

FAIR HAVEN ZONING BOARD OF ADJUSTMENT Regular Meeting Minutes – November 3, 2022, 7:15 pm

The meeting was called to order at 7:21 pm by Mr. Lehder, Chairperson, with the reading of the Open Public Meetings Act Statement (below). Mr. Lehder reviewed the authority and responsibilities of the Zoning Board, followed by the pledge to the flag.

Roll Call:

Present: Neczesny, Quigley, Ryan, LaBarbera, Laufer, Kinsella, Schiavetti, Lehder

Absent: Ridgeway

Also Present: Mr. Irene, Board Attorney; Mr. Rizzo of CME, Board Engineer

Mr. Lehder introduced the first agenda item:

Fantoni – 43 Woodland Drive, Block 63 Lot 4, Zone R-10A

Request to erect a detached garage and convert the existing garage to habitable living space; requesting relief as follows: maximum habitable floor area, 3,220 square feet permitted, 3,209 square feet existing and 3,531 square feet proposed.

Mr. Irene reviewed the notice and discovered the notice was deficient as the applicant had failed to notice the Clerk of the Borough of Rumson.

Mr. Irene opened the meeting to the public regarding notice for the Fantoni application. There were no comments from the public.

There was discussion regarding what the notice requirements are and when the application would be heard.

MOTION by Mr. Lehder and second by Ms. Quigley to carry the Fantoni application to the December 1, 2022 meeting to perfect notice and provide stipulation extending time.

In favor: Neczesny, Quigley, Ryan, LaBarbera, Laufer, Kinsella, Lehder

Opposed: none

The meeting was opened to the public. There were no comments from the public.

Mr. Lehder then requested Mr. Neczesny review the administrative items. Mr. Neczesny introduced the first item: *Approval of Minutes from October 6, 2022 meeting*. Mr. Ryan asked that the Peralta application be corrected within the minutes to remove 'variance approval.' Mr. Irene explained the revision.

MOTION by Mr. Lehder and second by Mr. LaBarbera to approve the October 6, 2022 minutes, as amended.

In favor: Quigley, Ryan, LaBarbera, Laufer, Kinsella, Lehder

Opposed: none

Mr. Neczesny introduced the next agenda item: *Approval of resolution for Peralta – 88 Buena Vista Avenue, Block 64 Lot 6.01, Zone R-10A*. The approval of the resolution is pending the applicant providing the square footage of the home. Mr. Lehder requested the secretary remind the applicant that their resolution requires them to certify the current square footage of the home.

Mr. Neczesny introduced the next agenda item: *2023 meeting dates*. There was a discussion regarding the meeting dates. No formal action regarding the meeting dates will be taken until the January 2023 reorganization meeting.

Mr. Neczesny introduced the next agenda item:

Paolo/Personette – 78 Pine Cove Road, Block 78 Lot 13.7, Zone R-30 (Krimko)

Request for relocation of an inground pool. Location of pool in front yard, whereas accessory structures are not permitted in a front yard.

Mr. Lehder and Mr. Neczesny recused themselves from the application and left the meeting at 7:30 pm.

Dr. Laufer stepped in to act as Chairman.

Mr. Irene reviewed that there will be six Board members sitting to hear the Paolo/Personette application.

Jennifer Krimko was introduced as the attorney for the applicant.

Ms. Krimko mentioned that the application commenced at the September 8, 2022 meeting.

Ms. Quigley and Mr. Kinsella were not at the September 8, 2022 meeting. They both provided certification that they listened to the recordings of the September 8, 2022 meeting.

Mr. Bernard Reilly introduced himself as the attorney for the next-door neighbor, Santos.

Mr. Reilly asked to be heard regarding notice. Mr. Reilly also referenced that a variance is needed for the riparian ordinance. He stated that this variance wasn't specifically noticed.

Mr. Irene swore in Mr. Jordan Rizzo, Board engineer.

Mr. Reilly continued that the pool that exists is not a legal pool.

Ms. Krimko stated that only issues related to the notice should be mentioned. Ms. Krimko said that it was decided at the last hearing that the notice was sufficient and therefore new notice was not required.

Mr. Irene stated that Mr. Santos did not object to the application based on the notice but stated he didn't have time to get counsel. Mr. Santos also stated he didn't object to the house.

There was further discussion regarding the local ordinance for the riparian zone and references that are in the ordinance that don't exist.

