

MANALAPAN TOWNSHIP ZONING BOARD OF ADJUSTMENT

REORGANIZATION AND PUBLIC MEETING

MINUTES

JANUARY 16, 2020

The Manalapan Township Zoning Board of Adjustment Reorganization meeting was called to order by Acting Recording Secretary, Ms. Janice Moench with the reading of the Open Public Meetings Act at 7:30 p.m. and followed with a salute to the flag.

A Motion was offered by Mr. Weiss, Seconded by Mr. Lilien to nominate Mr. Stephen Leviton as Acting Chair. All were in favor and none were opposed. The meeting was turned over to Acting Chairman Stephen Leviton.

Acting Chairman Stephen Leviton stated the designated newspaper for the 2020 Manalapan Township Zoning Board of Adjustment is the Asbury Park Press.

Mayor McNaboe was present to swear in returning and new members.

Mayor McNaboe administered the Oaths of Office of Terry Rosenthal, Robert Gregowicz, David Schertz, and Basil Mantagas. After the Board Members were sworn-in and joined the dais. Ms. Moench called the roll for the Board.

ROLL CALL:

MEMBERS PRESENT: Terry Rosenthal, Adam Weiss, Larry Cooper, Robert Gregowicz, Eliot Lilien, David Schertz, Basil Mantagas and Stephen Leviton,

ABSENT: Mollie Kamen, Rob Ditota

RESOLUTION APPOINTING CHAIRPERSON

A Motion was offered by Mr. Schertz, Seconded by Mr. Weiss to nominate Mr. Stephen Leviton as Zoning Board Chairperson. There were no other nominees. No other discussions or nominations were offered. The nomination was accepted.

YES: Rosenthal, Weiss, Cooper, Gregowicz, Lilien, Schertz, Mantagas, Leviton

NO: None

ABSENT: Kamen, DiTota

ABSTAIN: None

Mr. Leviton was elected/selected as Chairperson and assumed the Chair.

RESOLUTION APPOINTING VICE CHAIRMAN

A Motion was offered by Mr. Lilien, Seconded by Mr. Schertz to nominate Mr. Larry Copper as Vice Chairperson of the Zoning Board. No other discussion or nominations were offered. The nomination was accepted.

YES: Rosenthal, Weiss, Cooper, Gregowicz, Lilien, Schertz, Mantagas, Leviton

NO: None

ABSENT: Kamen, DiTota

ABSTAIN: None

Mr. Cooper was elected/selected as Vice Chairperson. He assumed the Chair.

RESOLUTION APPOINTING RECORDING SECRETARY

A Motion was offered by Mr. Weiss, Seconded by Mr. Cooper to nominate Ms. Janice Moench as Recording Secretary to the Manalapan Township Zoning Board. No other discussion or nominations were offered.

YES: Rosenthal, Weiss, Cooper, Gregowicz, Lilien,
Schertz, Mantagas, Leviton
NO: None
ABSENT: Kamen, DiTota
ABSTAIN: None

Ms. Moench was elected/selected as Recording Secretary to the Manalapan Township Zoning Board of Adjustment.

RESOLUTION OPEN PUBLIC MEETING DATES

A Motion was offered by Mr. Weiss, Seconded by Mr. Cooper to accept the resolution establishing meeting dates for the Township of Manalapan Zoning Board of Adjustment for the calendar year 2020.

YES: Rosenthal, Weiss, Cooper, Gregowicz, Lilien,
Schertz, Mantagas, Leviton
NO: None
ABSENT: Kamen, DiTota
ABSTAIN: None

RESOLUTION APPOINTING ZONING BOARD ATTORNEY

A Motion was offered by Mr. Weiss, Seconded by Mr. Rosenthal to nominate and/or appoint The Weiner Law Group, LLP as attorney(s) to the Manalapan Township Zoning Board. Mr. John Miller, Esq. will be in attendance at the meetings. There was no further discussion.

