The resolution stated if the dedication to the municipality did not occur the subdivision of the deed was not to be recorded. Ms. Walter further explains the how dedication did not happen and the applicant is abandoning that approval in order to proceed with this application.
- 7) Chairman Herbert brings up the issue of the two submitted resolutions.
- 8) Ms. Walters states she does not know the history behind the resolution pertaining to the pump station.
- 9) Ms. Walter addresses the Doctrine of Merger issue stating its purpose is to bring lots more into conformity with current standards.

- 10) Chairman Herbert asks for further explanation for those who do not know about it.
- 11) Ms. Walters explains there are two undersized lots fronting on Mill Lane and a third lot that while conforming in lot size is deficient in frontage on Mill Lane but has sufficient frontage on Amwell Road. She also explains in the Doctrine of Merger contiguous non-conforming lots that come into common ownership can be deemed merged as a matter of law and the three lots in question have been shown as are back as the 1980s, via the Hillsborough tax map, to be three separate lots.
- 12) Chairman Herbert asks if they “can be” or “must be”.
- 13) Ms. Walters clarifies it is not a “must be” situation and it is preferred the be deemed consolidated as a matter of law unless an exception applies and gives further argument and explains the issue.
- 14) Chairman Herbert asks for clarification on the difference between if they were requesting to put three houses on three different lots verse merging the three to then subdivide.
- 15) Ms. Walters explains how it does not impact the merger.
- 16) Mr. Anderson agrees with her explanation.
- 17) Ms. Walters introduces **Michael Ford** as her first witness and reminds of his area of expertise in engineering.
- 18) Chairman Herbert states for the record Mr. Ford is still sworn in from the February 19, 2023 meeting.
- 19) Ms. Walters asks Mr. Ford to begin with Exhibit A-4.
- 20) Mr. Ford reviews the layout of the Exhibit and properties.
- 21) Mr. Ford explains proposed water access to each proposed dwelling; he discusses the size of the proposed subdivided lots, and street access.
- 22) Ms. Haines asks if the water pump station will go with the small lot.
- 23) Mr. Ford states that is correct.
- 24) Ms. Haines asks if the owner of the small lot will have to assume the lease with American Water.
- 25) Mr. Ford defers to Mr. Walters.
- 26) Ms. Walters states one of the requirements from the board professional is that the lease remain in full effect for as long as the water company requires it; the lease runs with the land. The title holder of the property would be responsible for the grant or responsibilities under the lease.
- 27) Ms. Payne asks why the odd corner at Amwell Road is carved out if the lot is under 10 acres.
- 28) Mr. Ford explains it is so the larger lot can have frontage on Amwell Road thus allowing it get water and sewer service; there is no water or sewer service from Mill Lane.
- 29) Mr. Ford states it would be just shy of 9 acres and explains other variables that effected this decision.
- 30) There is a brief discussion about the other variables and the Stream Corridor area.
- 31) Mr. Ford states they did a thorough analysis of the property and there is plenty of land for the two houses, driveway access and stormwater management mitigation.
- 32) Mr. Stamler asks what the driveway porous pavement material is.
- 33) Mr. Ford explains it is standard pavement with more fine matters in it.
- 34) There is a discussion about porous pavement effects and treatment.
- 35) Ms. Haines asks about the proposed barn on the site plan which is not reflected in the Impervious Coverage Calculation Sheet.
- 36) Mr. Ford states this is the current plan and the current plan does not have a barn.
- 37) Mr. Ford explains the Stormwater Management markings on the plan, the Small Scale Subsurface Infiltration Basin, which are mistaken form outbuildings on the plans.
- 38) Ms. Walters clarifies this is all part of the required Stormwater Management.
- 39) Mr. Ford reviews the bulk variance for Lot 44.043, the westerly lot which is 28 acres.
- 40) Ms. Walters asks if Exhibits A-5 and A-6 are demonstrations of front elevation and proposed color rendering for the dwelling on Lot 44.03.
- 41) Mr. Ford states this is correct and points out the architectural plan and rendering.
- 42) Ms. Walters states those two items were provided in the April 2022 resubmission of the application and carried forward.
- 43) Ms. Walters, with respect to Lot 44.04, asks Mr. Ford to review the setbacks and bulk variances.

