



**Neptune Township ~ Zoning Board of Adjustment  
Regular Meeting Agenda  
Wednesday November 6, 2013 - 7:30 P.M.  
Township Meeting Room 2<sup>nd</sup> Floor**

The regular scheduled meeting of the Neptune Township Zoning Board of Adjustment which has been duly constituted and advertised according to law is now called to order:

Fire exits are clearly marked at the side and rear of this room, if alerted of a fire, please move in a calm and orderly manner to the nearest smoke free exit.

At this time, I would ask everyone to please silence all cell phones and other paging devices, as they are distracting to others.

It is the policy of the Zoning Board of Adjustment to end all matters no later than 11 p.m. Toward the end of the meeting it will be announced that no new applications will begin after 10:00 p.m. nor will any new witnesses or testimony begin after 10:30 p.m.

The following procedure will be followed:

It is the Board's policy to adhere to the following procedure; after testimony by the applicant's attorney or his professional, questions will follow by the members of the Zoning Board; at the direction of the Chair the public portion will be opened. Each individual from the public will be sworn in; give their name and address; and will be have one five [5] minute session to speak. We ask that questions are directed to the Chair, and not repeated. Time is not transferable. At the completion of the public portion, members of the Zoning Board will make final comments prior to offering a resolution to either adopt or deny the proposal before them.

**I. Roll Call and Flag salute :**

Mr. Roger Eichenour, Chairperson  
Ms. Barbara Bascom  
Mr. Paul Dunlap, 2<sup>nd</sup> Vice Chairperson  
David Fericola (Alternate # 2)  
Mr. William Frantz  
Mr. James Gilligan, 1<sup>st</sup> Vice Chairperson

Ms. Dianna Harris (Alternate # 3)  
Mr. Thomas Healy  
Mr. Clifford Johnson (Alternate # 4)  
Mr. Joe Sears  
Ms. Cynthia Suarez (Alternate # 1)

Also Present: Monica C. Kowalski, Attorney to the Board  
Matt Shafai, Board Engineer  
Jennifer Beahm, Board Planner

## II. Discussion:

- a. Board's Administrative Officer proposes a change in the Special Meeting Date for the month of January 2014. The draft of proposed dates presented at the last meeting originally proposed January 22<sup>nd</sup>; however, this date presents a conflict with the Planning Board's Re-organization Meeting. The new date being proposed for the Special Meeting if needed is January 15, 2014.

## III. Resolutions to be memorialized:

- a. **ZB13/12** – Bodine, Elaine – Block 415, Lot 1 – 16 Vernon Avenue – Applicant proposes to erect 6 ft. solid vinyl fence along the side/front property line of this corner property.  
*Motion was offered to approve the application as discussed and agreed to.*  
*Those eligible to vote: B. Bascom, P. Dunlap, W. Frantz, J. Gilligan, T. Healy, C. Johnson*
- b. **ZB13/13** – Xenakis, Thomas – Block 405, Lot 49 – 526 S. Riverside Drive – Applicant proposes to demolish and replace failing retaining wall in front yard setback which will encroach into Township Right-of-Way. Township Committee adopted Resolution #13-293 Authorizing Revocable License Agreement to Permit the Replacement of the Retaining wall within the Municipal Right-of-Way on June 20, 2013.  
*Motion was offered to approve the application as discussed.*  
*Those eligible to vote: B. Bascom, P. Dunlap, W. Frantz, J. Gilligan, T. Healy, C. Johnson, R. Eichenour*

## IV. Applications under consideration for this evening:

**\*\*PARTIALLY HEARD JULY 3, 2013 – NO FURTHER NOTICE REQUIRED FOR THIS MEETING\*\***

- a. **ZB12/05** - Fasano & Gifford – Block 1006, Lots 4 & 5 – 774 & 778 Wayside Rd – Applicant is proposing to build 50 townhouses constructed within five (5) three-story buildings. All proposed buildings will have associated landscaping, lighting, parking, stormwater management, and utility improvements. Various variances and waivers are being requested.