YES: Rosenthal, Cooper, Nelson, Lilien, Byan, Schertz,
Gregowicz, Leviton
NO: None
ABSENT: Kamen, Weiss
ABSTAIN: None

The Weiner Law Group, LLC was elected/selected as Attorney to Zoning Board of Adjustment.

RESOLUTION APPOINTING ZONING BOARD ENGINEER

A Motion was offered by Mr. Schertz, Seconded by Mr. Cooper to nominate and/or appoint CME Associates as Engineer to the Manalapan Township Zoning Board. There was no further discussion.

YES: Rosenthal, Cooper, Nelson, Lilien, Byan, Schertz,
Gregowicz, Leviton
NO: None
ABSENT: Kamen, Weiss
ABSTAIN: None

CME Associates was elected/selected as Engineer to the Manalapan Township Zoning Board of Adjustment.

RESOLUTION APPOINTING ZONING BOARD PLANNER

A Motion was offered by Mr. Cooper, Seconded by Mr. Schertz to nominate and/or appoint Leon Avakian, Inc. as Planner to the Manalapan Township Zoning Board of Adjustment. There was no further discussion.

YES: Rosenthal, Cooper, Nelson, Lilien, Byan, Schertz, Gregowicz, Leviton
NO: None
ABSENT: Kamen, Weiss
ABSTAIN: None

Leon Avakian was elected/selected as Planner to the Manalapan Township Zoning Board of Adjustment.

Professionals were not chosen for a Conflict Planner, Conflict Engineer and Conflict Attorney.

Mr. Miller Swore in Professional Engineer, Brian Boccanfuso. Ms. Beahm was not present.

Chair Leviton explained application ZBE1942 would be carried to the March 5, 2020 meeting date with no further notice to the public.

MINUTES:

A Motion was made by Mr. Lilien, Seconded by Mr. Cooper to approve the Minutes of December 19, 2019 as written.

Yes: Cooper, Gregowicz, Lilen, Schertz, Leviton
No: None
Abstain: None
Absent: Kamen, DiTota
Not Eligible: Kamen, Rosenthal, Weiss, Mantagas

RESOLUTIONS:

Memorialization of Approval

Application No. ZBE1955

Applicant: Prescott

Location: 3 Salem Court; Block/ Lot: 1404/10

A Motion was made by Mr. Gregowicz, Seconded by Mr. Schertz to approve the Resolution of memorialization for Application **ZBE1955**

YES: Gregowicz, Lilian, Schertz, Leviton
NO: None
ABSENT: Kamen, DiTota
ABSTAIN: None
NOT ELIGIBLE: Kamen, Rosenthal, Weiss, Cooper, Mantagas

PUBLIC HEARINGS:

Application No. ZBE1954 (carried from 12/19/19)

Applicant: Treadwell Investment Co., LLC C/O Venino

Proposal: Single Family Dwelling

Request: Bulk Variance

Location: Union Hill Road

Block/Lot: 3.02/25.01

Zone: RE

January 16, 2020

Mr. Salvatore Alfieri, Esq. was present on behalf of the applicant Treadwell Investment Co. Mr. Alfieri described the application to have a classic undersized lot. The property is deficient in lot area. Because of the deficiency, there are other variances associated with lot. Mr. Alfieri further explained if a neighboring property owner were interested in purchasing the property at fair market value, as if the variance were granted, this would eliminate the hardship and the applicant would not be entitled to the variance. The applicant had two witnesses present: Jeffrey Jerman, Principal owner and Matthew Wilder Engineer/Planner.

Mr. Miller swore in Jeffrey R. Jerman. Mr. Jerman is a Principal of the entity that owns the property. Mr. Jerman testified he sent buy/sell letters to the neighboring property owners. The four letters were submitted and marked as Exhibit A-1. Of the four letters sent there were no replies. Mr. Jerman referred to the site plan previously submitted to the Board and testified the lots immediately to the west, lots, 70, 71 & 72 are homes on conforming lots. The lot owners would not be able to sell any portion of the properties without leaving the lots non-conforming. The property to the east, lot 37.02 owned by W.H.S, Inc. c/o Atlantic Realty, had no response to the letters sent.

