

**MANALAPAN ZONING BOARD OF ADJUSTMENT  
MINUTES OF THE REGULAR MEETING  
Thursday, August 2, 2018  
TOWNSHIP OF MANALAPAN – Courtroom  
Manalapan, NJ 07726**

The meeting was called to order with the reading of the Open Public Meetings by Chairman Stephen Leviton at 7: 35 PM followed by the salute to the flag.

Roll Call: Janice Moench

In attendance at the meeting: Terry Rosenthal, Larry Cooper, Eric Nelson,  
Mary Anne Byan, David Schertz, Adam Weiss,  
Stephen Leviton

Absent from the meeting: Mollie Kamen, Eve Strauss, Eliot Lilien

Also present: John Miller, Esq., Zoning Board Attorney  
Nancy DeFalco, Zoning Board Officer  
Lisa Nosseir, Acting Recording Secretary

**RESOLUTIONS:**

**Application No: ZBE1820**

Applicant: Joan Lizo-Urbano  
*Memorialization of Approval*

Location: 395 Route 9 –Block: 1305/Lot: 19

A Motion was made by Mr. Cooper, Seconded by Mr. Rosenthal to approve the Resolution of Memorialization for Application **ZBE1820**

Yes: Rosenthal, Cooper, Nelson, Schertz, Weiss, Leviton  
No: None  
Abstain: None  
Absent: Strauss, Kamen, Lilien  
Not Eligible: Byan

**PUBLIC HEARINGS:**

**Application No. ZBE1809 (Carried from 7/19/18)**

Applicant: Lash & Brow, LLC  
Proposal: Micro-blading or permanent make up  
**Request: Use Variance\*\*\***  
Location: 345 Route 9 South (Design Center)  
Block/Lot: 10/15.02  
Zone: C3C2M

Mr. Peter Klouser of Heilbrunn Pape, LLC was present to represent Lash and Brow, LLC. Mr. Klouser completed his direct presentation at the July 19, 2018 Zoning Board meeting. The applicant did not have a Professional Planner present at the last meeting to provide testimony regarding the use variance.

The applicant retained Joseph Layton, Professional Planner for this meeting. Mr. Layton was sworn in by Mr. Miller and his credentials were accepted by the Board. Mr. Klouser asked Mr. Layton to provide his testimony on how he prepared for the use variance for Lash and Brow, LLC. Mr. Layton explained he reviewed the application as well as the zoning ordinance and was provided with the testimony from the prior Board meeting. Mr. Layton explained the two use variances. The first is a change in use from what was a dance studio to a microblading and permanent make-up studio. The second is the use variance

microblading and permanent make-up studio. The second is the use variance required is for the training provided on the microblading. The proposed site is located in the Design Center at 345 Route 9 South. The use of microblading and permanent make-up is similar to other personal services in the beauty field. However, as a new use many ordinances do not have it listed as a permitted use.

Mr. Layton explained special reasons exist to support the granting of the variance with the regards to the positive criteria. Mr. Layton continued testimony describing Purpose A; to encourage municipal actions to guide the appropriate use of development of all lands in the state in a manner in which it will promote the public safety and general welfare. The site is particularly suitable. The proposed use is similar to other personal services permitted in the zone. Mr. Layton explained the proposed use promotes Purpose G; providing sufficient space and appropriate locations for a variety of commercial uses.

Mr. Layton explained the negative criteria, the Board must consider that the relief may be granted without substantial detriment to the public good and will not substantially impair the purpose of the zone plan and ordinance. The Board must consider the area neighborhood. Mr. Layton explained he doesn't feel there is a substantial detriment to the public good. The area is a shopping center that has other personal service uses already existing. The use is not out of character for the area. The parking demand is not excessive. The Board professionals have concluded in the last meeting the maximum number of cars would require 10 spaces. Mr. Layton states he does not see any substantial detriment to the zone plan or ordinance if the Board were to grant the application.

Ms. Beahm testified she takes no exception to the testimony provided by Mr. Layton. There was testimony given at the last meeting regarding how the operations and training would function. Mr. Beahm explained she agrees with Mr. Layton, the use acts similar to a personal service which is permitted in the zone. Microblading is new and hasn't yet been categorized. Most zoning ordinances haven't caught up with the use. Ms. Beahm agreed the site is particularly suited and the space can accommodate the use. Ms. Beahm explained the application meets the requirements and she would take no exception to the Board acting favorable on this application.