- 44) Mr. Ford states Exhibit A-07 is the Easterly lot, 7-acres with 179.93 feet of frontage on Amwell Road and 209.17 feet on Mill Lane.
- 45) Ms. Walters asks if the proposed dwelling on exhibit A-07 meets all rear to front yard requirements.
- 46) Mr. Ford states yes.
- 47) Ms. Walters asks if both lots were designed from a Stormwater Management perspective to comply DEP requirements.
- 48) Mr. Ford states yes, state requirements
- 49) Ms. Walters asks if both lots respect the Wetlands Buffer and the Stream Corridor Buffers.
- 50) Mr. Ford states yes and explains how.
- 51) Ms. Walters asks Mr. Ford to confirm exhibits A-08 and A-09.
- 52) Ms. Walter asks the approximate acreage of the easement on which the water pump station sits.
- 53) Mr. Ford believes it is just less than an acre.
- 54) Ms. Walters ask Mr. Ford to explain exhibit A-10 pictures of the water pump station.
- 55) Mr. Ford describes how the water pump station looks from various perspectives.
- 56) Ms. Haines asks who maintains, or mows, the mound over top of the pump station.
- 57) Mr. Ford states he sees American Water employees there regularly.
- 58) Ms. Walters states she believes it is part of their obligations.
- 59) Ms. Walters asks Mr. Ford if, in his professional opinion, he believes the two "d" variance reliefs she described earlier are still required.
- 60) Mr. Ford states yes.
- 61) Ms. Walters asks if there is anything else Mr. Ford would like to add.
- 62) Chairman Herbert asks if Mr. Ford has any idea when the zoning in that area changed from three acres to ten.
- 63) There is discussion about when the MZ and AG zones changed around 2002-2004.
- 64) Ms. Walters states they are not claiming the Grandfathering opportunity.
- 65) Mr. Anderson asks if there is anything in Mr. Di Sessa's report the applicant does not want to comply with.
- 66) Mr. Ford states no.
- 67) Ms. Walters wants to clarify for the record, the report seems to indicate they are only asking for subdivision approval and would return in the future for purposes of approval to seek development of the lots, which is not accurate.
- 68) Mr. Anderson acknowledges this and understands their request is different from this.
- 69) Ms. Walters states she believes they satisfied all the comments, and they agree satisfy any which have not been.
- 70) Chairman Herbert asks if there are any other questions from the Board or Board professionals.
- 71) Ms. Walters states for the record they have former Planning Director, Maski's, report from January 3, 2022 which had a couple comments of which they have complied. She states there is no object to Ms. McLaughlin report dated May 26, 2022 with revision of the bulk stands when the smaller lot size was increased. They have no objection to the Fire Official memo from February 27, 2022.
- 72) Mr. Anderson states it seems the lot configuration is driven by American Water Company Tariff which does not exclude an easement. Based on the information American Water provided for their explanation for the tariff, does Mr. Ford agree it does not eliminate the possibility of running the water through an easement.
- 73) Ms. Walters states she would like to answer the question since the tariff is a legal document.
- 74) Mr. Anderson states he is asking the witness who is permitted to no know the answer.
- 75) Mr. Ford states he is not referring to the tariff but rather to his thirty plus years of experience and explains his experience with a recent similar issue.
- 76) Mr. Anderson accepts Mr. Ford's explanation of his experience in dealing with American Water Company.
- 77) Mr. Anderson states he presumes the water line would need to be extended down Mill Lane and asks if this is correct.
- 78) Mr. Ford states that is correct.

