

**MONTGOMERY TOWNSHIP ZONING BOARD**  
**MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY**  
**REGULAR MEETING**  
**MAY 19, 2015**

**MINUTES**

Vice Chairman Voitach called the meeting to order at 7:38 p.m. and read the opening statement which affirmed that adequate notice of the meeting had been posted and sent to the officially designated newspapers.

**BOARD MEMBERS PRESENT:** Vice Chairman Voitach; Mr. DeRochi; Mr. Fedun; Mr. Post; Mr. Thompson

**ALSO PRESENT:** Mr. Drollas, Jr., Board Attorney; Mr. Sullivan, Board Planner; Mr. Cline, Board Engineer; Mr. Palmer, Zoning Officer

**I. SALUTE TO THE FLAG**

**II. APPLICATION**

<b>Case BA-02-15</b>	<b>Applicant: Robyn Nini</b>
Block 33001 Lot 21.02	
Bulk Variance	
Expiration Date – 7/2/15	
Affidavit of Notification and Publication Required	

Notice was found to be in order. Richard Schatzman, Esquire, David Schmidt, PE and Kevin Nini represented the applicant. Mr. Schmidt and Dr. Nini were sworn in.

Mr. Schatzman explained the application is for a “c” variance and a waiver. The “c” variance is for the construction of part of a house in the stream corridor and the waiver is for a reduction in the number of trees to be planted.

Mr. Schmidt gave the Board his qualifications and was accepted as an expert. Mr. Schmidt testified that the tract is 14.92 acres and is within the R-5 zone. The property is on the east side of Mountainview Road. The application is for the construction of a 5,000 square foot 5-bedroom residential dwelling. A portion of the existing dwelling will be removed and a new dwelling will be constructed. A design waiver is needed from 16-5.6d to reduce the number of trees to be planted. The requirement is based on gross tract area and the applicant would like to base it on the area of disturbance. The area of disturbance is ½ acre so they are proposing 7 trees. A waiver is needed from Section 16-6.4d6(f)(2) to provide the required 2:1 mitigation. Any mitigation will take away from the farming operation. A waiver is also needed from Section 16-5.6e which requires critical areas to be placed within a conservation easement or conservation deed restricted area. If an easement was placed on these areas it will no longer be permitted to be farmed. The property has wetlands and wetland buffers within the 100-year floodplain. The floodplain shown is based on the FEMA map dated May 18, 2001. The stream is delineated and the applicant has provided two cross-sections. There are slopes greater than 15% within the 100-year floodplain. There are no critical soils. Access to the property is through a 10’-12’ paved driveway. The utilities servicing the site are PSE & G, well water, a primary and reserve septic system, Comcast Cable and Century Link. The primary and reserve septic systems will be relocated outside the stream corridor. The project does not require stormwater management. The net increase in impervious surface coverage is 4,126 square feet. The total area to be disturbed is 23,500 square feet. The portion of the house within the stream corridor is considered clean water under the NJ Stormwater Management Regulations. None of the existing drainage patterns are going to be changed. The site is wooded along Bedens Brook, has minimal lawn area around the house and the remainder of the site is farmland.

Mr. Schmidt displayed a photo he took on May 16, 2015 from Mountainview Road looking toward the newly constructed barn (Barn Photo 2 marked as Exhibit A-1). The existing garage is intended to remain but the doors will be replaced and moved to the rear. The increase in coverage in the stream corridor is 750 square feet including a porch. The existing footprint is 2,860 square feet and will be increased to 2,970. Locating the dwelling on other areas of the property will result in twice the amount of disturbance or more. The property is currently being used to raise animals and the applicant is currently working with Somerset County to preserve the entire farm. He is also looking into acquiring additional properties to farm.

Mr. Schmidt discussed the tree waiver request. Dr. Nini has already planted 55 trees on the property. Mr. Schmidt testified that Ms. Wasilauski, Open Space Coordinator, agrees a conservation easement will limit the

farming activity that can take place on the property. However, in exchange, the applicant has been requested to do stream rehabilitation in the area of the stream corridor and floodplain. There is a total of 3.7 acres within the stream corridor of which 0.2 acres will be disturbed. Mr. Schmidt proposed the tree calculation be the area of the stream corridor multiplied by the 14 tree requirement with a credit for half the trees (27) the applicant already planted which totals 25 more trees to be planted or an equivalent of \$300.00 per tree to be used in the stream corridor area.

