

BOARD OF ADJUSTMENT
MINUTES OF THE MEETING

JULY 7, 2016

CALL TO ORDER: This is a regularly scheduled meeting of the Board of Adjustment of the Borough of Franklin Lakes. In compliance with the Open Public Meetings Law, Notification of this Meeting has been sent to our Official Newspapers and Notice has been posted on the bulletin board at the Borough Hall. I direct that this announcement be entered into the Minutes of the meeting.

ROLL CALL:

Present: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Badenhausen, Mr. Frankel,
Mr. DeLorenzo (7:43), Mr. Saracino, Mr. Hunter, Board Attorney Davies, Board Engineer Tiberi
Absent: None

FIRE SAFETY ANNOUNCEMENT - The fire exits are out the double doors, down the stairs and out the front door and the side exit door down the stairs and out the side door.

ORAL COMMUNICATIONS

There were no oral communications this evening.

RESOLUTIONS

Investors Group of New Jersey, LLC, 635 Kuliana Court, Block 3102, Lot 2.01

Mr. Rupert is a direct neighbor of the applicant. Mr. Rupert distributed a map showing the boundaries of the property highlighted in yellow. The areas marked with red dotted lines represent the area where the fence encroaches on his property. Mr. Davies read from his resolution stating that “applicant will indicate on its plan that the metal fence running along the southeast property line will be relocated so that the metal fence is entirely on applicant’s property”. Mr. Davies said that the Borough Engineer would be addressing this with the applicant. Ms. Tiberi, Borough Engineer, stated that her office was requiring an as-built survey of the fence after it is moved to prove that it has been moved onto the applicant’s property.

Mr. Rupert said he wanted to let the Board know that nothing has been done yet and Mr. Bavagnoli explained that the applicant can’t begin any work until the resolution is memorialized. Mr. Rupert pointed out other areas where the fence encroaches onto his property by at least 15 feet. Mr. Bavagnoli asked Mr. Rupert why he didn’t attend the meeting when this application was scheduled. Mr. Rupert replied that he wasn’t informed of the meeting due to a clerical error in the Tax Office. Mr. Davies explained that Mr. Rupert’s name did not appear on the list of owners within 200 feet.

Mr. Rupert was sworn by Mr. Davies. Mr. Davies said that to his knowledge there have been issues on this property for some time. Mr. Rupert confirmed this and compared the grading between the old home and new home. He also distributed a photo and spoke about water runoff from this property. A berm had been installed to redirect water runoff from High Mountain Road which reduced the water flow significantly. Mr. Rupert described a five foot wall installed in the rear of the property along with a berm and he suggested the installation of a French drain or another berm along the property line.

Ms. Tiberi explained that the as-built received for this property shows a tiered wall built at heights which were approved and accepted. The former structure drained completely onto Mr. Rupert’s property in a southeast/northwest direction. This new house has seepage pits and drains towards the fire pond. A portion of the water still flows to Mr. Rupert’s property simply due to the fact that his property is lower. Ms. Tiberi stated that the

ZONING BOARD OF ADJUSTMENT MEETING

7-7-16

PAGE 2

back yard seepage pits have been expanded and approved and the Engineering Department has no further issues with this property with the exception of the fence.

Mr. Davies said that the pictures provided to the Board by Mr. Rupert show a considerable amount of water on his property. He asked Ms. Tiberi how the drainage issue could be rectified. Mr. Rupert commented that the runoff to his property was significantly changed due to the berm. Ms. Tiberi said that Mr. Rupert's property was always subject to water issues even before the berm was constructed. She said there is less water on his property now; however, Mr. Rupert disagreed. He added that both the grading and the seepage pits contribute to the problem on his property. He asked that the Board not approve the variance until these issues have been addressed.

Mr. Davies recommended that this application be carried so that these issues can be resolved. He hopes that the applicant's engineer and the Board engineer could come to an agreement on this. If this doesn't work he will have to look further into the legal implications of the incorrect information given by the Borough relative to adjoining neighbors. Mr. Saracino made a motion to defer voting on the resolution, seconded by Mrs. Gerber. Mr. Bavagnoli said that the engineers would meet and a report will be given at the next meeting. If an agreement is not reached the application will have to be rescheduled and heard again.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel, Mr. Saracino, Mr. Hunter

Nays: None

OLD BUSINESS

Cal.#2016-5 Application for Davis, 496 Cherry Street, Block 2506, Lot 3, Dimensional Variances.
CARRIED FROM 6-2-16 MEETING.