- 79) Mr. Anderson states he presumes this would be expensive.
- 80) Mr. Ford states correct.
- 81) Mr. Anderson states the configuration of the lots is ultimately driven by the cost which is generated by what American Water Company demands.
- 82) Mr. Ford states correct.
- 83) Chairman Herbert asks if there are questions from the public.
- 84) There are no questions from the public.
- 85) Ms. Walters calls the next witness.
- 86) **John Hughes**, applicant's property manager, is sworn in.
- 87) Mr. Hughes explains his position for the applicant as a property manager.
- 88) Ms. Walters asks if he is also an interested party with respect to this application.
- 89) Mr. Hughes states he is hoping to move into the dwelling on the westerly lot, 44.03.
- 90) Mr. Hughes explains who he spoke with, that there were a few phone calls and he requested a documented version of their conversations.
- 91) Ms. Walters states this conversation information is part of exhibit A-11.
- 92) Mr. Anderson points out that this packet of information appears to be hearsay. He states while the Board is not prohibited from hearing hearsay, he believes it is important the Board knows what is hearsay.
- 93) There is discussion regarding which portion is hearsay.
- 94) Ms. Walters states for the record Mr. Hughes has not communicated verbally any direct content of the communications he has. The testimony he has provided so far is not hearsay; as far as the emails are concerned, they are evidence to support the testimony of Mr. Hughes has provided.
- 95) Ms. Walters presents Mr. Hughes with exhibit A-11 which contains email threads from NJ American Water starting on February 17, 2022 and asks him to summarize the communication.
- 96) Mr. Hughes reads portions of the email thread into the record.
- 97) Ms. Walter states her interpretation of the tariff.
- 98) Mr. Anderson disagrees with the interpretation but understands the applicant has provided substantial testimony that providing explain why frontage on Amwell Road is necessary.
- 99) No further questions from the Board
- 100) No questions from the public.
- 101) Ms. Walters calls **John Taikina**, applicant's planner, as her final witness.
- 102) Mr. Taikina is sworn in and gives his educational and professional qualifications.
- 103) Ms. Walters ask if he has been present for the entire meeting, heard all the testimony, was provided, and read a transcript from the February 2022 meeting and reviewed all plans submitted.
- 104) Mr. Taikina states he has.
- 105) Ms. Walters asks if he is familiar with the project and what is being proposed.
- 106) Mr. Taikina states he is.
- 107) Ms. Walters asks Mr. Taikina to provide the Board with the planning explanation and justification for both the 'd' variances and bulk release required.
- 108) Mr. Taikina's explanation includes but is not limited to the 'd-3' variance requirements, impact, intent purpose and Agricultural Zone; the 'd-1' variance, permitted use for water, and negative criteria; bulk 'c' variances, environmental and utility constraints,
- 109) Ms. Walters asks Mr. Taikina to clarify if he is providing alternate testimony under 'c-2'.
- 110) Mr. Taikina states he is only testifying under 'c-1'.
- 111) Ms. Walters asks if either outcome of the Doctrine of Merger impacts his testimony.
- 112) Mr. Taikina states it does not.
- 113) Ms. Haines asks if the applicant has taken tax advantage of being in the AG Zone.
- 114) Mr. Taikina states the property is currently Farm Accessed.
- 115) Ms. Haines asks if the owner of the big lot would continue to utilize the Farm Assessment.
- 116) Ms. Walters explains the Resolution requirements for preservation assessment.
- 117) There is discussion regarding if being in a AG Zone is a detriment for this property and zoning along Mill Lane.

- 118) Mr. Anderson reminds the Board of Adjustments is obliged to accept zoning is correct. Argument of improper zone belongs in a different Board.
- 119) There is a discussion on AG Zone intent.
- 120) Ms. Walters asks Mr. Taikina to revisit his previous testimony on the purpose of designation of properties in the AG Zone as it pertained to the Master Plan.
- 121) Mr. Taikina states the intention of the AG Zone was to encourage the preservation and continuity of agriculture in the township which requires large contiguous areas in farming, that don't have interstitial uses that would consider farming to be a nuisance.
- 122) Ms. Haines asks if the small property will qualify for Farm or Woodland Assessment.
- 123) Mr. Taikina states he does not know.
- 124) Mr. Anderson explains Farmland Assessment requirements.
- 125) Chairman Herbert asks for confirmation that a residence is of permitted use in this zone.
- 126) Mr. Taikina states yes.
- 127) Ms. Haines ask if concreted survey monuments should be used, instead of flags, since the proposed lot line is so irregular.
- 128) Ms. Walters states this is acceptable to the applicant.
- 129) Chairman Herbert opens to the public.
- 130) There are not question from the public.
- 131) Mr. Anderson, in referring to the questions he asked Mr. Ford, states the lot line configuration seems to be driven by NJ American Water.
- 132) Mr. Taikina states yes, this is why they need access for both lots.
- 133) Mr. Anderson states it is his understanding from Mr. Ford's testimony there is an alternative but it is exceedingly expensive.
- 134) Mr. Taikina agrees.
- 135) Mr. Anderson asks if he agrees that Board of Adjustment should not be determining an outcome based on cost of development.
- 136) Mr. Taikina states in general yes but one of the purposes of the Land Use Law is to reduce the cost of such development and to do so efficiently. He states it is reasonable for everyone to consider the cost but it is not a sole determinant.
- 137) Ms. Walters asks Mr. Taikina if with regards to the 'd-3' variance he testified to the covered tree square standards and with regards to 'd-1' to the Medici standards
- 138) Mr. Taikina states d-3 is correct but with d-1 only Medici in how it defines what is necessary for inherently beneficial use.
- 139) Ms. Walters if any of his testimony was based on financial hardship or did it go towards the statutory and legal criteria for justifying those variances.
- 140) Mr. Taikina states for the statutory criteria of hardship as provided in the 'c-1' standards,
- 141) Ms. Walters asks if his d-1 and-3 testimony address financial considerations.
- 142) Mr. Taikina states it did not.
- 143) There is a discussion on providing sewer service through an easement.
- 144) Ms. Walters asks to bring Mr. Ford back to answer.
- 145) Ms. Walters reminds the Board is obligated to consider the application as it has been proposed.
- 146) Ms. Payne asks if there is well or septic for the current properties.
- 147) Ms. Walters ask if Mr. Ford is aware how the current properties along Mill Lane are services with respect to water and sewer.
- 148) Mr. Ford states there are private wells and septic.
- 149) There is discussion regarding water access and sewers.
- 150) Ms. Walters states she believes this conversation is not relative to the burden of proof required of the applicant.
- 151) Mr. Anderson disagrees.
- 152) Ms. Walters and Mr. Anderson discuss their arguments.
- 153) Ms. Walters asks Mr. Ford if a well would draw upon the stream of affect the aquafers to which the stream is connected.
- 154) Mr. Ford says it draws ground water, public water access would avoid this potential and utilizes a substantial public utility investment.