## V. Adjournment:

- a. Next scheduled hearing will be a Special Meeting for Hovsons, Inc. on November 13, 2013 at 7:30 PM, here in the Municipal Complex
- b. With no further business before the Board a motion to adjourn was offered by \_\_\_\_\_ to be moved and seconded by \_\_\_\_\_, meeting closed at \_\_\_\_\_ PM.



# Memo

Date: July 30, 2013

To: Kristi Armour, Citizen Board Administrator

From: Dawn Crozier, Secretary of the E/STC 

Re: ZB 12/05 Block 1006 Lots 4 & 5 also known as 774-778 Wayside Road

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Please be advised the Environmental/Shade Tree Commission has reviewed the above mentioned application. Please find their comments:

- 1) Submit an Environmental Impact Statement addressing everything in the Ordinance;
- 2) Submit a full drainage report;
- 3) The existing wooded area and ravine conducive to threatened and endangered species and the wetlands buffer setback should be addressed accordingly;
- 4) The Commission recommends denying the variance for the creation/disturbance of critical slopes;
- 5) Please make sure the applicant/property owner contributes to the Township Tree Fund as required by the ordinance;
- 6) Wetlands are an exceptional resource value;
- 7) We take exception to some of the classifications presented in the tree removal plan and would be willing to walk the property with the applicant.

Attached please find the submitted plans.

**APPLICANT: ELAINE BODINE**  
**APPLICATION NUMBER: ZB13/12**  
**BLOCK: 415**  
**LOT: 1**  
**ADDRESS: 16 VERNON AVENUE**  
**ATTORNEY FOR APPLICANT:**  
**RESOLUTION NUMBER:**



**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF NEPTUNE  
FOR THE INSTALLATION OF A 6 FOOT FENCE  
IN THE FRONT AND SIDE YARD**

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**WHEREAS, BOARD MEMBER JAMES GILLIGAN, offered the following Resolution moved and seconded by MR.THOMAS HEALY:**

**WHEREAS, ELAINE BODINE, hereinafter referred to as the “applicant” filed an application with the Zoning Board of Adjustment of the Township of Neptune, (hereinafter referred to as the “Board”) seeking the following relief:**

**PROPOSED 6 FOOT, SOLID VINYL FENCE IN FRONT YARD ALONG THE SIDE AND FRONT OF A CORNER PROPERTY AS INDICATED ON THE SURVEY.**

**WHEREAS, the application pertains to premises known and designated as Block 415, Lot 1 on the Tax Map of the Township of Neptune, which premises are located at 16 VERNON AVENUE;**

**WHEREAS, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and**

**WHEREAS, the Board held a public hearing with regard to the referenced application on the following date: OCTOBER 2, 2013.**

**WHEREAS, the following items were entered as Exhibits at the hearing:**

**NONE.**

**PROVIDED WITH APPLICANT PACKAGE:**

Survey of Property – 9/14/11  
Deed – 9/29/11  
Zoning Officer’s Permit Denial – 6/5/13  
Variance Application – 6/21/13

**WHEREAS, The Board listened to the Testimony of the following:**

**1. ELAINE BODINE**

**WHEREAS**, The Board took Questions from the following member of the Public as to the witnesses presented:

**NONE.**

**WHEREAS**, The Board took Public Commentary on the Application upon conclusion of the witness testimony as follows:

**NONE**

**WHEREAS**, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. There is a 505.B.8 sight triangle issue.
2. There are variance issues:
  - a. 4 foot fence allowed in front yard versus the 6 foot fence proposed
  - b. Fences are allowed to be 50% open as opposed to solid.
  - c. Corner has to be brought down to 30" to modify the sight triangle issue.
3. HEALY: COMMENT: The Board has been tough on fences. However, the cul-de-sac makes him a little more liberal on consideration here.
4. DUNLAP: Hard to see that the property is in a cul-de-sac. Doesn't see it on the map. Prefers to move the fence back and have shrubs around it. Dunlap suggest moving the fence back 10 feet to create site triangle or move the fence back 5 feet and then cut an angle for the sight triangle (5 x 5 notch) for fence.
5. Board has discussion on potential resolutions prior to final vote.