Mr. Reilly added that he thought that the Board should start fresh tonight on the application. Mr. Irene stated that the application was bifurcated between the pool and the addition on the home. The meeting tonight was specific to the pool.

Ms. Krimko passed out copies of the following previously submitted exhibits:

Exhibit A6 – Ariel exhibit 9/8/22, overlay of plot plan

Exhibit A7 – View looking at area for proposed pool 9/8/22

Exhibit A8 – photo of subject property street view

Ms. Krimko introduced the following exhibit:

Exhibit A9 – Existing pool, proposed new pool, and area between proposed house and right of way – dated 11/3/22 prepared by Jason Fichter, Insite Engineering

Mr. Fichter, Insite Engineering, professional planner and engineer for the applicant, was sworn in by Mr. Irene.

Ms. Krimko reviewed the placement of the pool and building requirements. She reviewed Exhibit A9.

Mr. LaBarbera requested clarification about Exhibit A9.

Ms. Krimko reviewed the definition of lot line from the Fair Haven ordinance. Mr. Fichter testified that the lot line along Pine Cove Road is the front lot line. Mr. Fichter testified that there are three side lot lines to the South and North. Ms. Krimko stated the definition of lot width and yard front/front yard. The perception of the front yard is what is depicted in Exhibit A9.

Mr. Reilly asked if he could object during the testimony.

Mr. Irene asked if Mr. Reilly is objecting to the applicant's case. Mr. Reilly stated he is. Mr. Irene said he will have an opportunity to cross examine the applicant's witnesses and present his witnesses.

Ms. Krimko stated she is not seeking to appeal the Zoning Officer's decision.

Ms. Krimko continued to explain Exhibit A9.

Ms. Krimko explained that Mr. Fichter will be testifying in the areas of planning and engineering. He stated he will be providing testimony for C1 and C2 criteria regarding variance relief for:

1. Construction of a pool in the front yard.
2. Construction of a 48-inches-high pool fence in the front yard, where ordinance limits fence height in the front yard to 42 inches.
3. Disturbance to a Borough regulated riparian zone.

Mr. Fichter gave testimony using Exhibit A9. Mr. Fichter spoke of the irregular shape of the lot and explained the brown area in Exhibit A9, showing that the pool is in the technical front yard. He discussed placement of the pool as far away as possible from the river. He also mentioned the buffer

between the applicant and the neighbor's property. Ms. Krimko referred the Board to Exhibit A7 to see the buffer mentioned.

Mr. Fichter stated that towns do not want pools in the front yard. Mr. Fichter confirmed the location of the pool on the side yard and stated that the pool is 25 feet to the concrete area around the pool. Mr. Rizzo confirmed the pool is 28 feet to the southeast property line.

Mr. Schiavetti asked about the pool equipment. Mr. Fichter confirmed the equipment will be placed in a compliant location.

Mr. Fichter mentioned the Borough regulated riparian zone and DEP riparian zone.

Mr. Fichter testified that the proposed location for the pool is the best location for the home and the neighborhood.

There was extended discussion regarding the impervious coverage and the riparian zone.

There was also discussion regarding the fence.

Mr. Fichter testified the natural topography runs towards the river not towards the neighbor's property.

Mr. Fichter testified there is no impact on light, air, and open space. The required set back from the neighbor's property is 10 feet. The proposed pool is 28 feet from the neighbor's property.

Mr. Fichter testified that a pool is desirable on river-front property and will increase the property value of the home and neighboring homes.

Exhibit A8 was introduced showing the view of the property from Pine Cove Road. The pool has no visibility from Pine Cove Road.

Negative criteria were reviewed, and Mr. Fichter testified that there is not substantial detriment to the public good nor a substantial impairment to the zoning plan. He stated that the benefits outweigh the detriments.

Mr. Rizzo asked about placement of the pool and the DEP requirements. Mr. Fichter said that if any DEP approval is required, the applicant will submit what is necessary; Mr. Fichter thinks the pool would be by rule instead of a full application. Mr. Rizzo said that permit by rule is when the applicant's experts submit a plan.

Ms. Quigley asked if consideration was given to keeping the pool in the front yard and closer to the home. Mr. Fichter stated that this was considered and dismissed.

Mr. LaBarbera asked about the easements on the northeast side property.

Mr. Irene then turned the meeting over to Mr. Reilly, the attorney for the Santos.

There was a brief recess from 8:55 pm to 9:05 pm.

