

**RUMSON ZONING BOARD OF ADJUSTMENT
OCTOBER 16, 2012
MINUTES**

Chairman Conklin called the regular meeting to order at 7:30 p.m. with the Pledge of Allegiance. The Roll was called with the following members present: Conklin, Gummer, Duddy, Brodsky, Atwell, Wood, Blum. Also present: Bernard Reilly (Board Attorney), Fred Andre (Zoning Officer), State Shorthand.

The requirements of the Open Public Meetings Act were stated as met.

Mr. Andre was sworn in at this time.

Chairman Conklin announced that the following applications will be changed as noted:

1. Randolph Rosen, 2 Broadmoor Dr., - Continued to November meeting;
2. Locals Creative Fresh Takeout, 112A Avenue of Two Rivers – application has been withdrawn.

Dennis & Sarah Devine, 7 Evergreen Drive

Mr. Brodsky and Dr. Wood will not sit in on this application.

Robert Adler, architect, appeared again on behalf of the application. They had two points in question:

1. The matter of the tree closest to the existing house, which had been proposed to remove;
2. Their intent to work with the neighbor to the north to move the house to the south away from that property 13', which created a condition where the house would be effectively centered with the curb and the property to the north (the Wilts).

The front setback to the house on the east is 71', as compared to the minimum required, which is 55'. The proposed setback with the 13' change will be 62' to the property line. The original plan had 73' to the property line.

William Brooks, borough arborist, is present to testify as to the trees on the property. Mr. Brooks was sworn in and said that the Black Oak in question is not a significant specimen tree and is permitted to be removed. The grade changes would possibly end up affecting the tree, so he thinks they should be allowed to remove the tree and replace it with a new tree. If the house is built as originally proposed, the tree would be severely impacted, based on the grading change elevations. He examined the plans, and it appears they will be going down 1' and removing the top soil, which will impact the root system, which is his concern. Based on the regrading plan, he feels the tree would probably not survive, even if the house were not moved over.

Mr. Adler pointed out that even the razing of the existing home, which is very close to the tree, would also impact the roots adversely. The applicant is willing to put in two additional trees, if this tree is removed. There is a number of Black Laurels on the property, and they would like to replace these with oak trees, which is a much better type of tree.

Mr. Brooks reported on several other trees on the property that should be replaced. The significant specimen trees that do exist on the property will not be impacted, in his opinion.

Mr. Duddy said he agrees that the oak tree cannot be salvaged, and it is not a specimen tree. He does not have a problem removing it.

Wendy Wilt, next-door neighbor, was sworn in and noted that she appeared last month and spoke in support of the application. She reviewed the building of their house, which they worked on for three years. They always thought that the house next door to them would have faced Holly Tree Lane. She noted that the existing driveway is 70' from their property. When they saw the new plans, they were upset, because the house is much closer to their side of the property. She thinks there are other changes that could be made to the design or orientation of the house, so that it does not adversely impact them. She explained that she spoke to the Devines, who agreed to move the house over 13' so that they have 30' to their driveway. She also questioned the plan for the removal of the trees. She does not understand why the house will not face Holly Tree Lane. They would prefer to face the back of this house, and she also does not see where the relief is needed to change the orientation of the house. She thinks the 30', if the house is moved, is still a "worse case" scenario for them.

Mr. Adler explained the distance as 55' from the façade of the house to the Wilt's property.

Chairman Conklin pointed out that if they oriented the house toward Holly Tree Lane, the rear setback may be 40', as required, giving them 89' of house 40' off their lot. Mrs. Wilt does not think her home value or integrity should be compromised so they can change the orientation of the house.

Mr. Adler said they did not include any proposed new location, but offered additional testimony for the Board to consider the proposed movement of the placement of the house. There would be a total of 70' from the Wilt's property line to the façade of the new house.

Mrs. Wilt offered her opinion as to how she thinks the house should be oriented. Mr. Reilly pointed out that her suggestion would still have the house at the same distance. Mr. Adler thinks the 13' additional would create a condition that improves the layout of the home and create a balanced condition with the street façade. The ordinance and the Master Plan do not speak to any negative impact with a home facing the side of another, and he thinks their proposal is the best for a the street. He mentioned the setbacks of other homes in the area, noting that the homes across the street have 64' and 71' setbacks.

Larry Wilt was sworn in and reviewed their concerns with the Board. He does agree with their request to move the house over 13', as mentioned at the last meeting. He takes exception to comments from the Board regarding the potential placement of the house, if it were orientated differently on the lot. Mr. Reilly reviewed the question as to how the house lines up with others on the street, and this information was provided for the board, which now has to make a decision on the application.

Mr. Wilt was told if he wanted to oppose the orientation, he can present experts to argue their position. Mr. Reilly suggested the Board give their non-binding opinion as to whether they think the house should be moved over 13'. Mr. Wilt said he would like the Board to do this.

Richard Jones, 37 Navesink Ave., was sworn in and asked if the new construction would be considered new impervious surface, and Mr. André said the application would need to go to the borough engineer. Mr. Jones cited from the ordinance, noting that the existing plan does not include any Storm Water Management issues. Mr. André said this would be considered under the engineer's review. He also noted they are not seeking a variance for greater coverage than what is allowed under the ordinance. The Board is not the place to decide this issue.

Mr. Jones also asked Mr. Brooks if he is paid by the borough, and Mr. Brooks said he is the Borough Forrester and is paid by the borough. He has looked at the property, but has not yet seen any tree removal plan. He reviewed the prior testimony regarding the trees. He has not seen an actual permit as yet, but he believes there are 12 trees to be removed – five which are impacted by the footprint and driveway – none of which are significant specimen trees. They are outside the building area, and other trees proposed for removal are damaged or inferior species, which will be traded out for better specimens.

Mr. André does not know of any filing for the tree permit as yet.

There were no other questions or comments from the public.

Mr. Reilly suggested they take an informal opinion poll regarding the location of the house:

Mr. Blum: He would not have a problem approving the relocation of the home farther to the south, and he thinks 10' would be a better distance

Mr. Duddy: He agrees with Mr. Blum. He has no problem moving the house to the south and would be in favor of the 13' movement so as to help with the distance to the neighbor. He stated he does not understand the objections of the neighbor, since there will be a berm and dense vegetation;

Mrs. Atwell: Agrees with the comments of Mr. Blum and Mr. Duddy. She would prefer to have it moved somewhat less than the 13' proposed

Ms. Gummer: also agrees that 10' would be a better distance, but the 13' does not make that much of a difference;

Chairman Conklin: Had concerns regarding the tree, and after Mr. Brooks' testimony, it appears saving the tree would not be possible. The property to the east was also a concern for him. The 13' distance is fine with him.

Mr. Reilly noted the Board is more in favor of 10'; however, Mr. Adler said they feel 13' is more preferable to maintain the balance between the lot lines.

Mr. Duddy noted that the Board agreed that orienting the house on Evergreen is better than facing the house on Holly Tree Lane.

Mr. Duddy moved to approve the application with the 13' adjusted placement. Ms. Gummer seconded.

Roll Call Vote: Ayes – Conklin, Gummer, Atwell, Duddy, Blum

Nays - None

Motion carried.

Mr. Reilly has prepared a resolution, which he can complete this evening with the approval of the 13' distance. Mr. Blum suggested adding wording to include what the setbacks will be from Holly Tree Lane (60'). Also, Mr. Brooks's comments regarding the compromise with the provision as to the removal and the replanting of the replacement trees, as per the borough requirement, will also be included.

Mrs. Atwell moved to adopt the resolution, and Ms. Gummer seconded.

Roll Call Vote: Ayes – Conklin, Gummer, Atwell, Duddy, Blum

Nays - None

Motion carried.

Stephen & Nancy Mahedy, 8 Avenue of Two Rivers

Kevin Kennedy, attorney, appeared on behalf of the applicants. He reviewed the application from the last meeting, which applied to change grade approval for a new single-family home. The application was approved, pending revised plans. He stated they are asking for one minor change this evening. They would like a 10' grade for garage, instead of the 9' approved. This will be more functional and more architecturally consistent. He does not believe this presents a critical part of the discussion.

Chairman Conklin does not think this is an issue for anybody, but he would like them to address the garage as to height. Mr. Kennedy said they will only have storage on the second floor with stairs to that location. Mrs. Mahedy, still under oath, said they will have a set of stairs inside the garage.

There were no questions or comments from the public. The revised plan shows the 10' grade for the garage. The revised resolution has been prepared with the new grade for the garage. Mr. Blum pointed out that the revised plan does not show a door in the garage, and Mrs. Mahedy said there is a door to the garage. Mr. Kennedy said they can arrange for the plans to be further revised to show this door.

Mr. Duddy moved to approve the revised plans, and Ms. Gummer seconded.

Roll Call Vote: Ayes – Conklin, Gummer, Atwell, Duddy, Blum

Nays - None

Motion carried.

Patrick & Sara McElduff, 96 Rumson Road

Paul Lawrence, architect, appeared again on behalf of the applicants. He was sworn in at this time, and the Board accepted his qualifications. He stated they have presented a revised plan with the correct numbers now on the plan. The previous numbers did not include the porch credit. Chairman Conklin noted that they are taking away some of the existing variances.

There were no questions or comments from the public. Mrs. Atwell moved to approve the corrected plan, and Mr. Duddy seconded.

Mr. Reilly has presented a resolution as a result of the last meeting. He suggested they take a vote on the application and the resolution, which is changed based on the revised numbers on the plan.

Roll Call Vote: Ayes – Conklin, Gummer, Atwell, Duddy, Blum
Nays - None

Motion carried.

Paul & Teresa Sperber, 65 Navesink Ave.

Mr. Brodsky and Dr. Wood rejoined the meeting.

Peter Goodhue, architect, was sworn in, and the Board accepted his qualifications. He distributed a sketch which shows their plan to replace two small dormers with one larger dormer to allow for an egress window in the bedroom. This will also cause them to do some work on the front porch – all within the existing footprint of the front porch. They will also be removing wood decks in the rear and repairing one at the rear, as well as building a patio on grade. Another deck in the back of the garage will also be removed. They will not be creating any new nonconformities with this plan. They are within the FAR, lot coverage, building coverage, etc.

There were no questions or comments from the public.

Chairman Conklin thinks it is a good plan, and he does not have a problem with the application.

Mr. Duddy agrees and thinks it will improve the house.

Mr. Brodsky moved to approve the application, and Dr. Wood seconded
Roll Call Vote: Ayes – Conklin, Gummer, Atwell, Duddy, Blum, Brodsky, Wood
Nays - None

Motion carried.

Timothy & Christine Leonard, 62 Lennox Ave.

Mr. & Mrs. Leonard were sworn in, along with James Daly, architect. The Board accepted his qualifications. Mr. Leonard explained their plan to construct a half story addition over the existing home along with a front porch to fit in with the area. They need additional living space for their family. The addition in the rear will not be seen from either Lennox Ave. or Narumsun St., and is a small bump out in the rear. The porch size will be 6' x 18' in size, in balance with

the house. They will be removing the entire roof and adding two bedrooms and a bath over the main part of the house facing Lennox and adding a small office addition over the previous area facing Narumson St., as well as adding a play room over the garage – all within the roof line. The height of the ridge is 24.56', where 30' are allowed.

Robert Gray Henderson, 60 Lennox Ave., was sworn in and stated his opinion that the addition will enhance the neighborhood, and he has no objections.

There were no other questions or comments from the public.

Mr. Blum asked why the porch cannot be narrower, eliminating the variance. Mr. Daly said a normal porch allows for a seating area, and is normally 6' – 7' wide. Their plan is in keeping with the design of the typical porch and needs to be this wide to be minimally functional and also aesthetically pleasing. The columns are the only portions that are in a variance condition, and these are to fit in with the craftsman style design.

Mr. Blum said the variances are preexisting, except for the columns, and the porch is a minimum size to provide any functionality.

Mr. Brodsky thinks it is a nice enhancement. He moved to approve the application, and Dr. Wood seconded.

Roll Call Vote: Ayes – Conklin, Gummer, Atwell, Duddy, Blum, Brodsky, Wood
Nays - None

Motion carried.

Dr. Wood left the meeting at this time.

JNM Holdings, 16 Washington St.

Michael Leckstein, attorney, appeared on behalf of the application. They are proposing to build an attractive structure on a vacant property, which will fit the neighborhood and is uniquely suited for what they are proposing. In order to make the project work and provide a benefit for the town, several variances are being requested.

Michael Monroe, architect, was sworn in, and the Board accepted his qualifications. He presented the Board two colored renderings (A-1 and A-2), and an exhibit of other buildings within 200' of this property (A-3). He stated they propose a two-family dwelling and a COAH apartment over a detached structure with a three car garage below. The renderings show the corner view from Washington St. and the side street from Hunt St. He said they are trying to work around some existing trees, which affect the variances they are proposing. The setbacks of the nearby structures were also shown. They are proposing a 30' setback for the structure. The R-5 zone encourages porches, for which you get a 10% credit, and they are usually allowed to come 5' closer to the street. They are in keeping with the streetscape, and it is appropriately setback on the Washington St side. The Hunt St. side is next to the condos, which have a 128' setback. They are attempting to save an existing holly tree on the southeast corner of the property. Some of the mature trees on the site were also considered when they placed the structure on the lot.

The setback variances were listed:

- Accessory structure – rear setback 12’ - 6’ to the adjacent structure, which is similar to setbacks of other similar structures in this area. It is not uncommon in this neighborhood to have garage structures with the same type of setback, and Mr. Monroe noted the others in the neighborhood. This allows them to have more open areas between the buildings;
- 16’ height of the accessory structure allowed / 22’ proposed;
- Floor area proposed 4,320 sq. ft. / 3,360 sq. ft. allowed – he could have one garage and two carports, but this would be less desirable;
- Building coverage – 540 sq. ft. over that allowed for the zone. In this zone, they encourage front porches, and you get a 10% credit. Their porch is large and wraps around three sides. Due to the corner lot, they could not get the entire credit for all porches. There is a large two-family home on the street with a wrap around porch, which is closer to the street than their plan. The porch gives an open an airy feeling.

Their design matches the previous style of the area, and is a classic colonial look.

The two-family has two, two-bedroom units, and an apartment over the garage. There is no basement. The lot is 50% over what is required in this zone. Most of the lots on this street are smaller than this lot – all with two-family units. The lots adjacent are slightly undersized for the zone.

Chairman Conklin asked how big the floor area is for the two family house, and Mr. Monroe will get these figures for the Board and report back.

Mr. Reilly noted that five affirmative votes will be needed for the required use variances.

James Kennedy, project engineer, was sworn in and the Board accepted his qualifications. He distributed site renderings of the project (A-4), dated 10/16/12. He noted that Washington St. has many different uses, including single family homes, multi-family homes, a bank, commercial buildings, etc. They propose a multi-family unit with a three-car garage. Previously there was a barn structure on the lot. Most of the adjacent lots are undersized for the zone. They proposed a three-car parking area with a three-car garage, providing six parking spaces. They are required to have five parking spaces. They propose utility connections from Washington St. They show eight buffer plantings (Hollies) along the adjacent lot and two Sycamore trees along Washington St., which will be preserved. The tree to the southeast is an American holly and needs work, but it is worth preserving. A pear tree along Hunt St. will also be preserved. They proposed two additional trees planted on the lot (flowering dogwoods). Foundation plants and landscaping is also proposed. He thinks this is a simple application. They are not regrading the site or significantly altering the land, as it was previously developed. They will have a walkway out to Washington St., and the driveway would come out to Hunt St., as do the driveways across the street, which serves a similar multi-family structure. They propose a decorative fence around the property;

David G. Roberts, professional planner, was sworn in, and the Board accepted his qualifications. He distributed an exhibit for the Board (A-5) which describes the application and variances requested. The most significant variance is the Use Variance. He pointed out the tax map with the subject property outlined, as well as an aerial presentation of the area. He described the nearby properties to the site. The area was described as a mixed use, including town houses, commercial, multi-family units, etc. They feel their proposal is in keeping with the mixture of different use styles in the area and how they interface with their property. Street views of other property in the neighborhood were also included in his presentation.

The neighborhood interaction from 1979- 2007 shows how the neighborhood has evolved over time, and this area is different than the typical R-5 zone, since multi-family homes already exist in the area. He thinks the house lends itself well to this proposed use and is suited for this house, rather than a single-family or business use. Also, the goals of the Master Plan were referenced, with Mr. Roberts saying that many buildings in the residential neighborhood are in keeping with the district, and their plan fits in with the character of the neighborhood and improves it with the design of the structure. Their proposal offers a diversity of use types and promotes a desirable visual environment. It also provides opportunity for low and moderate income housing.

The site was previously developed, and they are creating an affordable housing unit, which is an inherently beneficial use. The ordinance allows for one family units, and they are proposing a two-family unit with an apartment over the garage, which is one way for the borough to accommodate some affordable housing, which keeps in character with the borough. Mr. Roberts reviewed the COAH requirements. The negative criteria on the use are due to the layout of the structure, which fits in with others in the neighborhood and will be set back farther than some others along the street. The design provides a way so that no damage is done to the intent or plan of the ordinance.

Great care was taken to make the buildings fit on the property. The interaction of the area also makes it consistent with the area. The use already exists in the neighborhood. The size of the lot is 12,240 sq. ft., where 8,000 are required for a corner lot, providing greater space to work with and provide less of an intense demand on the property. By developing the project with the setbacks as proposed would provide a better project for a the borough. Mr. Roberts thinks there is a benefit with being able to “bank” a COAH unit, which he thinks the state will re-establish in the future. It was again noted that the lot is 50% greater than what is required for the zone.

Mr. Reilly asked if they were to be rental units, and Mr. Leckstein said they will all be rental units.

A short recess was taken at this time (9:55 p.m.).

Mr. Reilly asked if the restriction on the COAH rental unit would be for 30 years and conform in every way to the COAH regulations. The garage will have one COAH unit.

Richard Demartino was sworn in and said he moved into his house at 18 Washington St. in 2002. He does not have a problem with the two family home, but he has an issue with the garage, which he feels will form a wall around him, since the townhomes are also behind his house. This

structure will block his view and reduce the value of his property. He thinks it is too much for the lot. He has a two-car garage in the rear of his property, which is 16' in height. He feels he will be boxed in with the proposed garage. Mr. Monroe said the size of the garage is proposed as 40' x 20', 12' off Mr. DeMartino's property line.

Chairman Conklin asked if the applicant has considered a two-bay garage with the COAH unit on the side. Mr. Monroe showed the Board a photo of the adjacent house and garage. He tried to make the roof line as low as possible. They could rotate the garage, but this would make for a cumbersome circulation on the lot. They thought their plan would be more beneficial to the property.

Chairman Conklin asked if it could be moved farther away from the property line. Mr. Leckstein said they could move it a few feet, but Mr. Demartino said that would not make any difference. Mr. Monroe said even a 16' high garage could block a second floor view. He would have a hard time getting it lower. It was again suggested to possibly have a two-bay garage with the COAH unit on the first floor. Mr. Monroe said it would create more of a mass on the property, although it would create less of a wall. Mr. Leckstein said this could create additional coverage problems.

Mr. Brodsky asked if they considered flipping the garage so that the doors face east, instead of north. Mr. Monroe said this would make a less attractive area. Mr. Kennedy reviewed the alternatives, noting the reasons for their current design. If they rotate the building, the patios in the rear would be lost, and the private areas would be impacted. They considered reducing the setback on the side and moving it toward the neighbor's garage, opening up an area between the main building and the garage. This would somewhat hide the new garage behind Mr. Demartino's existing garage in the rear. The code would allow a 3' setback, but Mr. Kennedy said he would not suggest going less than 5'.

Greg Lesko, 14 Hunt St., was sworn in and said he thinks they are asking for too much. He noted that he was not allowed to expand his house, and they are asking for several variances. He would prefer to see a single-family or two-family house, but no garage. Chairman Conklin noted that any new construction would require a garage.

Gary Sendel, 70 Lafayette St., was sworn in and said he thinks the project will be an enhancement in the area, but he thought that the town would be improving Hunt & Lafayette Sts., which has not occurred yet. He would like to see this happen when this project is completed.

There were no other questions or comments from the public.

Mr. Demartino was asked to express his main concern, and he said that the corridor issue is probably his main concern. He thinks the size of the garage will serve to box him in at the proposed height. Mr. Leckstein said they would be willing to move it to be located in the same area as Mr. Demartino's garage, but Mr. Demartino said this would not help his problem.

