

TO: Borough of Fair Haven Zoning Board of Adjustment

FROM: Elena Gable, PP, AICP, CFM
Leigh Fleming, PP, AICP

RE: Hans Zimmerer
139 Park Road
Block 7 Lot 15
Completeness & D(4) FAR Variance v2

DATE: January 5, 2021

As requested, we have reviewed the following application materials:

- Zoning Board Application (ZB 20-09) and checklist, dated August 26, 2020;
- Zoning Officer's denial letter, dated April 17, 2020;
- 11-sheet set of photos of property and neighboring properties;
- 1-sheet Survey entitled, "Survey of 139 Park Road Lot 15 Block 7 Borough of Fair Haven New Jersey," prepared by Charles V. Bell Associates Inc, dated July 13, 2017;
- 3-sheet set Architectural Plans entitled, "Proposed New Dwelling Zimmerer Residence, 139 Park Road, Fair Haven, New Jersey, Block 7 ~Lot 15," prepared by Anthony Condouris Architect Inc., dated June 10, 2020; last revised October 9, 2020; and
- Letter from Anthony M. Condouris, AIA Architect, dated October 22, 2020.

Completeness Review

The application has been checked for compliance with the Borough of Fair Haven Land Development Application checklist. The applicant has not completed all required submissions. The application is deemed incomplete; however, we take no objection to the Board granting the waivers for completeness purposes only.

- Item #9- Completed Monmouth County Planning Board Application- The applicant has requested a waiver for this item. We take no exception to the granting of the waiver for completeness purposes only as the property does not front on a County Road.
- Item #10- Completed Freehold Soil Conservation District (FSCD) Application- The applicant has requested a waiver for this item, noting the FSCD application will be submitted following approval and upon application for building permits. We take no exception to the granting of the waiver for completeness purposes only.
- Item #11- Completed Monmouth County Health Department Application- The applicant has requested a waiver for this item. We take no exception to the granting of the waiver

for completeness purposes only, as the Monmouth County Health Department application only relates to public recreational bathing places, body art establishments, food establishments, pet shops, septic system construction and alterations, tobacco retail establishments, food and beverage vending machines and construction/alteration of private wells.

Application Guidelines

In addition to the above Items from the Application Checklist, the applicant has not submitted the following required items from the Application Guidelines:

- Complete floorplans showing existing and proposed conditions with string dimensions- The applicant has requested a waiver for the string dimensions of the existing floor plans. We take no exception to the granting of the waiver for completeness purposes only. Proposed floor plans include the required string dimensions. We note that the applicant is proposing to construct a new dwelling.

Property and Project Description

The subject property is Lot 15 in Block 7, located at 139 Park Road. The property is an irregularly shaped lot with 74.4 feet of lot frontage along Park Road and 157.48 feet of lot frontage along Park Avenue. The lot is undersized in lot area and lot width. The site is currently developed with a one-and a half single-family dwelling with a concrete driveway located off Park Avenue and a brick walkway located off of Park Road leading to the existing dwelling. The rear yard fenced in with a picket fence along the rear lot line, and along Park Avenue, encroaching into the right-of-way. Surrounding the property are other single-family dwellings.

The applicant is proposing to demolish the existing single-family dwelling and all associated improvements and construct a new single-family residence, a patio, pool, and a detached garage. Walkways are proposed from both Park Road and Park Avenue to the dwelling and a driveway is proposed from Park Avenue.

The first floor of the proposed home will consist of a foyer, mudroom, powder room, family room, kitchen with eating area, walk in pantry and den. A raised patio is proposed in the rear yard off of the family room. Three covered porches are proposed to be located off of the first floor: the first on the east (front) elevation along Park Avenue, the second on the north (right) elevation along Park Road, and the third on the south (left) elevation, in the proposed rear yard. The second floor is proposed to contain four bedrooms, three bathrooms, and a laundry room.

The detached garage is proposed in the southwest corner of the property, within the required 30-foot front yard setback along Park Avenue. The pool is proposed between the driveway/detached garage and the southern (left side) elevation of the proposed dwelling.