Bruce Whitaker, attorney for the applicant, introduced himself, and explained that the applicants want to renovate their newly purchased home. The home has been vacant for some time and is uninhabitable. The applicants want to upgrade the structure and create a second floor over the existing footprint. The applicants propose an eat-in kitchen, dining room, bathroom and great room on the main floor with two bedrooms and a bathroom on the second floor. The only expansion of the footprint is some decking off the main floor and a small front porch that would infringe on the front yard setback. This would make the house more in keeping with the other homes in the area. Mr. Whitaker said that the property is in the A-22.5 district and the Zoning Officer confirms that the home was built in approximately 1930. The house predates current zoning and has a lot width of 100 feet where 150 is required. Building coverage is 19.2% where 15% is the maximum coverage that is allowed. Total coverage is 37.7% where 20% is permitted. Side yard setbacks are 4.5 feet and 4.2 feet where 25 feet is required. Front yard setback is 27.3 feet where 50 feet is required.

Mr. Whitaker said that this is a classic case where a home was built many years ago on an undersized, substandard lot as compared to today's ordinances. It is obvious that the footprint of the first floor cannot be expanded due to the size of the lot. The applicants propose that the footprint for the living space remain the same but the one and a half story house will be expanding to a full two stories. The pre-existing non-conforming conditions are not being expanded except as pertains to the front porch. The applicant proposes a seepage pit which is an upgrade that will be within the setback requirements. The variances requested pertain to a lawfully existing structure in an exceptional location and any attempts to conform to the existing code would result in an undue hardship.

Mr. Whitaker stated that a variance can be granted using the C-2 criteria which suggests a substantial benefit that would outweigh any detriment. The upgrading of this site constitutes a benefit to the municipality as well as the property owners. There will be improvements in grading as well as others that will update the house to today's standards. The pre-existing conditions are not being exacerbated.

ZONING BOARD OF ADJUSTMENT MEETING

7-7-16

PAGE 3

Richard Davis, 496 Cherry St., Franklin Lakes, testified that he is committed to construct an addition over the second floor of the existing home. Mr. Davis said he is familiar with the plans drawn by David Hals, engineer and Mr. Davies marked the plans as Exhibit A-1. The plans drawn by Charles Schaeffer, architect, were marked as Exhibit A-2. Photos taken by Mr. Davis were marked as Exhibits A-3 and A-4.

Mr. Davis testified that the engineer's drawings are accurate as they pertain to the two story addition which is located over the existing building. He stated that the front porch runs west from the current stairway and triggers the variance request. This stairway will become part of the front porch which he described as an aesthetically pleasing open structure. A deck to the rear is also proposed. Mr. Davis described the architectural plans which include removal of the roof with the addition of two bedrooms and a bathroom. The addition will match the existing siding. Mr. Davis indicated that the septic system received approval on May 10, 2016 and it was marked as Exhibit A-5 by Mr. Davies.

Mr. Davis said that there is an existing fence on the property belonging to his neighbor which is the gas station. After speaking with his neighbor he has agreed to let the fence remain for now. The area of fencing is minimal and the neighbor agreed to remove the encroaching area in the future if it becomes a problem. He confirmed that it is not possible to purchase any property from neighbors in order to increase the size of the property in question.

Ms. Tiberi pointed out that the new steps will be .6 feet further away from the right of way which improves the situation somewhat. The existing front setback is 20 feet to the base of the steps.

Mr. Bavagnoli asked if there were any questions from the public relative to this application. No one from the public came forward. Mrs. Gerber made a motion to close the public portion of the meeting, seconded by Mr. Messaros, all ayes.