Exhibit A-2 was introduced and marked by Mr. Alfieri. Exhibit A-2 is a board consisting of homes located in the immediate area on Union Road and Kerwin Court to show a comparison to the proposed home. The exhibit also shows a picture of the proposed home and floor plan. Mr. Jerman testified Exhibit A-2 showed how the proposed home would be consistent with the current homes in the area. The proposed home is approximate 3300 square foot home. The photographs on exhibit A-2 were computer generated. Mr. Jerman testified he has visited the sites of these homes and the photos accurately depict what is there today.

Mr. Alfieri had nothing further from Mr. Jerman. Mr. Miller swore in Mr. Mathew R. Wilder, Professional Engineer and Planner. Mr. Wilder placed his credentials on the record. The Board accepted the credentials. Mr. Wilder confirmed his office prepared the Variance Plan submitted in support of this application. Mr. Wilder testified the subject property is located on Union Hill Road just west of Kerwin Court. The property is just over 30,600 square feet in area and irregular in shape. Perpendicular to the side property line the property is approximately 84.75 feet in width. Generally surrounding this property to the west and south are other single-family residential dwellings. To the east there is a vacant parcel of land. North of the property is the Old Bridge Airport and Old Bridge Township Raceway Park. The property is currently located in the Residential Environmental Zoning District. The western limit of the property and the southern limit of the property are division lined for zone boundaries. The properties to the west and south are in the R20 Zoning District. The RE Zone requires lots that are three acres or greater. The property is significantly undersized so the development of the property creates variance relief. The application is for a single family home. The home is a two-story dwelling with a covered porch. A driveway that can accommodate four to six vehicles is proposed. There is a small patio in the rear of the dwelling. The proposed home includes a cellar based on the township requirements.

Mr. Wilder gave testimony in response to the engineering review letter dated November 7, 2019. Mr. Wilder agreed with the variances outlined in the review letter. Mr. Wilder addressed bullets one and two on page two of the review letter. The applicant will not be proposing a basement. The lower level will be classified as a cellar. Mr. Wilder testified they are requesting a waiver pertaining to the amount of exposure on a given foundation. The grading plan will be revised to ensure that half of the cellar is buried; however, there will be slightly more than a four-foot exposure in the rear. The exposed amount of foundation in the rear is expected to be approximately four and half feet. The applicant is trying to avoid retaining walls. Due to the width of the lot, a retaining wall would affect the usability of the area.

Mr. Cooper asked if there would be a design for a bathroom in the cellar. Mr. Wilder explained they are not at that level of design to date. Mr. Cooper expressed concerns of a possible two-family home. Mr. Wilder explained the proposal is for a single-family dwelling. There is no separate entrance to the cellar. The access to the cellar will be through the main structure.

Mr. Wilder testified any waivers and variances granted will be added to the plot plan. Soil test logs will be provided. The drywells will be installed to handle storm water runoff on the proposed structure. The sump pump discharge will be located in the rear yard. A turn-around will be in the front yard to avoid any vehicle having to back out onto Union Hill Road. All construction will be on the proposed plans. The trench drain in front of the garage will discharge via a stormwater pipe to a small drain in the rear yard.

Mr. Wilder testified the variances requested were clear examples of C (1) variances commonly known as hardship variances. 40:55D 70(c)1(c) says that the Zoning Board can grant relief by reason of extra ordinary and exceptional situation uniquely effecting a piece of property. The variances requested area as follows:

- Lot Area
- Lot Frontage
- Minimum Front Setback
- Minimum Side Setback
- Maximum Building coverage
- Maximum Habitable Floor Area
- Minimum Improvable Area
- Minimum Lot Width
- Minimum Improvable Diameter