Zoning

The property is located in the R-10 zone where single-family dwellings are a permitted use.

Bulk Standards for the R-10 Zone				
	Required	Existing (TBR)	Proposed	Variance
Lot Requirements (Corner Lot)				
Minimum Lot Area	11,500 sq. ft.	9,569 sq. ft.	9,569 sq. ft.	ENC
Minimum Lot Width- Park Road	95 feet	68.2 feet	68.2 feet	ENC
Minimum Lot Frontage- Park Road	95 feet	74.4 feet	74.4 feet	ENC
Minimum Lot Width- Park Avenue	95 feet	Approx. 173 feet	Approx. 173 feet	-
Minimum Lot Frontage- Park Avenue	95 feet	157.48 feet	157.48 feet	-
Minimum Lot Depth	100 feet	157.49 feet	157.49 feet	-
Principal Structure				
Minimum Front Yard Setback- Park Road	30 feet	26.1 feet	25 feet	Variance
Minimum Front Yard Setback- Park Avenue	30 feet	25.6 feet	15 feet	Variance
Minimum Side Yard Setback- One	10 feet	4.4 feet	4.5 feet to raised patio; 8 feet to dwelling	Variance
Minimum Rear Setback	30 feet	73 feet	79.8 feet	-
Maximum Building Height	32 feet	22 feet	32 feet	-
Maximum Stories	2.5	1.5	2.5	-
Maximum Building Coverage	35%	18.5%	24.5%	-
Maximum Habitable Floor Area Ratio	0.28	Not Provided	0.308	Variance
Maximum Habitable Floor Area Sq. Ft.	3,220 sq. ft.	Not Provided	2,948 sq. ft.	-
Maximum Lot Coverage	45%	33.8%	38.17%	-
Accessory Structure - Garage				
Minimum Rear Yard Setback	10 feet	N/A	5 feet	Variance
Minimum Side Yard Setback	8 feet	N/A	8 feet	-
Maximum Accessory Building Height	15 feet	N/A	15 feet	-

Accessory Structure – Swimming Pool				
	Required	Existing (TBR)	Proposed	Variance
Minimum Rear Yard Setback	10 feet	N/A	Approx. 55 feet	-
Minimum Side Yard Setback	10 feet	N/A	8 feet	Variance

ENC: Existing Nonconforming Condition

TBR: To Be Removed

Variations

A review of the application indicates that the property has the following existing nonconforming conditions:

- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Lot Area- The minimum required lot area is 11,500 square feet where 9,569 square feet is existing. This existing nonconforming condition and is proposed to remain unchanged.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Lot Width- The minimum required lot width is 95 feet, where approximately 69 feet is existing along Park Road. This existing nonconforming condition is proposed to remain unchanged.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Lot Frontage- The minimum required lot frontage is 95 feet, where 74.4 feet is existing along Park Road. This existing nonconforming condition is proposed to remain unchanged.

The application requires the following variations:

- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Front Yard Setback, Principal Structure – The minimum required front yard setback for a principal structure is 30 feet, where 26.1 feet is existing along Park Road and 25 feet is proposed.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Front Yard Setback, Principal Structure – The minimum required front yard setback for a principal structure is 30 feet, where 25.6 feet is existing along Park Avenue and 15 feet is proposed.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Side Yard Setback, Principal Structure – The minimum required side yard setback for a principal structure is 10 feet, where 4.4 feet is existing, and 5 feet is proposed to the raised patio.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Maximum Habitable Floor Area Ratio- Where the maximum habitable floor area ratio is 0.28 (2,679 square feet), where 0.308 (2,948 square feet) is proposed.

- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Side Yard Setback, Accessory Structure – The minimum required rear yard setback for accessory structures is 10 feet, where 5 feet is proposed.
- §30-5.1 Table C: Schedule of Area, Yard and Building Requirements- Minimum Rear Yard Setback, Accessory Structure – The minimum required rear yard setback for accessory structures is 10 feet, where 5 feet is proposed.
- §30-7.7c: Orientation of Principal Entrance – A proposed building must be oriented to face, which means it must have its most prominent façade and principal entrance face the front of the lot (the lesser lot frontage). The applicant is proposing its most prominent façade to face Park Avenue, which is the greater lot frontage and opposite the side yard.
- §30-7.8.a.2: Location of Detached Accessory Buildings – Detached accessory structures are not permitted to be located in the front yard and a detached garage is proposed in a front yard.
- §11-4.10: Swimming Pool Location – In no event shall any swimming pool (and associated coping or patios) be constructed or installed nearer than 10 feet to any property line of the property upon which the pool is to be located and the proposed swimming pool (and associated coping or patios), where 8 feet from the side property line is proposed.

Planning Comments

1. The applicant is seeking a d(4) Floor Area Ratio variance to permit an increase in the permitted habitable floor area ratio. In order to grant a 'd' variance, the applicant must satisfy both the positive and negative criteria.

For a d(4) Floor Area Ratio variance, the applicant has a lesser burden of proof than a d(1) use variance. The applicant must demonstrate that the property can accommodate the problems associated with the proposed permitted use with a larger floor area than permitted by the ordinance. The applicant must also demonstrate that there will be no substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board may consider imposing conditions to ensure that the deviations from the FAR requirement does not cause substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

- a. Has the applicant considered reducing the size of the dwelling as a means to conform to the habitable floor area ratio?
2. The applicant shall provide testimony addressing the positive and negative criteria for each variance being sought. It is the Applicant's responsibility to bear the burden of proof. In order to satisfy the positive and negative criteria for each c variance enumerated above, the applicant should provide testimony that satisfies either the c(1) hardship criterion or c(2) flexible criterion as set forth in the MLUL.

- a. Positive criteria: There are two types of c variances- c(1) hardship and c(2) flexible variances.

The c(1) hardship criteria states that a "hardship" will occur if the variance is not granted. The hardship relates to the physical or topographical features of the property and cannot relate to financial or personal hardship. Hardship relating to property can include:

- i. Narrowness, shallowness, or irregular shape
- ii. An exceptional topographic condition
- iii. Other unique conditions or features affecting the property

The c(2) flexible variance states that by granting the variance, the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirement and that the variance can be granted without substantial detriment to the public good.

- b. Negative Criteria: The applicant must satisfy the two-prong test of the negative criteria:
 - i. The variance can be granted without substantial detriment to the public good; and
 - ii. The variance can be granted without causing substantial detriment to the zone plan.

The applicant's testimony regarding the negative criteria should address any potential impacts that the proposed variances may have on the surrounding area, as well as how the proposed development is consistent with, or in potential conflict with, both the zoning ordinance and the Borough's Master Plan.

3. Master Plan

The Borough adopted its last Master Plan in 1991, and subsequent Reexamination Reports, with the most recent occurring in 2016. These planning documents set forth policies to guide the development in the Borough.

The 2016 Master Plan Reexamination Report included an objective of protecting and enhancing the existing character of the Borough and residential quality of the neighborhoods. Additionally, the 1997 and 2005 plans encouraged Borough pursue land use standards that reduce the creation of new large-scale single-family dwellings and inhibit additions to expand existing homes to a scale out of character with the surrounding neighborhood.

The applicant should provide testimony regarding the visual impact of the proposed development on neighboring properties, the existing setbacks and the building area of the surrounding neighboring dwellings as a means to address the negative criteria listed above.

4. The applicant requires a d(4) variance for exceeding the maximum habitable floor area ratio. It should be noted that the proposed improvements do not warrant a variance for the maximum habitable floor area square feet or building coverage.

a. In order to comply with the HFAR, the applicant is permitted 2,679 sq. ft. of habitable floor area.

