

FAIR HAVEN ZONING BOARD OF ADJUSTMENT

Regular Meeting Minutes May 3, 2018

The meeting was called to order at 7:17 by Mr. Neczesny, Vice-Chair with a reading of the Open Public Meetings Act Statement (attached), followed by the pledge to the flag.

1. ROLL CALL

Present: Mr. McGurl, Mr. Neczesny, Mr. Ridgeway, Mr. Schiavetti, Mrs. Quigley, Mr. Ryan

Absent: Mr. Lanni, Mrs. Ylagan, Mr. Lehder

Also Present: Mr. Irene, Board Attorney, Ms. Gabel, Planner

2. ADMINISTRATIVE MATTERS

Kolarsick – 60 Lake Ave – Mr. Irene read a letter from Mr. Von Arx, Attorney for the applicant, requesting that the application not be heard. There was no request to carry the application nor was an extension of time granted. Mr. Irene suggested the Board dismiss without prejudice. MOTION made by Mr. Neczesny, second by Mr. Ridgeway, to dismiss the application without prejudice.

In Favor: McGurl, Neczesny, Ridgeway, Schiavetti, Quigley, Ryan

Opposed: None

Garfinkle – 9 Williams St – Board unable to take jurisdiction due to problem with notice. MOTION Neczesny, second Schiavetti, to carry the application to the June meeting with necessity to perfect notice. No need to re-publish.

In Favor: McGurl, Neczesny, Ridgeway, Schiavetti, Quigley, Ryan

Opposed: None

3. NEW BUSINESS

Bonello – 98 Lewis Point Rd, Block 78, Lot 14 & 14.01 – Application for in ground pool, fence and patio – variances required for lot coverage and side yard setbacks.

David Shaheen, Esq. noted his appearance on behalf of the applicant. Elena Gable was sworn. The following were entered into evidence: **Ex. A-1** – survey prepared by Paul K. Lynch dated 3/31/14, rev. 4/21/17 and **Ex. A-2** – Plot plan prepared by Jason Fichter, dated 4/19/17, last revised 1/19/18, consisting of 2 sheets.

Mr. Shaheen noted that the proposal is to install a pool, adding that the application is incorrect and they are not planning to wall the cabana. He noted that the lot is a flag lot. They are requesting two new bulk variances for side yard setback and lot coverage. Other pre-existing non-conformities are not impacted.

Patrick Ward, Wall, NJ, was sworn and his credentials as a licensed Engineer and Planner were accepted by the Board. Mr. Ward described the property as a large lot fronting on the river,

with a long stem. **Ex. A-3** is a Google earth aerial view of the property. Mr. Ward stated that the driveway is 750' x 15' and this makes up lot 14.01. The pool would be at the northeast corner of the dwelling, which is the rear of the dwelling. The location of the pool was selected for two reasons. The first is that the pool must be at least 10' from the crest of the coastal bluff. For every foot of excavation, the setback must be further back. The patio is on the northwest corner. Mr. Ward noted that a CAFRA permit was received and they comply. The second reason is due to zoning constraints. In response to questions it was noted that lot 15 has access on lot 14.01 as does lot 16.01 which is a small lot for the sewerage authority.

Mr. Ward stated there is an error on the plans submitted. Lot 14.01 originally wasn't included in the lot coverage calculations. The proposed figure of 40.2% is an increase from 38.4%. The rectangular portion of the property is 28%, their justification. He said variances are needed for the placement of a modestly sized pool, and lot coverage which he stated was reasonable. Referring to the engineering review letter from James Kennedy he noted that Mr. Kennedy's concerns were primarily with CAFRA and DEP and he stated that he provided Mr. Kennedy with the paper work to show permits were issued. Mrs. Quigley asked about the Fair Haven riparian zone requirements. Mr. Ward believes the DEP's are more restrictive. He stated that the pool is in the existing lawn area, technically already an actively disturbed area and doesn't meet the intent of DEP restrictions.

Ex. A-4 – photo #4 – pine tree to be removed. **Ex. A-5** – photo #6 – back yard, site of proposed pool, **Ex. A-6** – another photo of the rear.

A portion of the property outside the riparian zone is 150' from the house. Mr. Ward stated that the ordinance refers to a "prudent location" and from a safety perspective a pool this far from the house or the view from the home would not be good. Additional paving, etc. for the 150' would be more disturbance. Mr. Neczesny questioned why the pool wasn't sited behind the house. Mr. Ward stated they were constrained by the bluff, this was a hardship peculiar to the property.