All of the variances requested, with the exception of the Floor Area Ratio, are bulk variances. The Floor Area Ratio requires a D (4) Variance. Mr. Wilder testified the relief being requested, is as a result of the property is 30,633 square feet where three acres is required. The property is undersized by 75 percent. The proposed home is approximately 3300 square feet. Mr. Wilder demonstrated the hardship to the property by providing a Building Envelope Exhibit dated January 16, 2020, marked as A-3. The exhibit highlighted the developable area in blue. The widest portion shown on the exhibit is 11.1 feet in width. Based on the required setbacks for the zone there is no developable footprint. Mr. Wilder stated the C (2) variance criteria known as the flexible variance criteria can provide more flexibility for developers. Mr. Wilder quoted 40:55 (d) 70 (c) 2 and explained there will be no negative detriment to the public or to the township relative to this development. The property is zoned residential, is surrounded by other residential and the applicant is proposing residential. The properties to the west and south of the proposed home are in an R20 Zone. If the subject property was zoned R20, the proposed home would be consistent with principal building setbacks. Mr. Wilder stated the applicant advanced several goals of the Municipal Land Use Law, primarily goals E, G and I.

- Goal E is to promote the establishment of appropriate population densities- the site is zoned residential and a residential home is proposed
- Goal G is to promote sufficient space in an appropriate location for a variety of uses including residential- to build residential in a residential zone surrounded by other residential uses
- Goal I to promote a desirable visual environment- the proposed home will be complimentary to the area

The variances requested do not impair the intent or purpose of the zone plan or zoning ordinance. Mr. Wilder testified the variances requested could be granted under the C (1) or C (2) variance criteria.

Mr. Alfieri asked Mr. Wilder to give more testimony on the D (4) variance requested. Mr. Wilder explained the site is able to support the development. The property is significantly undersized for the zone. The proposed home is consistent and complimentary to the surrounding area. In order to provide a structure consistent with the maximum habitable floor area, the home would be 850-900 square foot per floor. Any residential construction on the property due to the zone requirements would require the d (4) variance. The site has sufficient parking. Mr. Wilder gave testimony stating the lot can easily support the application before the Board.

Mr. Alfieri explained in response to a question by Mr. Cooper earlier, the applicant will stipulate that there will not be walk-out basement door and the access will be limited to the main entrance.

Mr. Alfieri had no further testimony.

Mr. Boccanfuso explained Mr. Wilder addressed most of the comments in the CME report. Mr. Boccanfuso clarified with Mr. Wilder the square footage of the home to be just under 4000 square feet. Mr. Wilder confirmed the applicant amended the request for the habitable floor area to from .13 percent to .114. Mr. Boccanfuso confirmed the amended request included the first and second floor and it does not include the garage, cellar and porch. Mr. Boccanfuso testified he agreed with Mr. Wilder regarding the C (1) variance request due to the narrowness of the lot. He further explained 7.5 percent building coverage is permitted and 7.7 percent is proposed which relates to 60 square feet. Mr. Boccanfuso explained he had no exception to the variance relief requested, he pointed out the variance would be a C (2). Mr. Boccanfuso advised the Board in order to eliminate the building coverage variance the applicant would be reducing one linear foot of the length of the home in order to comply with building coverage variance. Mr. Boccanfuso and Mr. Wilder discussed the seasonal high water table separation test. Mr. Wilder explained he completed some preliminary testing but did not have those notes with him. Mr. Boccanfuso had no objection to the outcome being a condition to an approval.

Mr. Weiss asked Mr. Boccanfuso for further clarification on the proposed Floor Area Ratio. Mr. Boccanfuso explained the variance for the building coverage requested is minimal. The impervious coverage is not drastically in excess of what is permitted in the zone. Mr. Boccanfuso explained the homes in the area abutting and adjoining this property are generally consistent with the size of the proposed home. Mr. Boccanfuso explained he does not see a major issue to the Floor Area variance requested particularly since the applicant reduced their request by 1.5 percent. It is important to note the proposal complies with the side setback of the adjacent R20 zone.

There were no further comments from the Board members.

Chair Leviton opened meeting to the public to ask questions of Mr. Wilder.