Chair Leviton opened the meeting to the public for comment or questions on the application. See there were none, Chair Leviton closed public.

Mr. Miller reminds the Board the variance requested is a use variance and five affirmative votes are required for the application to be approved.

A Motion of Approval for Application ZBE1809 was made by Mr. Weiss and Seconded by Ms. Schertz.

Yes: Rosenthal, Cooper, Nelson, Byan, Schertz, Weiss, Leviton  
No: None  
Abstain: None  
Absent: Strauss, Kamen, Lilien  
Not Eligible: None

**Application No. ZBE1827**

Applicant: Michael Green  
Proposal: Erect fence  
Request: Bulk variance  
Location: 1 Constitution Ct.  
Block/Lot: 1502/11  
Zone: R20

Mr. Michael Green of 1 Constitution Court was sworn in by Mr. Miller. Mr. Green's home is situated on the Corner of Constitution Court and Gordons Corner Road. Mr. Green explained he is before the Board because he would like to erect an L section of a six foot vinyl privacy fence in parallel to one side of Constitution Court, making it perpendicular to Gordons Corner Road and returning to the property line. This would be to create some privacy and muffle some of the traffic from Gordons Corner Road.

Chair Leviton asked who owns the wood fence on the property. Mr. Green explained the wood fence on the survey was put up by the previous owner but no longer exists. Mr. Green has owned the property for two years.

Mr. Rosenthal asked what prevents the applicant from getting closer to the 75 feet setback. Mr. Green explained the corner of his home is currently at 78 feet, so the fence would then be extremely close to the home. There is also an air conditioning unit on that side. Mr. Green explained his back neighbor on Beverly Court has a similar fence that is closer to Gordons Corner Road. Mr. Green and his fence contractor tried to line up the fence with his neighbor to avoid the fence protruding any.

Ms. Beahm explained the issue with the setback is that the home is on a corner lot, so the applicant has two front yards. The 75 foot setback is intended to push the structure off the road. The home is on a diagonal but primarily facing Constitution Court. The fence would create a backyard that is private. Ms. Beahm explained she would take no exception to the fence being at 50 feet. The side yard setback for this zone is 20 feet so if this was regular lot, the applicant wouldn't be before the Board. Ms. Beahm asked Mr. Green if he felt the location and height of the fence would create a negative impact on the zoning plan or ordinance? Mr. Green answered no. Ms. Beahm asked Mr. Green if he thought the fence would create a detriment to the surrounding land uses in the area. Mr. Green answered no. The corner lot creates a hardship.

Chair Leviton expressed concern of a 6 foot fence being erected on Gordons Corner Road across from the Church. Ms. DeFalco explained the home is positioned the way it is because the lot size is irregular. Ms. Beahm explained the applicant is requesting 50 feet which is in excess if it were non-corner lot would be required to comply with.

Chair Leviton accepted the recommendation made by Ms. Beahm and discussed Gordons Corner Road and the views of the fencing.

Ms. Beahm asked the applicant if he would consider some landscaping in front of the fence to mitigate the 6 foot white fence in the front yard. Mr. Green agreed.

Chair Leviton asked the applicant if he was aware there were two front yards when he purchased the property. Mr. Green answered no.

Chair Leviton opened the meeting to the public for comment or questions on the application. Seeing there were none, Chair Leviton closed public.

There were no further questions from the Board members. Mr. Green and Mr. Miller discuss the fence location in further detail.

A Motion of Approval for Application ZBE1827 was made by Mr. Weiss and Seconded by Ms. Schertz.

Yes:	Rosenthal, Cooper, Nelson, Byan, Schertz, Weiss, Leviton
No:	None
Abstain:	None
Absent:	Strauss, Kamen, Lilien
Not Eligible:	None

**Application No. ZBE1825**

Applicant: Joseph and Melina Dani  
Proposal: Ratify Stanchions w winged walls, Columns and Driveway  
Request: Bulk variances  
Location: 11 Kipling Way  
Block/Lot: 2006/53  
Zone: R20

Mr. Joseph and Melina Dani of 11 Kipling Way were sworn in by Mr. Miller.

Mr. Dani provided a packet of pictures, that consisted of five pages, to distribute to the Board members. Ms. Nosseir marked the packet of pictures A-1. Mr. Dani explained he purchased 11 Kipling Way as a short sale in October of 2015. The applicant is seeking a variance for the winged walls, stanchions and the driveway. All of these items were installed by the previous owner and have been in place for approximately 12 years, according to their neighbors. Mr. Dani explained he likes the structures and feels they are aesthetically pleasing. The structures match the brick on the house and the other homes on the block. Mr. Dani feels the structures add value to the neighborhood.

Chair Leviton confirmed with Mr. Dani, when he purchased the short sale the home was accepted "as is".

Mr. Dani received a list from the realtor of permits that were needed when they purchased the home. Mr. Dani explained he did not feel the walls or stanchions looked out of character. He thought he would file for the permits and pay the applicable fees due. The pillars in the rear of the property were reduced in size by the applicant. The pillars are less than 6 feet in height with no electric to them.

Chair Leviton gave a brief review on the items the applicant is seeking relief from.

1. The winged walls and stanchions that are 6 feet high where 3 feet is permitted
2. The Winged walls are 17 feet and 15 feet is permitted
3. The winged walls and stanchions are up against the property line where 5 feet is required.

Chair Leviton asked the applicant to limit his testimony to the items needing relief.

Mr. Dani explained the driveway is encroaching into the side setback by 3 feet. Mr. Dani has spoken to his neighbors about the encroachment and they are ok with it. Mr. Dani explained he doesn't feel that it is encroaching.

Ms. Beahm explained the requirements to the applicant. The setbacks are in place to provide adequate light, air and open space. As well as safe visibility when exiting the driveway. Ms. Beahm asked the applicant to provide the Board with a Land Use reason in order to seek relief. She further explained the applicant would need to provide a goal of zoning pursuant to the Municipal Land Use Law that would justify keeping the structures in place. The Zoning Board has a statutory obligation.

Ms. Dani gave testimony and explained when she saw the home the structures stood out because they were very visible. She explained she was aware she needed to get permits for the structures, but didn't fully understand the extent of the permit process. Ms. Dani gave testimony that she contacted masons to reduce the structures in size to comply with the ordinance. Ms. Beahm explained even if the structures were reduced in size they are not complaint because they are in the wrong location. Ms. Beahm explained the stanchion needs to be 5 feet from the property line and the stanchions are on the property line. Ms. Beahm explained to the applicant they need to prove to the Board that the positive reasons for allowing the structure to remain, in keeping with the land use requirements. Ms. Beahm gave testimony that the location and the height of the

structure is not safe. The reason the town requires the structures to be lower and 5 feet from the property line is for safety reasons.

Ms. Dani expressed she does not understand what a land use reason is. Chair Leviton explained what is needed to be established in order to prove a land use reason.

Mr. Dani explained he felt the structures were aesthetically pleasing and add value to the neighborhood.

Mr. Miller explained the applicant testified twice that the structures add value to the home and advised the Board is precluded from considering any effect on property values.

Mr. Weiss asked if the Board can consider cost incurred for removal. Mr. Miller explained the Board may not consider the cost in their decision. The hardship has to be with the topography and/or physical condition of the site.

Ms. Byan asked if any portion of the stanchions be allowable. Ms. Beahm explained the location of the stanchion on the North side of the driveway is conforming however the height is too high. The reason the ordinance does not allow for anything higher than 3 feet is for safety when pulling out of the driveway. Ms. Beahm explained in further detail the safety reasons for the stanchions.

Ms. Dani asked why she was able to purchase the home if it was unsafe. Ms. Beahm explained to the applicant they purchased the home as a short sale with the understanding they would be reconcile whatever issues occurred on the site.

Ms. Dani explained she asked the inspectors what needed to be done. The inspectors advised they applicant they needed to file for the necessary permits.

Ms. Beahm explained the building department and the zoning department are separate. The building inspectors do not evaluate zoning issues.

Chair Leviton explained to the applicant the Board has to evaluate this case as if the structures were not built yet.

Ms. Dani explained she has put effort into complying with the ordinance by reducing the pillars in the rear and contacting masons to get pricing for reducing the walls in the front.

Mr. Miller explained purchasing the property "as is" does not justify the installation of improvements from the Municipal Land Use Law. Mr. Miller further explained to the applicant that they were notified that permits were required.