In regard to the HGA review letter addressing the positive criteria, Mr. Ward stated they were trying to meet the intent of the ordinance, this was an appropriate use of the property and it provided adequate light, air and open space. The pool is a structure but it is not above ground. The property values are enhanced. Addressing the negative criteria he noted the evergreen buffer abutting the neighbor's property which will be maintained. In answer to questions raised in the review letter he stated additional landscaping will be added to soften the appearance after the trees are removed. The pool will not be visible to the public. No above grade lighting is proposed.

In response to Mr. Kennedy's engineering review, Mr. Ward stated that the fence is not proposed to go across the bluff. They will comply with the fence ordinances and state codes. The backwash discharge will be indicated. The resolution will stipulate compliance with Mr. Kennedy's recommendations.

Questions were raised about the playground seen on the plans. Mr. Bonello, was sworn. He stated that the playground has a grass surface.

Mr. Ryan asked about the run-off. The response was that it drains on the front lawn, driveway and easement area. Mr. Ward stated that all are connected and he believes they run into the Navesink. The leaders are underground. No thought was given to mitigating the existing run-off. There are no new proposals for the easement and access to the river which can't be blocked. The plans show a fence which has to be moved, set back – the stairwell is in the access.

Coping of the pool is not counted in the setback. If it is the setback would be less than 10'.

Mr. Ward indicated that the CAFRA plan that was approved was not based on the current plans but for a larger pool. They would have to meet CAFRA requirements.

Mr. Bonello addressed the placement of the pool. He said the biggest issue is safety. There are several children in homes that backyards merge. Mr. McGurl expressed concern that while the fence conforms to state requirements the pool not being fully fenced. It was stated that the crest of the bluff was a natural fence. There followed considerable discussion about the fencing.

There were no comments from the public.

Mr. Shaheen summarized by stating that this was a unique property with a flag lot portion that skews matters. The proposed pool location is more easily monitored, more suitable and functional. He went on to say there is no evidence of detriment to the ordinance. His applicant would agree to a 10' setback.

The Board discussed the placement of the pool, inside or outside the riparian buffer. Mr. Schiavetti stated he thought it was possible to place the pool outside the buffer. Mr. Ryan said he thought it would be safer where it had been requested. Mr. Schiavetti stated he considered the pool a disturbance. Mrs. Quigley and Mr. Neczesny both expressed concern about taking reasonable and prudent out of the Board's hand. It was stated that the applicant had a hardship for the lot coverage issue. Mr. Ryan stated he didn't see moving the pool as a positive, didn't see the need for additional fencing and expressed concern that the evergreen buffer be preserved.

Susan O'Brien, River Rd, was sworn. She stated that for homes on the river falling under the riparian buffer is in itself the hardship.

Mrs. Quigley stated she didn't see a better place to put the pool in the rear of the house.

Mr. Neczesny agreed that the riparian buffer was a problem and is not convinced that reasonable and practical doesn't apply.

MOTION Neczesny, second McGurl, to deny the application.

In Favor: McGurl, Neczesny, Ridgeway, Schiavetti

Opposed: Quigley, Ryan

4. ADMINISTRATIVE ITEMS

MOTION Neczesny, second Quigley, to approve the Leone resolution – 81 Chestnut

In Favor: McGurl, Neczesny, Ridgeway, Quigley

Opposed: None

Motion Neczesny, second Quigley, to accept the April 12, 2018 minutes as corrected

In Favor: McGurl, Neczesny, Schiavetti, Quigley

Motion to adjourn made by McGurl, second by Schiavetti and approved unanimously.

Meeting adjourned at 9:35 PM

Respectfully submitted,

Judy Fuller,
Board Secretary

Public Announcement of Compliance

This is a regular meeting of the Fair Haven Zoning Board of Adjustment. Adequate notice of this meeting has been given pursuant to the provisions of the Open Public Meetings Act. At the time of the Board reorganization in January of this year, the Board adopted its regular meeting schedule for the year. Notice of the schedule of the Board's regular meetings was sent to and published in the Asbury Park Press, and was also sent to the Two River Times and the Star Ledger. Tonight's meeting was listed in the Notice of the schedule of regular meetings. That Notice was also posted on the bulletin board in Borough Hall, and has remained continuously posted there as required by the Statute. In addition, a copy of the Notice is and has been available to the public and is on file in the Office of the Borough Clerk. A copy of the Notice has also been sent to such members of the public as have requested such information in accordance with the statute. Adequate notice having been given, the Board Secretary is directed to include this statement in the minutes of this meeting.