

**MANALAPAN ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
Thursday, September 6, 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 7:40 PM followed by the salute to the flag.

Roll Call: Janice Moench

In attendance at the meeting: Mollie Kamen, Terry Rosenthal, Larry Cooper, Eve Strauss, Eliot Lilien, Mary Anne Byan, David Schertz, Stephen Leviton

Absent from the meeting: Eric Nelson, Adam Weiss

Also present: John Miller, Esq., Zoning Board Attorney
Nancy DeFalco, Zoning Board Officer
Janice Moench, Recording Secretary

Chair Leviton announced application number ZBE1735, Katherine C. Smith and Katherine K. Smith Co-Trustees of the Katherine C. Smith Revocable Trust Agreement, will be carried to October 4, 2018 with no further notice to the public.

MINUTES:

A Motion was made by Mr. Cooper, Seconded by Mr. Schertz by to approve the Minutes of **August 2, 2018** as written.

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

A Motion was made by Ms. Strauss, Seconded by Mr. Cooper by to approve the Minutes of **August 16, 2018** as written.

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

RESOLUTIONS:

**Memorialization of Approval
Application No. ZBE1817**

Applicant: Eivind Hauge
Location: Woodward Road; 76.02/12.02

A Motion was made by Mr. Cooper, Seconded by Mr. Schertz to approve the Resolution of memorialization for Application **ZBE1817**

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

**Memorialization of Approval
Application No. ZBE1826**

Applicant: Godwin I. Ayeke
Location: 76 Pension Road; 14.06/44

A Motion was made by Ms. Strauss, Seconded by Mr. Cooper to approve the Resolution of memorialization for Application **ZBE1826**

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

PUBLIC HEARINGS:

Application No: ZBE1719

Applicant: Anthony Fontana
Proposal: Ratification walls, fencing, patio, walkways& garage height
Request: Bulk variances – setback relief
Location: 11 Cambridge Court
Block/Lot: 1309/55
Zone: R20

Mr. Miller explained that Board member Mr. Weiss was not present. Mr. Rosenthal and Mr. Cooper have listened to the recording of the June 21, 2018 meeting for this matter. Both Board members are eligible to vote on the application.

The Board Planner, Jennifer Beahm and Board Engineer, Brian Boccanfuso were sworn in by Mr. Miller

Mr. Cohen is present on behalf of the applicant Mr. Anthony Fontana. At the last hearing on June 21, 2018 the applicant agreed to prepare a plan addressing the concerns of the immediate neighbor Mr. Lewis. The applicant was encouraged by the Board to come up with plan for Mr. Lewis to avoid seeing the concrete wall as well as eliminating any maintenance issues. The applicant has a proposed plan that will eliminate the height variance for all but 35 feet of the northern property line.

Mr. Miller asked for any attorneys present to place their appearance on the record. Mr. Jeffrey Beekman was present on behalf of Mr. and Mrs. Lewis, who reside next door to the applicant. Mr. Miller confirmed with Mr. Beekman and Mr. Cohen the proposed plan had been submitted to Mr. Beekman prior to the hearing date.

Being there has been a dispute between parties, Mr. Miller asked Mr. Cohen to provide the Board with any updates on any progress or discussions. Mr. Cohen advised the Board there had been no progress made between the parties.

Mr. Richard DiFolco, Licensed Engineer and Planner was sworn at the June 21, 2018 meeting. However, Mr. DiFolco was sworn in again to provide further

testimony. Mr. DiFolco referred to the revised site plan of August 21, 2018, Exhibit labeled A3, this exhibit shows the relocation of the fence. Mr. DiFolco produced Exhibit A4, a photograph of the existing wall. This photograph was taken by the neighbor from the neighbor's property. A4 shows existing conditions. Exhibit A5 is the same view as A4 with the proposed wall superimposed into the photo. Exhibit A6 is a picture of the view, prior to the fence installed on top of the wall, of the Fontana property taken from the neighbor's deck. Exhibit A7 is the same view as exhibit A6 however it has the new fence and landscaping proposed by the applicant.

Mr. Cohen refers to Exhibit A3 and asked Mr. DiFolco to describe the proposed changes to the Board. Mr. DiFolco explained the current fence is mounted on top of the wall which violates the six feet maximum height. Currently the fence on top of the wall ranges from six-foot high to ten feet high at the end. The proposed plan will remove the fence off the wall and install it on the ground. This will conform to the height ordinance. Behind the fence on the Fontana side the applicant proposes landscaping and metal Jarith fence at pool grade level. The six-foot fence will start at the rear of the property and will end at the neighbor's metal fence. The applicant is requested the first thirty feet to remain on the wall.

Ms. Beahm asked if the Jarith fence is on top of the wall or adjacent? Mr. DiFolco explained the five-foot Jarith fence is on the ground adjacent to the pool deck.

Mr. Rosenthal asked the height of the fencing. Mr. DiFolco explained the fencing will range from 6'10 to 7'5 at the end. The first thirty feet will remain on top of the wall.

Ms. DeFalco asked why the fence has to remain on the wall. Mr. DiFolco explained the fence doesn't have to stay on the wall it is just proposed that way. Ms. Beahm explained, placing the fence on the ground would mitigate the need for the height relief. Mr. DiFolco explained he had discussed the issue with the applicant prior to the meeting. If it were a concern of the Board, the applicant would have no vinyl fence for the first thirty feet and put a Jarith fence in place to meet the neighbor's Jarith Fence. Mr. Cohen explained this would eliminate the height variance for the fence.

Mr. DiFolco explained under the proposal the existing wall would be totally hidden from the neighbors site by the six-foot vinyl fence. Mr. Cohen explained the wall will require side yard setback variance because portions of the wall are higher than three feet and he asked Mr. DiFolco to explain the purpose of the wall as it related to the drainage of the property. Mr. DiFolco explained the property slopes from the street to the rear with a crown in the center. All of the water that flows towards the side, is diverted by the wall, and directed to the drainage easement at the rear of the property. The primary function of the wall is to direct drainage and prevent erosion.

Ms. Beahm confirmed with Mr. Cohen the applicant will need relief for the wall on the opposing end of the property. Mr. Cohen Confirmed same.

Mr. Cohen referred to pictures three and four of the packet that were submitted to the Board one week prior. Picture number four shows the patio area encroaching into the side yard setback. Picture three shows how the driveway area and garage area connect to the pool. Mr. Cohen referred to development regulation 9.5-7.8e that would permit these walkways, therefore he does not feel a variance is required for the patio area. Ms. Beahm explained the concrete is a patio not a walkway. She states the applicant is in need of the variance. Ms. Beahm explained the applicant will need to explain why the proposed plan is a better planning alternative than complying with the ordinance, which is required by every applicant.

Mr. Cohen explained the driveway on the Brighton side of the property was there before Mr. Fontana purchased the property. The driveway on the Cambridge Court side, in photo number two of the Exhibit encroaches into the ten-foot side setback. Mr. Cohen referred to a developmental regulation 95-9.2b4 with regards to improvement standards that states no part of a driveway shall be further than five feet of a side property line. If a variance is required it is a de minimis violation, being the drainage flows into the property.

Mr. DiFolco states he believes there is a conflict in the side yard setback ordinance. The driveway is shielded with landscaping and is adequately graded. The proximity to the neighbor does not diminish light or air.

Mr. Beahm asked Mr. DiFolco for clarification on his testimony being the drainage runs into the back of the property therefore encroaching into the side yard setback. Mr. DiFolco and Ms. Beahm discuss the variances requested for the side yard setback in further detail. Ms. Beahm explained the applicant can remove four feet from the driveway and be in compliance.

Ms. Strauss asked why the applicant needed a driveway with such a wide width. Ms. Strauss explained the Board must look at the application as if nothing was built yet. Mr. Miller agreed and explained the case law in further detail. The Board doesn't punish the applicant for building without a permit. However, the applicant does need to meet the variance proofs for what has been constructed as it exists. Mr. DiFolco explained to the Board the driveway is required to be less than ten feet from the property line because the gate is located there and gains access to the rear yard.

Ms. Beahm asked how wide the gate entrance is to the rear yard. Mr. DiFolco measured the gate to be ten feet. Ms. Strauss asked why the gate is necessary. Mr. DiFolco explained the gate is required to bring in light machinery to work in the rear yard. Ms. Beahm asked what type of machinery would require a ten-foot-wide gate being the majority of the yard is pavement. Ms. Beahm explained the plan before the Board is excessive and every opportunity to exceed the ordinance requirements has been done. There are modifications that were not made in the year that this application has been pending before the Board. Ms. Beahm gave her recommendation to have the applicant come back to the Board this evening with an alternative plan.

Mr. Cohen asked for a short recess to consult with his client at 8:10 PM

Chair Leviton called the meeting back to order at 8:50 PM.

Mr. Cohen thanked the Board for affording his client the time to come up with an alternative plan. Mr. Cohen proposed the following:

- Eliminate the fence height variance along the northern property line. The six-foot compliant fence will run the entire length of the property so there is no view of the wall from the neighbor's yard.
- The driveway will be cut back to be in compliance with the ten-foot side yard setback. The applicant would like to keep the top portion of the driveway where it flairs out for the length of the gate.
- Eliminate the side yard setback relief for the rear patio and walkway by cutting them back to the required ten feet. There will be landscaping in the ten-foot setback

Ms. Beahm explained she see the proposal as a significant improvement.

Mr. Beekman expressed concern where the proposed fence will leave a gap between the fence and the wall. This create space for rodents, weeds etc. It would be more appropriate to place the fence closer to the wall.

Mr. Cohen agreed to have his client place the fence closer to the wall however, it will create a maintenance issue on the neighbors' side. Mr. Beekman stated his client would agree to continue with the maintenance.

Mr. Beekman asked for justification on the retaining wall. Mr. Boccanfuso explained there was testimony given at the last meeting with regards to the wall being installed for drainage purposes. Mr. Boccanfuso was not able to confirm that was the intent of the wall upon installation. However, as the wall is constructed today it does provide a drainage benefit in his opinion.

Mr. Lilian asked what type of drainage is in place to mitigate the water to the rear of the property?

Mr. DiFolco explained the water flow is by sheet flow from the house to the rear.

Ms. Beahm advised Mr. Cohen to put some justification on the record for the height of the garage. Mr. Cohen and Ms. DeFalco discuss the height variance required. The zoning permit for the height of the garage was approved at 15 feet. The plans submitted to the construction department after the zoning portion was approved, listed the height to be 20.6 feet. Mr. DiFolco explained the roof is an A-frame roof and there is adequate separation between the neighboring property and the garage corner.

Ms. Beahm confirmed with Mr. DiFolco there is no habitable space in the garage. Ms. Beahm explained she takes no exception to the relief being requested, in her opinion the garage is aesthetically pleasing promoting a desirable visual environment.

Mr. Cohen agreed with Mr. Miller on the condition of no habitable space in the garage as long as the garage stands.

Ms. DeFalco and Mr. Cohen agree the improvements will be completed by the Spring of 2019 along with an As-Built to be submitted.

Mr. Cooper asked if there was any plumbing in the garage. Mr. Cohen confirmed there is no plumbing.

Mr. Miller set forth the following conditions:

- The wall in the rear of the property line will be three feet off the property line
- There will be no gap between the fence and the wall
- The maintenance will be performed by the objectors
- The garage will have no habitable space in the garage
- The driveway and walkway/pool patio will be brought into compliance except the portion of the concrete that flairs by the gate
- The fence will be taken off the wall
- The work must be completed by the Spring of 2019 along with an As-Built submitted

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

Mr. Beekman thanked the Board for their time and explained he believes the outcome to be a reasonable modification to the plan submitted.

A Motion of Approval for Application ZBE1719 was made by Mr. Lilien and Seconded by Mr. Rosenthal.

Yes: Kamen, Rosenthal, Cooper, Strauss, Lilian, Byan, Leviton,
No: None

Abstain: None
Absent: Nelson, Weiss
Not Eligible: Schertz

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

ADJOURNMENT:

A Motion was offered by Mr. Cooper and agreed by all to adjourn the meeting at 9:20 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.