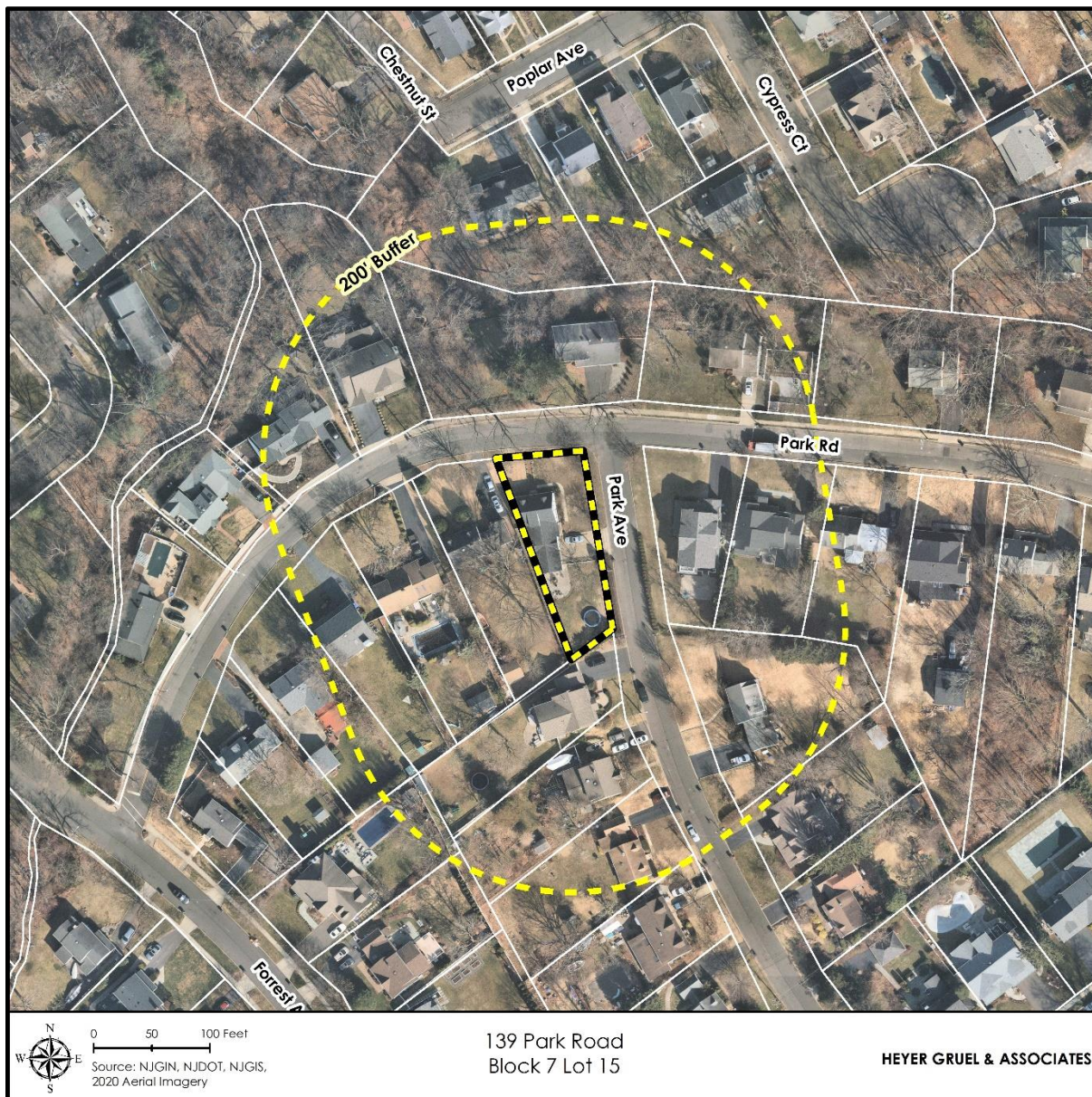
5. The applicant shall confirm compliance with §11-4.12. §11-4.12 states: *"All outdoor swimming pools shall be enclosed by a substantial fence not less than 48 inches in height, so constructed as to prevent, within reason, any person from gaining access beneath or through the fence and which shall have a similarly substantial gate of the same height as the fence, with facilities for locking the gate when the pool is unguarded. The swimming pool gate is to be kept closed at all times except when opened for purpose of ingress or egress."*

a. The applicant is proposing a 48-inch-tall pool fence that is proposed to extend from the covered front porch along Park Avenue and wrap around the pool and the western property line. No details have been provided regarding the type of fence proposed. The applicant shall provide testimony pertaining to the materials and