Mr. Schatzman noted that the applicant is strongly considering the willow stakes referenced in Ms. Wasilauski's memo dated May 19, 2015.

Mr. Schmidt testified that septic testing was done in February, 2013. The septic system is being designed. The reserve septic restriction will be filed as a condition of approval.

Mr. Schmidt described the stream corridor and the purpose of the corridor. The steps down to Bedens Brook will remain. The two retaining walls that project outside of the house and the house foundation show no signs of lean and have no cracks. The garage is heated but has no plumbing; it is not fitted for a residential use. It can be deed restricted that it will not be a residential use. The proposed generator and HVAC units are within the stream corridor but due to the 10' differential they are not in any danger of being flooded by the Bedens Brook. The above ground oil tank will probably be removed.

Mr. DeRochi questioned Mr. Schmidt. Mr. Schmidt described the footprint of the existing dwelling. The new construction is moving away from the stream. The new septic areas will be located outside the stream corridor.

Mr. Palmer asked about the trees that have already been planted on the site. Mr. Schmidt noted that additional trees have been planted since the plans have been submitted. The number of trees to be planted will be credited by half the number of trees that have already been planted as verified by the Township.

Dr. Nini testified that 55 trees have been planted and there are more under contract to be planted.

Mr. DeRochi asked about the conservation easement. Mr. Schmidt and Mr. Schatzman noted that the Township's conservation easement does not permit farming. If approval is granted the waiver is conditioned upon the farming. If it is not being farmed someone can ask for a conservation easement. The farm assessment is based on livestock and hay. There are 13+ acres devoted to farming. The stream corridor area will not be excepted out of the farmland preservation area.

Mr. Cline noted that the applicant will need an elevation certificate, a soil disturbance exemption for the borings work, will need to provide floodplain elevation and confirm the lowest floor of the elevations.

Mr. DeRochi asked where the applicant stands on the request for the pathway easement. Mr. Schatzman replied that the applicant will not grant a pathway easement. There is nothing that the Board is granting to the applicant as part of this application that necessitates the granting of the easement.

Mr. DeRochi said he understands but felt that the Township is giving up a very important link in the pathway system. He asked Mr. Drollas if the Board could preserve the option to purchase it as part of the application. Mr. Drollas opined that if the property goes into Farmland Preservation the easement will be prohibited.

Dr. Nini believes the granting of the easement will harm his farming operations. The area on the other side of the stream has been identified as summer forage and animals will be grazed there during the drier months. He hopes to lease or purchase the adjacent property to the south. Dr. Nini described his farming operation in detail. A corridor on the north side of the property, about 20' wide, has been left for the neighbors to get to the stream and for the deer to get between his lot and the neighbors. He will limit the livestock's access to the stream as much as possible. He will use as many LEED standards as possible in the construction of the addition.

Mr. Schatzman went through the various memos. Comments 7, 8 and 10 of Mr. Cline's memo will be conditions of approval. The applicant will work with Mr. Bartolone and Ms. Wasilauski regarding the types of plantings and the locations.

Mr. Schatzman noted that the applicant received letters in support of the application from neighbors Keith Wheelock and Richard Ragsdale.

Mr. Schatzman summarized the application and discussed the purposes of zoning that pertain to this application.

Mr. Cline and Mr. Sullivan noted that their comments have been addressed.

Vice Chairman Voitach opened the meeting to the public. There being no public comment, a motion to close the public hearing was made by Mr. DeRochi, seconded by Mr. Thompson and carried unanimously.

Mr. DeRochi said it would be nice to have gotten the walkway easement. In other respects the application is very responsible.

A motion to approve the application subject to conditions was made by Mr. DeRochi and seconded by Mr. Post. This carried on the following roll call vote:

Ayes: DeRochi, Fedun, Post, Thompson and Voitach

Nays: None

### **III. MINUTES**

#### **March 24, 2015 – Regular Meeting**

A motion to approve the minutes was made by Mr. Post and seconded by Mr. DeRochi. This was carried on the following roll call vote:

Ayes: Voitach, DeRochi, Fedun and Thompson

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:05 p.m.