

**ALPINE ZONING BOARD OF ADJUSTMENT**

Regular Meeting

Thursday, March 15, 2018 - 7:30 P.M.

(This meeting was taped in its entirety).

**CALL TO ORDER/PLEDGE OF ALLEGIANCE/PUBLIC ANNOUNCEMENT**

This regular meeting of the Alpine Zoning Board of Adjustment was called to order by Chairman Glazer at 7:35 p.m., Thursday, March 15, 2018 at the Alpine Borough Hall, the Pledge of Allegiance recited and the Public Announcement read according to the requirements of N.J.S.A. 10:4-6 et seq.: *In accordance with the provisions of the Open Public Meetings Law, the notice of this regular and reorganization meeting held Thursday, March 15, 2018 has met the requirements of the law by being published in The Record on January 4, 2018 and posted on the bulletin board in the lobby of the Borough Hall and a copy filed in the office of the Borough Clerk.*

**ROLL CALL**

Richard Glazer	Present	Tony Clores	Absent
David Kupferschmid	Present	Richard Bonhomme	Absent
Steve Cohen	Present	Anthony Barbieri	Absent
Jeffrey Mayer	Absent	George Abad, Jr, Alt I	Present

**Staff Present on Dais:** Matthew Z. Earle, Esq. for Attorney Michael Kates, Borough Engineer Gary Vander Veer, Board Secretary Nancy Wehmann

**COMMUNICATIONS**

Letter from Matthew Capizzi dated March 13, 2018 requesting Kim Block 75 Lot 10 18 Overlook Road be carried to April 19, 2018 waiving time constraints under MLUL. Applicant is in process of preparing revised plans. So noted. Applicant will need to re-notice and provide documents at least ten days prior to the meeting.

**MEMORIALIZATION – FORTIER BLOCK 30 LOT 4 – 4 HIGHWOOD PLACE**

Attorney Earle reviewed the resolution.

**Resolution:** Upon a motion by Mr. Cohen, seconded by Mr. Kupferschmid to approve the application for Applicants Alan and Bunny Fortier to construct a single-family home with variances for length of garage doors, disturbance of steep slopes, approval of a soil moving permit and waivers for soil depth and for slopes of 1:1 vs. 1:4. The aforementioned approval is subject to conditions as outlined in the resolution for this property located at 4 Highwood Place designated as Block 30 Lot 4 on the Tax Assessment Map of Alpine, New Jersey, Bergen County. A copy of this resolution is attached to these minutes and on file at the Borough of Alpine, 100 Church Street, Alpine, NJ for review.

**Vote: Ayes:** Abad, Cohen, Kupferschmid, Glazer

**MOTION APPROVED**

**PROCEDURAL MOTIONS**

**Resolution: Approval of Minutes: Regular Meeting February 15, 2018** upon a motion by Mr. Abad, seconded by Mr. Cohen and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, March 15, 2018 to approve the minutes of the regular meeting held on February 15, 2018.

**Resolution: Approval of Bills and Claims** Upon a motion by Mr. Cohen, seconded by Mr. Abad and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, March 15, 2018 to approve the following Bills and Claims:

North Jersey Media Group	Escrow: Ma 54/12	Inv. 4241971	21.45
Kates, Nussman, Ellis et al	Escrow: Fortier 30/4	Inv. 23609	1,184.00
Kates, Nussman, Ellis et al	Escrow: Ma 54/12	Inv. 23500	1,384.00
Azzolina & Feury	Escrow: Fortier 30/4	Inv. 69507	1,176.00
Azzolina & Feury	Escrow: Roh 41/6	Inv. 69509	504.00
Azzolina & Feury	Escrow: Edwards 121/6	Inv. 69514	112.00
Azzolina & Feury	Escrow: Garcia 49/33	Inv. 69505	756.00
Azzolina & Feury	Escrow: Luk 79/1	Inv. 69506	644.00
Azzolina & Feury	Escrow: Ma 54/12	Inv. 69502	140.00

**MOTION CARRIED**

## **HEARINGS**

### **Garcia Block 49 Lot 33 - 11 Rionda Court**

Attorney Matthew G. Capizzi, Esq. of Capizzi Law Offices, 11 Hillside Ave., 2<sup>nd</sup> Fl., Tenafly, NJ 07670 appeared on behalf and with applicant, Sandra Garcia. Also appearing were Applicant's engineer/planner Michael J. Hubschman P.E., P.P., of Hubschman Engineering, Inc. 263A S. Washington Avenue, Bergenfield, NJ. No one from the public spoke to the application.