**WHEREAS**, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

**NOW THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Neptune that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- a. Based upon the aforesaid findings of fact, the Board concludes that:
  - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Township of Neptune.
- c. **The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

**BE IT FURTHER RESOLVED**, by the Board of Adjustment of the Township of Neptune that the following be and are hereby **GRANTED**:

Applicant is granted a variance for a 6 foot fence, solid vinyl, parallel to property line on Woodward, 5 feet from the property line with an angled piece at driveway. The angle shall be approximately 7 feet (7.21') which maintains the site triangle for the driveway. Applicant is also directed to place plantings in the site triangle (angled) area, which planting shall be no more than 30" high.

**ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:**

- (1) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
  - a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
  - b. MONMOUTH COUNTY PLANNING BOARD;
  - c. FIRE MARSHALL;
  - d. BOARD OF HEALTH;
  - e. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
  - f. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)
  - g. BOARD OF ADJUSTMENT PLANNER (Per Report dated....)
  - h. BOARD OF ADJUSTMENT ENGINEER (Per Report dated....);
  - i. POSTING OF PERFORMANCE GUARANTEES AND INSPECTION FEES;
  - j. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
  - k. FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARDS'S PROFESSIONALS.
  - l. SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.
  
- (2) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

MOTION TO APPROVE: October 2, 2013

Offered by: J. Gilligan                      Second By: T. Healy

THOSE IN FAVOR: B. Bascom, P. Dunlap, W. Frantz, J. Gilligan, T. Healy, C. Johnson

THOSE OPPOSED: None.

ABSENT: J. Sears, R. Eichenour, C. Suarez, D. Fernicola, D. Harris

ABSTAINED: none.

MOTION TO ADOPT & MEMORIALIZE:

Offered by:                                      Second By:

THOSE IN FAVOR:

THOSE OPPOSED:

ABSENT:

ABSTAINED:

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Neptune at its meeting on **October 2, 2013** and memorialized at the meeting held on **November 6, 2013**

Date:

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Kristie Armour, Administrative Officer of the  
Zoning Board of Adjustment.  
Township of Neptune.

**APPLICANT: THOMAS XENAKIS**  
**APPLICATION NUMBER: ZB13/13**  
**BLOCK: 405**  
**LOT: 49**  
**ADDRESS: 526 SOUTH RIVERSIDE DRIVE**  
**ATTORNEY FOR APPLICANT: NONE**  
**RESOLUTION NUMBER:**



**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF NEPTUNE**

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**WHEREAS, BOARD MEMBER THOMAS HEALY**, offered the following Resolution moved and seconded by **MR. PAUL DUNLAP.:**

**WHEREAS, THOMAS XENAKIS** hereinafter referred to as the “applicant” filed an application with the Zoning Board of Adjustment of the Township of Neptune, (hereinafter referred to as the “Board”) seeking the following relief:

Applicant is seeking to demolish and rebuild existing 8 ft. retaining wall in the front yard setback (along driveway) that was damaged beyond repair after Hurricane Sandy. This wall exceeds the current zoning ordinance of 4 ft. and will encroach over the property line into the Township right of way as it previously stood.

This application includes any additional variances deemed necessary by the Board.

**WHEREAS**, the application pertains to premises known and designated as Block 405, Lot 49 on the Tax Map of the Township of Neptune, which premises are located at 526 South Riverside Drive;

**WHEREAS**, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and

**WHEREAS**, the Board held a public hearing with regard to the referenced application on the following date: October 2, 2013.

**WHEREAS**, the following items were entered as Exhibits at the hearing:

**NONE.**

**WHEREAS**, The Board listened to the Testimony of the following:

**1. THOMAS XENAKIS**

**WHEREAS**, The Board took Questions from the following member of the Public as to the witnesses presented:

**NONE.**

**WHEREAS**, The Board took Commentary on the Application from the Public upon conclusion of the witness testimony as follows:

**NONE.**

**WHEREAS**, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following findings of fact:

1. This is a **RETAINING WALL** which received approval pursuant to a Revocable License Agreement per the Township of Neptune via Resolution dated June 20, 2013 (#13-293) to occupy the Right of Way adjacent to 526 South Riverside Drive as the proposed retaining wall will replace the pre-existing retaining wall and will consist of segmental block.
2. The wall is not going to be 4 feet high by the curb. The wall tapers down to 2 feet high near curb line in a “stepped” effect. It is being replaced in kind to the previous wall.
3. The Board indicates that as a Condition of Approval, the Applicant shall be subject to satisfying the “General Comment Section” as found in Neptune Township Engineer Leanne Hoffman’s letter dated May 7, 2013, as follows:
  1. All materials, methods of construction and detail shall be in conformance with the current Engineering and Building requirements of the Township of Neptune, which are on file in the office of the Township Engineer;
  2. No soil shall be removed from the site without the written approval of the Director of Engineering and Planning;
  3. The applicant/owner shall ensure proper onsite drainage; as per Neptune Township Ordinance 07-11, Section 1010E (12). “Under no circumstances shall individual lots be graded in such a manner as to redirect storm water runoff onto an adjacent and/or downstream property or disturb or change the existing drainage patterns of an adjacent lot;”
  4. In accordance with Township General Code, Section XII, Property Maintenance 12-1.2 (U), “Leaders and Drains: No leaders or drains shall be constructed, installed, or maintained in such a manner as to cast rain water upon the adjoining property.” Therefore, all roof drains shall be connected to an underground recharge system or directed to a point of discharge that will not impact adjacent or downstream properties.
  5. Upon completion of construction the applicant shall submit three (3) copies of a final as-built survey for new residential or commercial construction and residential or commercial building additions signed and sealed by a Professional Engineer or Land Surveyor licensed in the State of New Jersey prior to requesting a final Certificate of Occupancy (CO) inspection from the Municipal Engineer.
  6. Applicant to obtain all other Municipal and outside agency approvals as necessary; this includes obtaining a Zoning permit and Construction permits from the Township for the construction of the dwelling.
  7. No work shall commence on-site without building permits.
  8. A minimum of forty-eight (48) hours notice shall be provided to the Department of Construction, prior to the commencement of work.

**WHEREAS**, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

**NOW THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Neptune that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- a. Based upon the aforesaid findings of fact, the Board concludes that:
  - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Township of Neptune.
- c. **The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

**BE IT FURTHER RESOLVED**, by the Board of Adjustment of the Township of Neptune that the following be and are hereby **GRANTED**:

Application as set forth is granted.

The Board also grants a waiver under Ordinance Section 505.b.8 for clear site triangle.

The Board specifically conditions the Granting of this Approval upon the satisfaction of condition in the May 7, 2013 Letter of Township Engineer Leanne Hoffman, as set forth above.

**ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:**

- (1) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
  - a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
  - b. MONMOUTH COUNTY PLANNING BOARD;
  - c. FIRE MARSHALL;
  - d. BOARD OF HEALTH;
  - e. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
  - f. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)

- g. BOARD OF ADJUSTMENT PLANNER (Per Report dated....)
- h. BOARD OF ADJUSTMENT ENGINEER (Per Report dated...);
- i. POSTING OF PERFORMANCE GUARANTEES AND INSPECTION FEES;
- j. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
- k. FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARDS'S PROFESSIONALS.
- l. SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.

(2) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

MOTION TO APPROVE: October 2, 2013

Offered by: T. Healy                      Second by: P. Dunlap

THOSE IN FAVOR: B. Bascom, P. Dunlap, W. Frantz, J. Gilligan, T. Healy, C. Johnson, R. Eichenour

THOSE OPPOSED: None.

ABSENT: J. Sears, C. Suarez, D. Fernicola, D. Harris

ABSTAINED: None.

MOTION TO ADOPT & MEMORIALIZE: November 6, 2013

Offered by:

Second by:

THOSE IN FAVOR:

THOSE OPPOSED:

ABSENT:

ABSTAINED:

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Neptune at its meeting on **October 2, 2013** and memorialized at the meeting held on **November 6, 2013**.

Date:

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Kristie Armour, Administrative Officer of the  
Zoning Board of Adjustment.  
Township of Neptune.