Roll call at 9:05 pm:

Present: Quigley, Ryan, LaBarbera, Laufer, Kinsella, Schiavetti

Absent: Ridgeway, Neczesny, Lehder

Mr. Reilly then cross-examined Mr. Fichter. He asked Mr. Fichter if the pool was legally placed in its current location. Mr. Fichter testified he didn't know. Mr. Reilly asked if the proposed pool is in the front yard. Mr. Fichter confirmed the pool is in the front yard. There was testimony regarding placement of the pool and the benefit of the pool placement in the side or rear of a yard.

Mr. Reilly asked Mr. Fichter about the placement of pools in front yards in surrounding towns and along the river. Mr. Fichter stated had no research on this.

Mr. Reilly asked about movement of the soil for the addition and renovation of the home, and removal of a retaining wall on the river side. He asked Mr. Fichter about placement of the pool on the river side of the home. Mr. Fichter stated that it was not considered for a variety of reasons.

Mr. Reilly asked about the visual impact of the pool in its current location. Mr. Fichter confirmed that you can't see the current pool from the street.

There was discussion regarding noise disturbance created by a pool and the height of the pool fence.

Mr. Reilly asked for documentation of properties that have pools and the increase in property value previously stated by Mr. Fichter. Mr. Fichter confirmed he had no studies showing an increase in property values based on the installation of a pool.

Mr. Reilly asked for clarification on the placement of the pool and the setback measurements.

The meeting was opened to the public for comments. There were no comments from the public.

Mr. Andrew Thomas, PO Box 363, Brielle, was sworn in by Mr. Irene. Mr. Reilly introduced Mr. Thomas as an expert witness in planning. Mr. Thomas stated his credentials including being a licensed professional planner since 1994.

Mr. LaBarbera asked about Mr. Thomas' familiarity with Fair Haven's zoning ordinances. Mr. Thomas stated he reviewed Fair Haven's zoning regulations.

The Board accepted Mr. Thomas' credentials.

Mr. Reilly asked if Mr. Thomas is the planner for several towns in the area. Mr. Thomas confirmed he is the planner for several town in Monmouth County.

Mr. Thomas reviewed local zoning definitions including front yard and referred to Exhibit A9 to show the front yard of the applicant's property.

Mr. Irene stated that all agree that the proposed pool is in the front yard.

Mr. Thomas referenced ordinances that state the pool cannot be in the front yard and referred to two other ordinances that allow a pool to be installed on the river side of a property.

Mr. Thomas did research showing that there are 20 homes that have pools on the river. Mr. LaBarbera asked about what consideration with the DEP went into the installation of these pools. Mr. Thomas did not know.

Mr. Reilly asked Mr. Thomas to confirm the reasons pools should not be in the front yard. Mr. Thomas confirmed that light, air, and open space would be impacted.

Mr. Thomas mentioned that the pool will not be connected to the home. Mr. Kinsella asked if there were any regulations that the pool needed to be in some way connected to the home. There was discussion regarding safety of the location of the pool and placement of the garage.

There was discussion regarding the vegetation between the Santos' property and the applicant's property.

Ms. Quigley asked for other ideas for placement of the pool.

Mr. Thomas also mentioned setting a precedent with the placement of this pool in the front yard.

Ms. Krimko then cross-examined Mr. Thomas.

Mr. Reilly introduced Mr. John C. Santos, Jr. of 92 Pine Cove Road. Mr. Santos has lived in his current home for seven years. Mr. Santos explained his concern with placement of the proposed pool. There was discussion regarding pools in the neighborhood.

Ms. Krimko then cross-examined Mr. Santos.

Mr. Irene opened the meeting to the public. There were no comments from the public.

Mr. Reilly provided closing arguments. Ms. Krimko provided closing arguments.

The Board deliberated regarding the application.

MOTION by Mr. Kinsella and second by Dr. Laufer to approve the Paolo application for installation of a pool with variance relief to permit the pool in the front yard, permit the height of the pool fence at 48 inches, and from the Riparian Buffer provisions of the ordinance.

In favor: Ryan, LaBarbera, Laufer, Kinsella

Opposed: Quigley, Schiavetti

Dr. Laufer made a MOTION to close the meeting that was carried by voice vote at 10:42 pm.

Respectfully submitted,
Sandi Papa
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 was sent to and published in the Asbury Park Press on January 19, 2022, and the Two River Times on January 20, 2022. That Notice was also posted on the bulletin board in Borough Hall, and has remained continuously posted there as required by the Statute. 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.