- 155) Ms. Walters if connection to public water service, if available, is mandatory by the township.
- 156) Ms. McLaughlin states the township encourages it but does not believe it is required.
- 157) Ms. Walters calls Mr. Taikina back up,
- 158) Chairman Herbert asks from a planning perspective what is the wisdom of putting people on wells, and maybe septic, verse public utilities.
- 159) Mr. Taikina states Hillsborough's Master Plan encourage the utilization of public infrastructure when it is available. He states there are two constraints which keep you from extending the property line out; one is the shape of the property and the presence of the stream corridor.
- 160) Ms. Walters asks if this proposal would also need a 'c-2', aka "flexible c", bulk standard,
- 161) Mr. Taikina states yes it would and explains why.
- 162) Ms. Walters asks Mr. Taikina to specify the areas of the Land Use Law that pertained to promoting Purposes of Zoning which he referred to earlier.
- 163) Mr. Taikina states Purpose G, L and Z.
- 164) Chairman Herbert opens to the public.
- 165) **Michael Cebo**, 651 Amwell Rd, Hillsborough, asks if gas and electric will be accessed from Mill Lane.
- 166) Mr. Ford states yes.
- 167) Mr. Cebo asks if down the road there could be an application for a multi-unit residential structure.
- 168) Mr. Anderson states there is nothing that prevents that but this property is not zoned for that.
- 169) No further questions from the public.
- 170) Chairman opens to the public for comments.
- 171) There are not comments.
- 172) There is a motion to close to the public, with a second. All were in favor, none opposed.
- 173) The Board discusses the application.
- 174) Mr. Stamler made a motion to approve the application with concrete property markers, seconded by Mr. Valcheck.
Mr. Anderson reviews the discussion points covered in the testimony.
No further discussion.

Roll Call:

Yes - Ms. Haines	Yes - Mr. Valcheck
Yes - Mr. Stamler	Yes - Mr. Ramsey
Yes - Mr. Dewelde	No - Vice Chairman Wohlmacher
Yes - Ms. Payne	Yes - Chairman Herbert

Motion carries.

EXECUTIVE SESSION TO DISCUSS ATTORNY-CLIENT MATTERS (if applicable)

- Mr. Stamler motions to move to Executive Session, seconded by Ms. Haines. All were in favor, none opposed. Motion carries.

RETURN TO REGULAR SESSION

- 9:58 p.m. board returns from executive session.
- Ms. Haines motions to adjourn the Executive Session, seconded by Mr. Stamler. All were in favor, none opposed. Motion carries.

ADJOURNMENT

9:14 p.m. public meeting is adjourned.

9:58 p.m. Executive Session is adjourned.