Mrs. Gerber made a motion to approve the application as presented, seconded by Mr. Saracino.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Badenhausen, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo, Mr. Saracino, Mr. Hunter

Nays: None

NEW BUSINESS

Cal.#2016-6 Application for Montgomery, 1007 Franklin Lake Road, Block 1208, Lot 1, Dimensional Variances, which are in violation of the following Sections of the Ordinance:

TYPE	REQUIRED	EXISTING	PROPOSED	VARIANCE	CODE
Building Coverage	15%	16%	15.4%	.4%	300-102
Lot Coverage	25%	28.7%	34.8%	9.8%	300-102
Front Yard Setback					
Home	50'	31'		19'	300-102
	50'	13.14'		36.86'	300-102
Existing Driveway					
Setback	15'	4'		11'	300-71.D.(4)
A/C Units Location	Rear & Side Yard		Front Yard	Needed	300-121.A.(1)
Front Yard Setback					
Pool Equipment Pad	50'		Front Yard	Needed	300-102
Side Yard Setback					
Walkway	25'		20'	5'	300-102

DEEMED COMPLETE: 5-10-16

DETERMINATION DATE: 9-6-16

Mr. Davies swore Kevin Montgomery, 1007 Franklin Lakes Road, and his landscape architect Richard Cording, 58 Ringwood Avenue, Ringwood, N.J. Mr. Montgomery stated that he owns a small non-conforming corner lot with a small patio in the rear yard. The lot exceeds the required total coverage by 3.7% for a property that doesn't contain a swimming pool. The brick patio is in poor condition and Mr. Montgomery wants to expand the space to 1,677 square feet which would be more suitable for his family. Additionally, he hopes to add a modest size swimming pool with an adjacent spa known as an endless pool. These proposals will increase the surface coverage area from 8.7% to 9.8%. Mr. Bavagnoli noted that the presence of a swimming pool on the property allows for the extra 5% in allowable coverage.

Mr. Montgomery stated that the proposed movement of the air conditioning units from the patio area to the other side of the house triggers another variance. The units will be relocated to the Franklin Lake Road section of the lot on a knoll and plantings have been proposed to screen the units from the street. He also plans to erect a small lattice wall around the air conditioning units to deter the sound. The pool equipment will be located in this area as well.

Mr. Montgomery addressed the brick walkway which allows access from the front of the house to the back yard. He wants to install a new bluestone walkway to be located in the same area as the existing walkway located 20 feet from the property line.

The Board discussed the application. There was a concern raised about drainage issues as a result of the berm. Mr. Cording said this would not be the case and he described proposed plantings. There was also a concern about the septic system. Ms. Tiberi said that access to the system can be maintained and she noted that the Board of Health has approved the plans. Mrs. Gerber noted that there had been an addition to the home relative to coverage limits that were exceeded resulting in a variance being granted. She asked if a pool was considered at that point and Mr. Montgomery said he purchased the house without a pool.

Ms. Tiberi described the proposed patio as large at 1,600 square feet in addition to the 150 square foot pool. The pool and pergola are a standard size and she suggested a compromise to cut back some of the coverage on the patio. Mr. Cording said that they could come up with some design ideas to reduce the size of the patio by 4 or 5 feet while continuing to maintain the functionality of the plan. He suggested replacing the area along the side of the house with a planting bed in the area of the existing air conditioning units, and shortening the area next to the pergola. After more discussion Board members agreed that 31% coverage would be acceptable. Mrs. Gerber suggested that the Board review the resolution relative to the prior variance to make sure there were no restrictions regarding another expansion. She asked for more details as to why this application would be justified because she is not convinced that there are any existing hardships.

Board Members discussed whether they could approve this application without researching the contents of a prior resolution. Mr. Davies advised that this would not be a good idea because it could cause potential problems if the prior resolution did contain restrictions. Mr. Montgomery asked that the Board approve the application making it contingent on any prior restrictions which the Board finds. Mr. Davies said that the applicant is prohibited from any construction until the resolution is memorialized a month from now. The resolution could be drafted and approved at the next meeting which would not hold up the applicant's construction. He added that it is possible that relief could be granted from the restrictions noted in a prior resolution.

Board Members expressed their opinions on the percentage of total coverage they would find acceptable which ranged between 31% and 32%. After a lengthy discussion Mr. Bavagnoli concluded that the percentage would be 31.5%. Mr. Davies recommended that the Board not approve the application without first checking the old files to see if there are any prior restrictions pertaining to this property. He reiterated that the Board could approve the application at the next meeting and he will draft a resolution using the 31.5% total coverage which the Board can also approve at the next meeting.

A motion was made and seconded to open the public portion of the meeting. Steve Ross, 321 George Street, said that he hopes the Board will grant the variance and he added that any restrictions contained in a prior resolution are not covenants that run with the land or recorded in a document. This applicant did not appear before the Board previously and did not make any prior agreements with the Board. Mr. Davies agreed that the Board is free to override conditions imposed by previous Boards. A motion was made and seconded to close the public portion of the meeting.

Mr. Davies reviewed the conditions of approval:

1. Board of Health approval for the septic tank location.
2. Amend plan to show total coverage of 31.5%.
3. Screening around the air conditioning units and pool equipment in the front will be evergreens and lattice subject to the approval of the Borough Engineer.

Mr. Bavagnoli stated that the Board would defer a vote on this application until August at which time the resolution will be memorialized. Mr. Saracino made a motion to defer a vote on the application, seconded by Mrs. Gerber.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Badenhausen, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo,
 Mr. Saracino, Mr. Hunter
 Nays: None

Cal.#2016-7 Application for Ross, 321 George Street, Block 3303.01, Lot 9, Dimensional Variances which are in violation of the following Sections of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>EXISTING</u>	<u>PROPOSED</u>	<u>VARIANCE</u>	<u>CODE</u>
Front Yard Setback	50'	44.85'	44.85'	5.15'	300-102
Approved for 45.5' 2002 Resolution					
Side Yard Setback					
Driveway	10'	8'		2'	300-71.D.(4)(d)
West side steps, landing pad and small portion of wall in the 15' no disturbance buffer.					300-124
East side contains a 15' long encroachment of wall within 15' no disturbance buffer.					300-124
Two foot rubber wall on property line.					300-124

This property was previously before the Board for Farnan in 2002. Variances granted for lot width and front yard setback.

DEEMED COMPLETE: 5-31-16 DETERMINATION DATE: 9-27-16

Steven Ross, 321 George Street, was sworn by Mr. Davies. Mr. Ross stated that he is proposing a pool; however, when he tried to obtain a building permit it was discovered that his driveway and several retaining walls were in violation of Borough ordinances. The issues are a small rock wall, a portion of which is located in the no disturbance buffer. This wall existed when he moved into the house. The property is very close to a high school and he expanded the driveway for easier access in and out due to the amount of traffic that exists during the school year. Regarding the front stairs, the current plan indicates a front yard setback of 44.85 feet to the base of the front steps. These stairs were the subject of a variance application in 2002 when a setback of 45.5 was approved. Mr. Ross explained that wooden stairs were installed in 2003, but these were changed to masonry stairs in 2010. He received a permit and installed the new stairs in what he thought was the exact same location; however, no re-surveying was done. This means there is less than a foot which violates Borough ordinances.

ZONING BOARD OF ADJUSTMENT MEETING

7-7-16

PAGE 6

Ms. Tiberi indicated that the driveway is 8 feet from the side property line versus 10 feet required. There is a rubble stone wall along the property line and a perimeter wall that encroaches slightly into the 15 foot buffer with a similar discrepancy on the other side. She noted a shed on the property which received prior approval and was allowed to remain.

A motion was made and seconded to open the public portion of the meeting. No one from the public came forward and a motion was made and seconded to close the public portion of the meeting.

Mr. Davies said that the Board seems amenable to the application. He suggested that the acceptable front yard setback for the stairs be altered slightly to 44.8 feet. Side yard driveway setback will be 8 feet. A small portion of the wall on the west side of the property will remain within the 15 foot No Disturbance buffer as well as the 15 foot long encroachment of the wall on the east side of the property. Mr. Saracino made a motion to approve in line with Mr. Davies' suggestions, seconded by Mr. Hunter.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Badenhausen, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo,
Mr. Saracino, Mr. Hunter

Nays: None

RESOLUTIONS

Eltaki and Abdulla, 892 Franklin Avenue, Block 1404, Lot 12

Mrs. Gerber made a motion to memorialize the resolution as presented, seconded by Mr. Hunter.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Saracino, Mr. Hunter

Nays: None

Mahmood, 895 Scioto Drive, Block 2101.08, Lot 24

Mr. Messaros made a motion to memorialize the resolution as presented, seconded by Mr. Hunter.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo, Mr. Saracino, Mr. Hunter

Nays: None

Glaser, 881 Roberts Court, Block 1432, Lot 36

Mr. Saracino made a motion to memorialize the resolution of approval as presented, seconded by Mrs. Gerber.

Roll Call Vote

Ayes: Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel, Mr. DeLorenzo, Mr. Saracino, Mr. Hunter

Nays: None

The meeting was adjourned at 9:51P.M. on a motion made by Mr. Frankel, seconded by Mr. Saracino.