Ms. Dani explained she went to all the utility companies because of the easement that the walls are in. The zoning office advised the variance process would be the only option. Ms. Beahm explained the other option is to remove the walls. Ms. Dani explained she understands the financial hardship is not allowed to be taken into consideration, however it is very expensive to remove the walls.

Mr. Miller explained financial reasons are not a reason to justify granting variance relief by the Board. Ms. Dani continued to speak over Mr. Miller. Mr. Miller advised Ms. Dani when she completed her testimony he would then speak.

Ms. Beahm suggested the applicant consider hiring a professional planner to help with the representation being the applicants have not given a land use reason to grant the variance. Ms. Beahm explained in her opinion there is a safety concern, so she is unable to support relief. The Zoning Board has statutory requirements by law in order to grant relief. The applicant has not justified the necessity from the relief. Ms. Beahm explained she understands the

situation but her job is to make sure the testimony is placed on the record so the Zoning Board is protected moving forward and to date that has not happened.

Mr. Miller explained by law the Board is not permitted to waiver from the statutory standards. The Board must have testimony in order to make a decision.

Chair Leviton asked the Board for comments and questions of the application.

Mr. Nelson asked the applicant, the street has 15 or 20 houses, how many have walls like yours? The applicant states there are two homes that have walls but they are significantly shorter.

The Board and the professionals discuss the safety hazard and the height of the structures

Mr. Rosenthal agreed the safety issue is something that has to be rectified. Being the wall is on the property line, does it infringe on the neighboring property? Ms. Beahm explained the wall is on the property line but not over it.

Ms. Dani explained to the Board she contacted several masons to cut the walls down. There is customized capping that will crumble if they were to have the walls reduced.

The applicants had no further testimony.

Chair Leviton opened the meeting to the public for comment or questions on the application.

Mr. Eliot Green and Ms. Holly Green of 13 Kipling Way, were sworn in by Mr. Miller. Mr. Green gave testimony that there has never been an accident on Kipling Way. Mr. Green states there is no safety issue. Mr. Green further states prior to the applicant purchasing the home, the house was on the market for years and was an eyesore. Mr. Green stated the home wouldn't have sold if it were for the applicant to purchase it.

Mr. Miller explained to the Chairman the testimony given by Mr. Green goes to the alleged increase in property due to the fact the Dani's purchase the property. Mr. Miller advised the Board the testimony is not relevant for consideration of the variance proofs that are sought by the applicant.

Mr. Green explained his understanding was to reference the desirability or comparison to other properties in the neighborhood. The homes were built new in 2006 and some had winged walls.

Mr. Miller reminds Mr. Green again his testimony doesn't speak to the bulk variance relief sought by the applicant.

Mr. Green gives testimony again there has never been an accident on the block and the walls have been there for 16 years.

Ms. Beahm explained the walls do not comply with the ordinance and they require variance relief. There is a statutory requirement under the law that must be provided. Ms. Beahm explained the ordinance and the safety issue in further detail again. Ms. Beahm suggested the applicant ask for an adjournment and retain a professional to help justify under the law why the structures should remain.

Chair Leviton explained to the applicant to take the testimony given by the Board Planner and Attorney under advisement. He further explained he feels the walls need to be lowered or come down. Chair Leviton stated the Board is amenable to adjourning without calling a vote to allow the applicant to come back for relief.

Mr. Dani explained he is in favor of an adjournment and will seek guidance from a planner. It is agreed by the applicants and the Board to carry the application to the October 4, 2018 meeting date.

**At 8:45 PM a Motion was made to move into executive session by Mr. Cooper and Seconded by Mr. Weiss.**

Yes: Rosenthal, Cooper, Nelson, Byan, Schertz, Weiss, Leviton  
No: None  
Abstain: None  
Absent: Strauss, Kamen, Lilien  
Not Eligible: None

The Board Attorney briefly updated the Board members regarding pending litigation on the prior application of Boundless Adventures. Executive session closed at 9:00PM

Chair Leviton re-opened the meeting to the public for any non-agenda items, seeing there were no public comments, he closed public.

**ADJOURNMENT:**

A Motion was offered by Mr. Nelson and agreed by all to adjourn the meeting at 9:05 PM

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.