- color of the proposed pool fence. We recommend the applicant provide visuals of the proposed fence at the Zoning Board hearing.
- b. The applicant shall confirm that the proposed 48-inch-tall pool fence is not located within the front yard. Borough Ordinance Section 30-7.25 prohibits fences taller than 42 inches in the front yard.
 - c. Further, the applicant is proposing a fence-like railing within the covered porch. The applicant shall provide testimony confirming that this portion of the fence complies with the Borough's pool code.
6. The applicant shall provide testimony pertaining type, color, and materials of the "New Proposed Fence" that is proposed to extend along the western lot line and meet the dwelling's western elevation. We recommend the applicant provide visuals of the proposed fence at the Zoning Board hearing.
 7. The applicant shall provide testimony pertaining to the pool's setback with respect to the water's edge.
 8. The Lot Coverage detail submitted on the architectural plans notes "Pool (water only)". The applicant shall provide testimony pertaining to the pool/water area and whether there is a walkway surrounding the pool.
 9. The applicant shall confirm that no basement or cellar is proposed.
 10. The applicant requires a variance for placing the "front" and most prominent façade along Park Avenue instead of Park Road. The applicant shall provide testimony to the relocation of the "front" façade. The existing dwelling has its prominent entrance on Park Road.
 11. The applicant is proposing to decrease both of the existing front yard setbacks, most notably a ten-foot decrease from Park Avenue, further exacerbating an existing non-conformity. Has the applicant considered maintaining the existing front yard setback from Park Avenue?
 12. The applicant is proposing a 4.5-foot side yard setback variance for the raised patio, where the proposed side yard setback for the main portion of the dwelling is 8-feet. Has the applicant considered reconfiguring the proposed raised patio to decrease the severity of the required variance?

- a. The bulk schedule indicates that the raised patio is 4.5 feet from the side yard line, where the site plan labels the setback as 5.4 feet. The applicant shall provide testimony clarifying the proposed patio setback and revise the plans accordingly.
13. The proposed garage is 22' x 22' and requires a variance for its location in the front yard along Park Avenue. Has the applicant considered the construction of a smaller garage which would not encroach into the front yard?
14. The applicant shall confirm that the ground floor area of all accessory buildings in the R-10 zone may not exceed 40% of the ground floor of the principal building pursuant to §30-7.8f.
15. The applicant shall provide testimony pertaining to the type of materials proposed for the exterior of the dwelling. If available, the applicant shall bring a colorized rendering of the dwelling to the meeting.
16. Pursuant to §30-7.8g Accessory Buildings and Structures, "a single-family zone district or on a lot with a single-family dwelling, an entry driveway or walkway may cross any yard but not more than 25% of the front yard area shall be used as a driveway or for off-street parking." The applicant shall provide testimony confirming that the proposed driveway does not occupy more than 25% of the front yard area.
17. The applicant shall provide testimony to whether any trees will be removed as part of this project and if any landscaping is proposed.
 - a. We note that the revised architectural plans show a landscaped screening along the western property line in the vicinity of the pool. The applicant shall provide testimony pertaining to the type of plantings proposed.
18. Does the applicant propose any changes proposed for utility connections? The Borough's Ordinance (§30-9a13) requires utility connections to be installed underground.
19. The applicant shall provide testimony pertaining to whether any outside agency approval, including Freehold Soil Conservation Service, is required.
20. We defer comments regarding stormwater to the Board Engineer.

Aerial Map of Property



Photographs of Property taken 7/22/2020



Photograph taken from Park Road



Photograph taken from Park Avenue



Photograph of neighboring property on Park Road



Photograph of property across Park Avenue



Photograph of property across Park Road