Mr. Miller swore in Deanna Wizbicki of 4 Kerwin Court. Ms. Wizbicki explained she has lived in Manalapan for 25 years and over the past 15 years construction has taken up every square inch of the town. She is a second generation resident of her home. Her parents were the previous owners and were advised that a deck in the rear yard would require 55 feet from the property line. Ms. Wizbicki is not in favor of the proposed home. She currently has a beautiful view of the woods in the summer and winter and the view would be taken away. Ms. Wizbicki agreed that the proposed home would be consistent with the homes in the area; however, the land will not match.

Chair Leviton explained the Municipal Land Use Law in more detail. He further explained each application that comes before the Board is evaluated individually.

Seeing there were no further comments, Chair Leviton closed public.

Mr. Miller confirmed with Mr. Alfieri that there were no further witnesses.

Mr. Alfieri referred to the Dallmeyer case in Ocean County where Judge Sertentelli weighed out factors that one had to meet in order to justify the variance relief. The main factor was to demonstrate the hardship that you are unable to acquire land and or sell your land. If the municipality should not allow the development of a property, it is then effectively a taking of the property. The goal is to minimize the variances and build something consistent with the surrounding homes in the area. The proposed home is consistent with the homes in the area. The building envelope showed nothing but a narrow shed would conform on the lot. Mr. Alfieri further explained his witnesses have justified the variance relief consistent with the Dallmeyer case in the Municipal Land Use Law.

Mr. Miller explained there was testimony provided for the D4 variance. The applicant needed to show that the site could accommodate the increase in the Floor Area when it deviates from the ordinance. Mr. Wilder provided testimony to this and Mr. Boccanfuso added comments to Mr. Wilder's testimony. Mr. Miller instructed the Board to evaluate the testimony given and make the decision.

Chair Leviton confirmed Mr. Miller the maximum coverage variance would be considered a C2 variance, the bulk variances would be considered C1 variances and the Floor Area would be a D4 variance.

Mr. Boccanfuso added that Mr. Wilder requested a design waiver for exposed foundation. The applicant proposed 4.5 feet, where a maximum of 4.0 feet is permitted.

Mr. Alfieri set forth on the record the applicant agreed to address all technical comments contained in Mr. Boccanfuso's November 7, 2020 report and there would be no walkout basement.

Mr. Miller listed the following conditions:

1. Drywells to be installed
2. Soil logs
3. Sump pump will be installed in the rear yard
4. Trench drain
5. A revision to the FAR was revised to .114 percent based on a 3500 square foot propose home size
6. There will be a cellar ~ no basement
7. The driveway will have a turn-a-round
8. A conditional approval upon proof the seasonal high water table can accommodate the site

Mr. Schertz asked if the applicant had intentions to provide a barrier natural or artificial to the west.

Mr. Wilder referred to the variance plan, originally submitted with the application dated September 10, 2019. Mr. Miller advised the Board Secretary to mark the variance plan as Exhibit A-4. Mr. Wilder explained there is no proposed fencing at this time. The purchaser of the property may choose to erect a fence. The applicant is proposing a 15 foot side yard setback on the west side and slightly over 20 feet on the east side.

Mr. Schertz asked if there was a proposal for trees. Mr. Wilder explained the applicant is not proposing any trees at this point. The applicant tried to save as many trees as possible, which is the reason they are maintaining the majority of the backyard.

Ms. DeFalco explained there appears to be an existing fence on the neighbor's property.

Mr. Wilder explained lot 70 (6 Kerwin) Court and Lot 71 (4 Kerwin Court) appear to having fencing. They did not did not associate a fence with Lot 72 (2 Kerwin Court) the corner lot of Kerwin Court and Union Hill Road.

Ms. DeFalco confirmed with Mr. Wilder that everything behind the tree line on the subject property would remain natural.

Mr. Weiss asked Mr. Wilder to allay the concerns expressed by Ms. Wizbicki concerning detrimental impact to the character of her home and yard.

Mr. Alfieri explained his client would be willing to install a fence at the property line.

Ms. DeFalco clarified as per the ordinance the first 75 feet must remain with no fencing. Lot 72 is corner lot with a 75-foot setback.

Mr. Wilder testified subsequent to his firm producing the plan they do visit the site and attempt to identify where the adjacent dwelling and structures were on the neighboring properties. They did not have rights to access the properties so the measurements are completed by using survey equipment. On Lot 72 (2 Kerwin Court) the existing home is approximately 40 feet from the common property line. On lot 71 (4 Kerwin Court) the home is located 30 feet from the rear property line. Mr. Wilder testified he does not foresee Ms. Wizbicki to have an issue with the proposed design. The clearing will be completed by the time you reach her southern property line.

Mr. Gregowicz asked if the client or buyer had plans in the future for a deck, patio or to install a pool. Considering the size of the lot, if the buyer were to make improvements to the rear yard, they may be back before the Zoning Board.

Mr. Alfieri explained the applicants have no plans to live in the home. This is an investment property. The purchaser of the home would have to come back before the Board for any additional variance relief that would be required. The applicant is unable to predict what a homeowner would want in the future.

Mr. Boccanfuso explained if a variance were necessary, the buyer would be back before the Board. There is potential for the proposed buyer to make some improvements in the rear yard without relief from the Board. At this time, the Board does not have control over what the buyer may want.

Mr. Wilder testified there is flexibility with depth on this lot. The property can support additional improvements to the rear without being a detriment to the neighbors.

Being the Board had no further comment, and there was more testimony provided after the public portion, Mr. Miller suggested to reopen the public portion of the meeting to address any questions or comments to the testimony that was provided after the first public session.

Chair Leviton re-opened the public portion of the meeting.

Mr. Miller swore in Rosa Gram of 2 Kerwin Court. Ms. Gram testified the home she resides in at 2 Kerwin Court belongs to her parents. When her parents pass, the home will be entrusted to her. Ms. Gram explained that due to the setbacks she does not have a fence. Her rear yard is private and her kids play area. Ms. Gram voiced concerns of flooding to her property once the proposed home were to be built.

Mr. Wilder addressed the drainage to the area and explained the topography to satisfy Ms. Gram's concerns. The proposed home will not negatively affect the topography to the surrounding homes.

Mr. Boccanfuso agreed with Mr. Wilder testimony.

Mr. Alfieri asked Mr. Wilder to depict on Exhibit A-4 where a fence would be located at the 75-foot setback to see if the Board would want to consider same.

Ms. DeFalco and Mr. Wilder discussed the tree line on the subject property.

Mr. Miller explained the Board would need to get all questions and comments completed before opening the meeting to the public one last time.

Mr. Lilien suggested a living fence to satisfy the neighboring homes. Mr. Alfieri agreed.

Mr. Mantagas, Mr. Schertz, Mr. Cooper and Mr. Weiss agreed with the idea of a living fence.

Mr. Boccanfuso suggested an all season buffer reviewed during plot plan.

Chair Leviton opened the meeting to the public relative to testimony given after the second public portion.

Ms. Wizbicki, previously sworn in, asked for clarification if the tree line.

A Motion of approval was by made by Mr. Lilien and Seconded by Mr. Rosenthal for application ZBE1954

YES:	Rosenthal, Lilien, Leviton
NO:	Weiss, Copper, Gregowicz, Schertz
ABSENT:	Kamen, DiTota
ABSTAIN:	None
NOT ELIGIBLE:	Mantagas

The application was denied.

Chairman Leviton opened the floor to the public for any non-agenda items. Seeing there were none, the public section of the meeting was closed.

ADJOURNMENT:

A Motion was offered by Mr. Lilien to adjourn the meeting at 9:05 p.m. and was agreed to by all. None were opposed.

Respectfully Submitted,

Janice Moench
Recording Secretary

RECORDED COMPACT DISCS OF THE ZONING BOARD OF ADJUSTMENT ARE AVAILABLE FOR REVIEW, IN THE PLANNING/ZONING BOARD OFFICE BY APPOINTMENT.