Applicant seeks relief to construct a pool and patio on her property requiring the following relief:

1. Interpretation, appeal or variance to permit the pool, spa and patio in a side yard.
2. Variance for side yard setback 11 feet where 20 feet is the minimum required.
3. Variance for improved lot coverage 27.60% where 22.8% exists and 25% is the maximum permitted.
4. Waiver from the soil moving ordinance to permit construction of a retaining wall less than 10 feet from a property line.
5. Waiver from the tree ordinance for encroachment into the ten-foot-wide tree buffer.

Exhibits noted for the record as follows:

- A – 1 Proof of Publication on March 5, 2018 in The Record.
- A – 2 Certified Mailing to Residents within 200' on March 5, 2018 per Tax Assessor's List dated December 14, 2017
- A – 3 Application Form Revised and resubmitted January 30, 2018 signed and dated January 29, 2018 including:
  - Proposal & Reasons for Relief dated January 29, 2018
  - Tax Collector's records show taxes paid through 2018 1st Quarter. (as of 3/5/2018)
- A – 4 New Zoning Officer's Review letter dated January 9, 2018
- A – 5 Four colored photos submitted by Hubschman Engineering dated January 25, 2017
- A – 6 Area Map Block 49 Lot 33 prepared by Hubschman Engineering, LLC 263 A S. Washington Avenue, Bergenfield, NJ 07621 dated July 17, 2017
- A – 7 Revised Plans prepared by Hubschman Engineering, LLC consisting of 2 pages dated February 13, 2017 last revised #3 February 27, 2018 annotated, "GVV 2-2-18 letter"
  - Drawing No. 3538-1 entitled "Pool Plan"
  - Drawing No. 3538-2 entitled "Soil Erosion and Sediment Control Plan"
- A – 8 Soil Moving Report prepared by Hubschman Engineering, LLC dated March 1, 2018

- A - 9 Drainage Report prepared by Hubschman Engineering, LLC dated February 13, 2017 last revised February 27, 2018
- A - 10 Borough Engineer's letter dated February 2, 2018
- A - 11 Borough Engineer's letter dated September 8, 2017
- A - 12 Borough Engineer's letter dated March 8, 2018
- A - 13 Soil Moving Application dated resubmission March 14, 2018 signed and notarized  
*And marked during the proceedings:*
- A - 14 Colorized version of **[A-7]** Drawing No. 3538-1 entitled "Pool Plan"
- A - 15 Larger display version of aerial map **[A-6]**

Mr. Hubschman was sworn and qualified as a professional engineer and planner. Utilizing a colorized version of his plan marked **[A-14]** Mr. Hubschman described the subject property. The lot is located near the northerly end of the Rionda Court cul-de-sac. The neighborhood is part of the Glen Goin subdivision which included many small cottages from an old estate. The south side of this house incorporates one of those cottages. Mr. Hubschman designed many of the septic systems for the subdivision and recalled the locations of the cottages and feasible septic locations contributed to the resulting irregular sizes, shapes and access easements for many of these lots.

The lot is uniquely shaped and configured and is not a rectangle. The house faces an access easement to the northeast and not the curved frontage on Rionda Court. The view from Rionda Court is of the left side of the house. A branch of the access easement traverses the northerly corner of the property to service additional lots. The owner wishes to locate the pool and patio in their functional rear yard opposite the front of the house, however the Zoning Officer defines this as a side yard. However, placing the pool in the yard opposite the frontage on Rionda Court would locate it on the far side of the house and would not be practical for purposes of function or safety.

Locating the pool was further constrained by an existing septic field located right behind the house as the minimum distance between the pool and the edge of the field must be at least 20 feet. The patio may be closer. A second septic field is located to the west. Mr. Hubschman states he provided for a 21-foot separation as a margin of safety noting they did dig to verify the outer edge of the septic field. The rectangular pool with a retaining wall is proposed parallel to the rear of the house but on an angle relative to the property line. This location results in an intrusion into the setback for a triangular portion of the pool and spa being 10 feet at the closest point and proceeding to more than 20 feet at the western end.

The proposed requires a variance for improved coverage being 27.60% where 22.88% exists and 25% is the maximum permitted. This coverage would only be about 22% if 6.9% for the shared access easement, which presents a hardship, was excluded. They propose to offset the increase in coverage by installing seepage pits near the pool. A 2-foot retaining wall is proposed 7 feet from the property line to manage the grade change between properties; the subject property is five feet lower. Disturbance within ten feet requires waivers from the soil moving and tree buffer ordinances. Elimination of the wall would require grading and a waiver for a 2:1 slope. They feel the wall would create less disturbance and provide a nicer plateau for planting some buffer trees.