Mr. Brodsky likes the design of the main house and thinks it will be an improvement to the area. He does not think someone would build a single-family house in this area. He thinks the garage

looks oversized for the property, and he is sensitive to the neighbor's concerns. He thinks they could possibly turn the structure to make it more acceptable to the neighbor and less of a visual impact to the lot. He thinks it looks like it belongs on a larger sized property or estate.

Mr. Duddy asked if they looked into having the property rezoned for multi-family uses. He was told this zone is a very mixed area, and the Master Plan cites using this type of zone to create affordable housing. Rezoning would not necessarily be the appropriate response in this case.

Mr. Duddy asked about the current state of the COAH rules, feeling that the Board is not now under any obligation to put in this type of unit. Mr. Reilly said the issue is how many each town will be asked to provide, and he stated that COAH still has rules in place to administer this housing. The matter is now before the Supreme Court, and possibly will be resolved in the future where a number may be assigned to Rumson. This type of non-residential zone would be the place to build this type of housing. Mr. Monroe said the minimum size for these units is close to the 700 sq. ft. they are proposing.

Ms. Gummer likes the idea of a COAH unit, but she thinks the size of the main building looks very big to her. She asked if the units could be smaller and still provide the wrap-around porch. Mr. Leckstein said that the problem with their numbers is that they are being held to a one-family house standard, and they are building a 2+ structure. This is a unique lot, and they are proposing 2,800 sq. ft. of building, which is only 1,400 sq. ft. per unit, which is not a large building. He noted that the neighbor's lots are much smaller. If this lot were cut in half and laid out like all the other homes on the street, there would be more than what they are proposing.

Mr. Reilly stated that the COAH housing unit is beneficial, and the courts have upheld this concept, as it provides a positive force for creating a use variance. The negative issue is that the structure will impact the neighborhood adversely.

Mr. Duddy does not think there was any testimony on what exactly Rumson will be asked to provide in their COAH requirements.

Ms. Gummer again raised the size issue, and Mr. Reilly said this goes along with the use variance being requested.

Mrs. Atwell thinks the COAH unit is a benefit, but it is a massive building on the property. The porch is architecturally pleasing, but it may be a little too much.

Ms. Gummer suggested having the COAH unit and a smaller, single-family home.

Mr. Leckstein explained the "unmet need" in the COAH rules, which is a very hard concept to understand and where they get the inherent beneficial need. With regard to the one-family unit suggestion, he noted that you don't make any money on the COAH unit, and there is no benefit to the developer to build a combined structure and then put in a COAH unit, which is usually provided when they get something else. He reviewed the other lots in the area that already have multi-family dwellings on similar lots, which were more dense than what they are proposing.

Mr. Leckstein acknowledged that the application will need to be carried, and they will be taking a look at the plan for the next meeting.

Mr. Blum questioned the placement of the house. Mr. Kennedy said the 27' setback was to protect the tree. Mr. Blum also asked if they considered moving the garage toward the road. Mr. Kennedy said he did not want cars backing out on to Hunt St. He thought having an on-site turnaround would be safer. Mr. Blum asked about the administration of the project, and Mr. Leckstein said the landlord will be responsible for all maintenance.

Chairman Conklin commented that he thinks the house is fine. He does not have an issue with the three-car garage and the COAH unit, although he can see the neighbor's point regarding the 40' wall. He agrees that there is an inherently beneficial use, and the town does have an obligation in this area. He would like to know whether there is a possibility of working it out to the better benefit of the neighbor.

The application will be carried to the Nov. 20, 2012, meeting, with no further notice required. Any revised plans would need to be submitted at least 10 days before that meeting.

It was announced that the application of **George & Elizabeth DeRose, 77 South Ward Ave.,** will be carried to the November meeting and will be first on the agenda. No further notice will be required for that meeting.

Approval of Minutes

Motion was made and seconded to approve the September minutes, with corrections. Voice Vote: Ayes. Unanimous.

There being no further business, motion was made and seconded to adjourn. Voice Vote: Ayes, unanimous. The meeting was adjourned at 11:15p.m.

Respectfully submitted,

Patricia Murphy
Clerk