Mr. Abad observed one of the seepage pits is located under the patio. Mr. Hubschman explained they don't have a lot of room and have to maintain a fifty-foot setback from the septic system. One tree will be removed. Mr. Abad asked the distance between the property line and the adjoining neighbor's driveway and basketball court setup. Mr. Hubschman said about ten feet.

Chairman Glazer opened to the public for questions. There were none.

Mr. Kupferschmid asked what the effect on requested relief would be if the yard in question was relabeled as the rear yard. Mr. Hubschman observed although eliminating the accessory structure in a side yard variance they would still need the other variances and waivers.

Mr. Glazer asked if they could reduce the size of the 20-foot x 32-foot pool to 16 x 32 feet with a comparably smaller spa or consider a chamfer corner. Mr. Kupferschmid also questioned reducing the width of the twelve-foot patio but it was noted the limiting setback is the pool to the septic field not the patio.

Mr. Capizzi requested and the Board permitted a brief recess from 7:59 to 8:03 PM to confer with his client and Mr. Hubschman.

Upon resuming the public portion, Mr. Kupferschmid asked what criteria determines side yard vs. rear yard. Mr. Hubschman noted Borough Ordinances as follows:

*§220-13B.(3) No accessory building in any zone shall not be located in any front or side yard.*

*§220-2 Definitions YARD, REAR A space, unoccupied except as hereinafter provided, within and extending a full width of the lot between the rear walls of the main building and the rear lot line.*

Mr. Kupferschmid noted it is the irregular shape of the property and orientation of the house that really drives this situation. The Chair received clarification from the Board Attorney that in this instance it is within the purview of the Board to render an interpretation as to the designation of rear yard. Mr. Kupferschmid noted while he could see, based on the definitions in the Code, how the Zoning Officer made his determination, as a practical matter the location of the pool opposite the front of the house could be considered the rear yard. Mr. Cohen concurred,

Attorney Capizzi advised the Applicant agrees to reduce the size of the pool which would increase the setback to 14 feet from the southerly property line eliminating the waiver for disturbance of the tree buffer. He noted the decision in *Lang (v. Zoning Board of Adjustment of Borough of North Caldwell 160 N.J. 41, 733 A.2d 464 (1999))* as the seminal case for these matters. In that case the variance was triggered by the limited area available on the property due to existing conditions. Similarly, they are restricted by locations of the septic systems, easement and orientation of the house. The pool and the patio are by no means oversized. Mr. Glazer opined a typical 32-foot-long pool would be 16 feet wide which increase the setback to 15 feet. Attorney Capizzi stated they could accommodate this. Mr. Kupferschmid acknowledged the Applicant is trying to work with the existing conditions. Mr. Hubschman stipulated they would not go any closer to the

westerly line and the retaining wall will be moved outside of the tree buffer eliminating waivers from the soil moving and tree ordinances for that structure. They still require a waiver from the tree ordinance for seepage pits which have to maintain the fifty foot setback from the septic field.

Mr. Kupferschmid motioned and Mr. Cohen seconded to approve the application as modified during the course of these proceedings and with the usual conditions.

*Discussion:* Mr. Kupferschmid added his motion is based upon an interpretation that the rear yard is the portion of the yard along the southerly border of the property, the applicant's reducing the size of the pool to 16 feet wide or whatever works to keep it at least fifteen feet off the property line and the retaining wall out of the ten-foot tree buffer. It was noted although they will reduce the pool area by 128 square feet, about 100 square feet for the retaining wall was not included in the plan calculations. The variance for the excess improved coverage may be granted based on the hardship of the shared driveway access easement which the Applicant had no control over.

Vote: Ayes: Abad, Cohen, Kupferschmid, Glazer

MOTION APPROVED

Attorney Capizzi requested a short recess prior to the next hearing which the Board granted from 8:16 PM to 8:27 PM.

**Luk Block 79 Lot 1 – 16 Marie Major Drive** Upon return from recess Attorney Capizzi requested that this matter be continued to the next hearing scheduled for April 19, 2018 extending the Board's time to act under MLUL and in hopes that a fuller complement of Board members would be available to hear this matter. Request was granted without objection. There is no need for additional public notice.

#### **OTHER BUSINESS**

Board members are reminded the deadline for the mandatory Stormwater Management Training is June 30<sup>th</sup>. Mr. Abad has now completed the training.

Mayor Tomasko advised the Karp Alpine LLC. matter before the Demarest Zoning Board has been postponed to May which will trigger a need to re-notice. The quarterly newsletter will go out later this month. Mayor Tomasko attended the State of the County address and reports the County is trying for no increase in their portion of property taxes this year. This is encouraging as County taxes are a significant portion of our tax bills.

**ADJOURNMENT** at 8:20 p.m. upon motion by Mr. Kupferschmid seconded by Mr. Abad and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary