

## ALPINE ZONING BOARD OF ADJUSTMENT

Regular Meeting

Thursday, September 20, 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 7:33 p.m., Thursday, August 16, 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 meeting held Thursday, August 16, 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	Present
David Kupferschmid	Absent	Richard Bonhomme	Absent
Steve Cohen	Present	Anthony Barbieri	Present
Jeffrey Mayer	Absent	George Abad, Jr, Alt I	Present

**Staff Present on Dais:** Attorney Michael Kates, Borough Engineer Perry Frenzel, Board Secretary Nancy Wehmann

**COMMUNICATIONS** None

### MEMORIALIZATIONS

#### **4M ALPINE LLC BLOCK 21 LOT 3 – 10 RIO VISTA DRIVE**

**Resolution:** Upon a motion by Mr. Clores, seconded by Mr. Barbieri to approve the application for Applicant 4M Alpine LLC granting a variance to exceed the regulated height for entry cheek walls, piers and gates for ornamental ironwork and lighting fixtures. Design is in keeping with the neighborhood. The aforementioned approval is subject to conditions as outlined in the resolution for this property located at 10 Rio Vista Drive designated as Block 21 Lot 3 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: Barbieri, Clores, Cohen MOTION APPROVED**

#### **OLIVER PAPANIKU BLOCK 46 LOT 3 – 26 WEST MAIN STREET**

**Resolution:** Upon a motion by Mr. Cohen, seconded by Mr. Clores to approve the application for Applicant Oliver Papaniku granting a variance to for redevelopment with a new single-family home requiring reconstruction of the septic systems, a soil moving permit and relief to exceed maximum building (18.07% where 10% max) and improved (28.05% where 20% max and 33/21% exists) coverages. The aforementioned approval is subject to conditions as outlined in the resolution for this property located at 26 West Main Street designated as Block 46 Lot 3 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: Barbieri, Clores, Cohen MOTION APPROVED**

### PROCEDURAL MOTIONS

**Resolution: Approval of Minutes: Regular Meeting August 16, 2018** upon a motion by Mr. Clores, seconded by Mr. Barbieri and approved by all those eligible to vote to approve the minutes of the regular meeting held on September 20, 2018. **MOTION APPROVED**

**Resolution: Approval of Bills and Claims** Upon a motion by Mr. Barbieri, 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, September 20, 2018 to approve the following Bills and Claims:

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*These minutes have been approved by the Zoning Board of Adjustment.*

Kates, Nussman et al LLP	8-01-21-185-021 Mfg Jul-Sep	Inv. 24268	400.00
Kates, Nussman et al LLP	Escrow: 4M Alpine LLC 21/3	Inv. 24267	595.00
Kates, Nussman et al LLP	Escrow: Papraniku 46/3	Inv. 2426674	795.00

**Resolution: Return of Escrow** Upon a motion by Mr. Cohen, seconded by Mr. Barbieri and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, September 20, 2018 to return the following escrow which has been reviewed and approved by the Board Attorney and Borough Engineer.

Charles Kim	Block 42 Lot 3	Resolution 6/21/2018	\$588.00
Trust AC 70176	1006 Closter Dock Road		

## **HEARINGS**

### **Kim Block 74 Lot 10 – 18 Overlook Road**

Tony Clores lives within 200 feet, recused and stepped down to the audience.

Attorney Matthew G. Capizzi, Esq. of Capizzi Law Offices, 11 Hillside Ave., 2<sup>nd</sup> Fl., Tenafly, NJ 07670 appeared on behalf of applicant 4M Alpine LLC along with Douglas W. Doolittle, PE, PP of McNally Engineering 169 Ramapo Valley Road, Oakland, NJ 07436.

Applicant seeks a variance for improved coverage of 23.47% where 20% is the maximum permitted and 21.30% is existing to expand his driveway.

Attorney Capizzi reviewed application last heard April 2017 seeks a variance for improved coverage to widen their old existing driveway consisting of two narrow paved strips. Prior owner did not update during redevelopment to conform to the ordinance. Unfortunately, delivery trucks and cars have difficulty staying on the strips and tend to veer off onto the lawn resulting in an unsightly muddy mess. A full width driveway was preferred but to further minimize the variance they only propose three wide strips. A proposed retaining wall opposite the garage has been replaced by proposed rockery. Mr. Clores, downhill rear neighbor, raised issues with drainage relative to increased improved coverage and impact to his property. Since the last hearing the neighbor, applicant and engineers for applicant and Borough met on site to devise proposed solution they feel will function for the applicant, neighbors and the Borough.

### **Received subsequent to the April meeting**

A – 13 Letters and e-mail correspondence from Attorney Capizzi requesting continuances while they worked on plan revisions.

A – 14 Documents prepared by McNally Engineering LLC

- Site plan dated November 14, 2017 last revised #8 dated July 2, 2018 "revised stormwater design"
- Storm Drainage Report dated July 2, 2018

A – 15 Borough Engineer's letter dated July 9, 2018

A – 16 Refreshed Notices and 200 property owners list consisting of

- Proof of Publication on September 10, 2018 in the Record
- Certified Mailing to Residents within 200' on September 10, 2018 per Tax Assessor's List dated September 6, 2018
- Tax Collector's records show taxes paid through 3<sup>rd</sup> 2018.

Marked during the course of these proceedings:

A – 17 Site plan dated November 14, 2017 last revised #9 dated September 19, 2018

**Variance.** Mr. Doolittle, under oath from prior meeting, provided new plans, distributed and marked **A-17**, revised after a meeting with the Borough Engineer last week to add a flared end to a section of drainage piping. Proposed driveway will have three paver strips for a total width of thirteen feet. The front turnaround has been shortened instead of pushing it out opposite the driveway and the proposed retaining wall replaced with a rockery to the property line to

provide more turnaround area plus bumper overhang beyond the edge of the driveway. This design adds 566 square feet of driveway necessitating the variance for improved coverage.

**Drainage.** The property slopes down from Overlook Road to the rear where it abuts Mr. Clores' rear yard. The existing retention system diverts runoff into the ground but due to rock and clay water bleeds through the low retaining wall and pools. They propose replacement with a detention system to consist of two sixty-foot rows of eight-inch HDPE solid pipe with an outflow structure and three-inch orifice connecting to the drainage system on Mr. Clores property through a series of eight-inch PVC's and inlets. A backup system will consist of an interceptor drain that runs along their entire rear yard and up both sides to collect water from the properties on either side and direct it to the drainage piping. This system will pick up groundwater 2-4 feet below the surface as well as surface water runoff from their property and the properties on either side. The latest revision added a flared end for the section for the 1<sup>st</sup> inlet on Mr. Clores' property which is about eighteen inches below grade to capture any remaining water and drain it via a swale which will be constructed using materials of Mr. Clores' choice. There will be no real re-grading on Mr. Clores' property and he has agreed to the improvements. Their proposed stormwater drainage calculations demonstrate they will comply.

**Audrey Wolf, 14 Overlook Drive**, neighbor to the west questioned if this will improve pooling water on her property in that area. Mr. Doolittle opined the interceptor drain will run about fifteen feet up the property line and should pick up any water in that area.

**Tony Clores, 19 Forest Street**, stated he believes the plan will be an improvement.

Mr. Frenzel noted the proposed represents a very considerable focused effort by the applicant and his engineer to address the drainage issues and will benefit all four adjoining properties. Mr. Glazer thanked all involved for working towards this solution and being no further questions or comments called for a motion.

**Resolution:** Upon a motion by Mr. Abad, seconded by Mr. Barbieri, to approve the application subject to the usual conditions.

**Vote: Ayes: Abad, Barbieri, Cohen, Glazer MOTION APPROVED**

#### **McCaffrey Block 42 Lot 4 – 1010 Closter Dock Road**

George Abad citing a potential conflict of interest recused and stepped down to the audience.

Attorney Matthew G. Capizzi, Esq. of Capizzi Law Offices, 11 Hillside Ave., 2<sup>nd</sup> Fl., Tenafly, NJ 07670 appeared on behalf of applicants John and Bob McCaffrey. Present were applicant John McCaffrey, a court stenographer for the applicant, Donna Arnold for Laura Carucci of Laura A Carucci LLC POB 505 Saddle Brook, NJ 07663, and Alpine Zoning Officer Alden Blackwell. Dermot J. Doyle from the firm of Huntington Bailey, LLP 373 Kinderkamack Road, Westwood, NJ 07675 appeared on behalf of the Governing Body of the Borough of Alpine. Neighbor Ted Noback of 57 Schoolhouse Lane spoke in opposition.

Application is an appeal from the Zoning Officer's determination.

Attorney Capizzi advised Mr. McCaffrey filed a zoning review application in April 2018. Mr. Blackwell denied in his April 16, 2018 letter **[A-4]** stating he was not in a position to render a determination based on litigation from 2015. They appeal seeking review of Mr. Blackwell's position, to obtain a determination as to what variances, if any, are required and the appropriate Land Use Board to hear their application. By way of background he stated 1010 Closter Dock Road serves as the landscape yard for Alpine Gardens that Mr. McCaffrey has operated since the late 1970's. There are essentially two structures on the property. The lot has

frontage on both streets. The subject of this appeal is the structure located on the back left if facing Closter Dock Road proximate to Schoolhouse Lane that has a World War II style Quonset roof. Applicant seeks to improve the aesthetics of the structure by replacing this with a traditional hip roof.

Exhibits marked as follows:

- A – 1 Proof of Publication on June 11, 2018 in The Record.
- A – 2 Certified Mailing to Residents within 200' on June 11, 2018 per Tax Assessor's List dated May 17, 2018
- A – 3 Application Form signed and dated June 11, 2018 including:
  - Tax Collector's records show taxes paid through June 11, 2018
- A – 4 Zoning Officer's letter dated April 16, 2018
- A – 5 Plans Reviewed with Zoning Permit application
  - "Boundary Survey" Geospatial Surveying & Layout 27 Howard Place, Jersey City, NJ dated 11/16/2017 no revisions
  - "Building Height / Volume Calculations" prepared by Eid & Lapatka LLC dated 1/5/2015 last revised 11/16/2017
- A – 6 Notice of Appeal dated May 9, 2018
- A – 7 Borough Attorney request (as an interested party) dated June 11, 2018 and Applicant's Attorney's letters dated June 20, 2018, July 19, 2018 and e-mail dated August 15, 2018 permitting matter be carried and extending time for the Board to render a decision through September 21, 2018

*From Zoning Officer's files*

- Z – 1 Application for Zoning Review
- Z – 2 Settlement Agreement between John and Bob McCaffrey and the Borough of Alpine dated September 14, 2015
- Z – 3 Civil Action Order Docket No. BER-C-271-14 Borough of Alpine vs. Robert McCaffrey & John P. McCaffrey dated March 17, 2016

*Received 8/24/2018*

- A – 8 Architectural Plans prepared by Chris Blake, 155 N Washington Ave., Bergenfield, NJ 07621 consisting of two pages A1 and A2 dated August 15, 2018:
  - A1 Site Plan, Legend + Zoning Elevation + Building Section
  - A2 Floor + Roof Plans + Gen. Notes

Per **[A-4]** Attorney Kates read Mr. Blackwell's statement: "*The Zoning Official of the Borough of Alpine does not have the authority to modify the Settlement Agreement and/or the Court Order.*" Attorney Capizzi challenges stating those documents are not relevant to Mr. Blackwell's job as a Zoning Officer.

Attorney Doyle was recognized and stated he was there to provide a lengthier history of this matter. Attorney Capizzi objected if Attorney Doyle was seeking to offer his own testimony. Attorney Kates asked Attorney Doyle if the Borough was opposing on the basis of *res judicata* for a matter settled in court. Attorney Doyle affirmed. Attorney Kates advised they could proceed on that basis which calls for legal argument. Attorney Doyle advised he has numerous exhibits if they go beyond the narrow issue of deciding the appeal.

Attorney Doyle noted a statement in the application that this structure existed since the 1940's is false. While there may have been a prior structure there, Mr. McCaffrey removed it in October 2012 and began construction of a brand-new nonconforming structure on a nonconforming lot. Attorney Capizzi objected citing this history was not part of his application nor set forth in Mr. Blackwell's determination. Mr. Blackwell is not acting as a Construction Code Official when he is reviewing a zoning permit application.

Attorney Kates acknowledged he is wrestling with the jurisdiction of the Zoning Board in this matter. The Borough's position as presented by Attorney Doyle is that something that transpired in court precludes the applicant from coming before the Board to make this appeal. He reminded the narrow issue here concerns an appeal, not a development application. *Res judicata* comes into play when this Board has before it a repeat of a prior application which it is familiar with because it decided the prior matter. This situation differs where the prior determination took place elsewhere, in this case a court of law. There is hard case law called black letter law which he shared with both attorneys as referenced in the Cox book<sup>1</sup> stated here for the benefit of the Board. In *Springsteel et al v. Town of West Orange, et al.*, an Appellate Division case in 1977<sup>2</sup> "the court held that the Board of Adjustment lacks power to determine, for example, whether equitable estoppel is applicable in a certain case. The court stated:

*'The instant action is founded upon misconception of the roles of the board of adjustment and the township council. Neither of these bodies is a court capable of adjudicating either legal or equitable issues. Their respective functions and powers depend upon statutory grants. The board of adjustment may perform quasi-judicial functions but only in the sphere of authority vested in it by N.J.S. 40:55D-70.'*

Based on the above Attorney Kates advised his tendency is to say that the Board is free to interpret under Municipal Land Use Law whether, in fact, the Board and the Zoning Officer are precluded from making a determination as to where you go with this application.

Attorney Doyle recounted this structure was erected without permits and despite 22 separate interactions from various Borough officials ordering him to stop work to obtain proper approvals which he ignored. Midway through the applicant submitted a zoning review application which was denied as an expansion of a nonconforming structure and a prior nonconforming use which was also ignored. The Borough went to Superior Court to compel removal. The matter was litigated. At one-point Mr. McCaffrey was held in contempt for his refusal to stop work. After a year and a half the Borough generously agreed to a Settlement Agreement which the applicant voluntarily entered into allowing him to keep the structure subject to conditions including correcting over 60 property maintenance violations (which all acknowledged was not a matter for this Board), putting the old Quonset roof back on and removing the massive roof structure that included framing, siding and windows, greatly increasing the size of the building. The purpose was to more closely resemble the size and configuration of the old building. As part of this compromise agreement the Borough generously allowed Mr. McCaffrey to keep some of the additional cinderblocks that had added more than five feet of height to the walls as well as the new under-slab radiant heating flooring. Mr. McCaffrey then replaced the roof but left the old roof on the property which was so massive that the neighbors who had complained about the illegal construction now thought there were three structures on the property. The Borough had to obtain a Court order compelling Mr. McCaffrey to remove the roof structure entirely from the property which he only did on the 90<sup>th</sup> day of the deadline, making arrangements to close down roads and tow the structure to a storage area of the Palisades Interstate Parkway. Attorney Doyle put forth the Settlement Agreement and Court Order made clear he was to remove the roof structure completely from the property.

Attorney Kates asked if Attorney Doyle felt the Court's order to remove the roof structure from the property now precludes his using it in a new application for this structure? Does this application violate what the court had ordered him to do? Attorney Doyle felt it did.

Attorney Kates asked Attorney Capizzi if he would permit the Board to postpone their decision to allow the parties to return to court for a clarification if the court's intent was to preclude this

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<sup>1</sup> New Jersey Zoning and Land Use Administration by William M. Cox with Donald M. Ross Section 4-4.2 Questions of law

<sup>2</sup> *Springsteel et al. v. Town of West Orange, et al.*, 149 N.J. Super.107, 112-113 (app Div.) certify. Den. 75 N.J. 10 (1977)

Board from acting on a new application. It was noted the Judge in that matter has since retired. Attorney Capizzi stated no, arguing if that was the court's intent the Board and Mr. Blackwell would have been parties to the Settlement Agreement recorded in a chain of title with the applicant specifically waiving his right to file future applications to develop this particular structure. That did not occur. He further contends Attorney Doyle's history, while interesting, is not relevant to this appeal. A settlement agreement is not binding as to factual findings, testimony under oath and conclusions of law. It is an integrated document including a merger provision that indicates the four corners of the agreement are the agreement and you can't make it better or worse today because you wish you'd added something back in 2015 and retry Mr. McCaffrey for mistakes he made back in 2015. They want a determination of appeal.

Attorney Doyle argued the March 2016 Court Order ordered him to remove the structure from the property. Attorney Capizzi rebutted he resolved the building code violations and is going through the process the law provides him. Chairman Glazer asked if the roof is on the property now and what Attorney Doyle is seeking. Attorney Doyle replied the roof was removed from the property and they want to stop his effort to bring this massive roof structure back. The issue of property maintenance is for other Officials. Discussion ensued between Attorneys Capizzi and Doyle. Attorney Capizzi argued it was illogical for the Borough to usurp the role of the Board who was not party to their settlement. Attorney Doyle stated if they thought they would come back and try to restore the roof they wouldn't have entered into the Settlement Agreement and that was ludicrous to think they have the right to return in the face of the agreement and the court order.

Attorney Kates recapped Attorney Doyle's position as claiming the applicant is equitably estopped, because he is a bad actor, from doing anything with this property in violation of what he proposed before the court. However, the Board does not have the skills sets or statutory authority to impose that kind of equitable restraint. The cases are legion with bad actors and bad property owners who for whatever reason circumvent the zoning officer, construct without permits, get caught and are then forced before a Land Use Board because they violated ordinances. In this case it appears we're dealing with a bad actor but he is still entitled to evoke the jurisdiction of a Land Use Board with a new plan. That does not preclude the Borough from coming in and criticizing that plan on the basis of what he did or did not do. It's not a whole clean slate but jurisdictionally it is a new beginning point.

Chairman Glazer asked if the applicant would have the right to replace the roof now if it was destroyed by a natural disaster. A discussion followed with both Attorneys Doyle and Capizzi arguing their respective sides with one side opining the intent of Municipal Land Use Law is to bring nonconforming structures and uses into conformance by disallowing rebuilding and the other noting nonconforming structures are a valuable property right subject to specific protections under that law. Attorney Kates noted the problem for any Board going forward is how to define this application freshly and asked Zoning Officer Blackwell to weigh in.

Zoning Officer Alden Blackwell was sworn. Attorney Kates noted Mr. Blackwell's letter of April 16, 2018 **[A-4]** is patently clear but as zoning official he has the capacity to evaluate the new application if given the freedom to that. Attorney Kates asked Mr. Blackwell if the Board were to determine that this applicant is not precluded from proceeding anew, and notwithstanding the sordid history and the court order that arguably is interfering with him going forward, would he be in a position to do a zoning review on the basis of this application as submitted; would he go along with that? Mr. Blackwell responded yes if the Board so rules. Attorney Kates offered that would provide a way for the matter to move forward. The authority of the zoning officer and his obligation to make a determination in accordance with the zoning ordinance and not some other document is specifically enumerated in the statute and the Borough can't tell him not to make a determination. Attorney Kates further offered if the Board decided that Mr. Blackwell should perform a zoning analysis and allow an application to proceed that would not preclude

the Borough from going to court and enjoining the Board from making that determination and/or enjoining this applicant from proceeding on that basis; that remedy is always available. While the Board can interpret their own decisions as *res judicata* this inherent jurisdiction does not include interpreting a Court Order as such. To the extent that there's an equitable analysis, again, the Board does not have this jurisdiction. The nature of a land use board is to deal with the future and not the past. In the absence of the court specifically barring the applicant from doing so, any application can start fresh with a new approach and some Board has to listen to it whether it's the Zoning Board for a variance or the Planning Board for site plan review.

Attorney Doyle concluded he won't belabor the point if the only issue before the Board tonight is jurisdictional but he anticipates objection if the matter proceeds to a hearing on the merits.

Zoning Officer Blackwell recommended the Board remand the matter back to his office for re-review which satisfied Attorney Capizzi. To avoid any confusion, it was agreed Attorney Capizzi will provide Mr. Blackwell with a fresh zoning review application.

Neighbor **Ted Noback, 57 Schoolhouse Lane**, wished to be heard. He disagrees that the proposed roof is aesthetic describing it as a huge commercial structure put there illegally and that the applicant's behavior during construction was purposely designed to circumvent detection and proper procedures. The additional elevation remained and now they have to look at this atrocious building. The proposed roof would be 30% wider than the one on there now. They should make him drop it down five feet to the original height it was before Mr. McCaffrey demolished it. He has before and after pictures as proof of the height change.

Attorney Kates offered Mr. Noback can provide those to Zoning Officer Blackwell who is free to use whatever materials or resources he deems relevant to make his determination. Attorney Capizzi objected and cautioned the Zoning Officer must be prepared to testify to the facts that form the basis of his determination.

**Resolution:** Upon a motion by Mr. Clores, seconded by Mr. Barbieri on Applicant's N.J.S.A. 40:55D-70(a) Appeal and with the consent of the Zoning Officer, the applicant will resubmit their Zoning Review application to the Zoning Officer for his consideration and a determination rendered on the basis of the Zoning Ordinance and all other considerations as deemed relevant by the Zoning Officer in rendering that determination.

**Vote: Ayes: Barbieri, Clores, Cohen, Glazer MOTION APPROVED**

The Board took a brief recess.

#### **Zoellner Block 55 Lot 4.01 – 83 Church Street**

Anthony Barbieri recused and stepped down to the audience as he lives within 200 feet.

Attorney John A. Schepisi, Esq. of Schepisi & McLaughlin, PA 473 Sylvan Avenue, Englewood Cliffs, NJ 07632 appeared on behalf of the applicant Victoria Zoellner. Also present for the applicant was property manager, Robert Cullen, 83 Church Street, Alpine, NJ 07620, engineer, Andrea Piazza, PE of Piazza Engineering, 11-15 River Road, Fair Lawn, NJ 07410, architect Thomas Milano, RA of TM Designs, 6 Timber Mill Road, Sandy Hook, CT 06470 and planner, Joseph Mele, PE, PP, PLS of Dresdner Robin, 1 Evertrust Plaza, Suite 901, Jersey City, NJ 07302. All four were sworn in unison. Neighbor Paul Tomasko spoke in favor of the application.

Applicant seeks a soil moving permit and variance for height of an accessory art studio.

Exhibits noted by affirmation:

A – 1 Proof of Publication on September 3, 2018 in The Record.

- A – 2 Certified Mailing to Residents within 200' on August 30, 2018 per Tax Assessor's List dated August 9, 2018 Note a copy of the deed was requested and supplied as Borough tax map records still list this property as Lot 4 where it was changed to 4.01 by February 28, 2012 Planning Board subdivision approval (memorialized March 27, 2012). This is important to note in relation to the notices as the 200-foot property owners list still identifies the property as Block 55 Lot 4).
- A – 3 Application signed and received June 21, 2018 by Victoria Zoellner & Cover letter from Danielle Cordone of Schepisi & McLaughlin, PA dated and received June 21, 2018 including:
- Description of property metes and bounds prepared by Massimo Piazza, PE, PLS
  - Addendum to Application Information Regarding the Property, Proposal and Reasons for Relief
  - Tax Assessor's 200 Foot Property Owners List dated May 17, 2018
  - Tax Collector's report taxes paid through 2018 2Q – tax collector does advise taxes are up to date
- A – 4 Deed of subdivision dated April 29, 2012 and filed with the Bergen County Clerk on May 2, 2012 along with Plan signed and sealed prepared by Piazza Engineering Sheet SV-1 Preliminary Plat Minor Subdivision dated February 6, 2012 last revised March 23, 2012
- A – 5 Zoning Officers Letter dated June 7, 2008
- A – 6 Prior resolution Alpine Planning Board adopted March 27, 2012
- A – 7 Prior resolution Alpine Zoning Board of Adjustment adopted March 19, 2015
- A – 8 Seven color Photographs unlabeled and undated and not authored
- A – 9 Plans signed and sealed prepared by Piazza Engineering dated May 29, 20-18 no revisions except for T-1 as marked below consisting of:
- Sheet T-1 Location Map, Kep Map, Area Summary and Notes last revised 8/28/2018 verifying PO list and labeling buildings
  - Sheet C-1 Site Plan, Schedules & Notes
  - Sheet C-2 Grading & Drainage Plan, Soil Movement, SESC Plans and Notes
  - Sheet C-3 Septic System Plan & Details
- And the following sheet
- A – 10 Drainage Report signed and sealed prepared by Piazza Engineering dated May 29, 2018
- A – 11 Architectural Plans prepared by TM Designs, Creative Architectural Spaces" last revised May 2, 2018 consisting of ten pages:
- Sheet Number A-0 entitled "Proposed Basement Plan"
  - Sheet Number A-1 entitled "Proposed First Floor Plan"
  - Sheet Number A-2 entitled "Proposed Second Floor Plan"
  - Sheet Number A-3 entitled "Proposed Roof Plan"
  - Sheet Number A-4 entitled "Proposed South Elevation"
  - Sheet Number A-5 entitled "Proposed North Elevation"
  - Sheet Number A-6 entitled "Proposed East/West Elevations"
  - Sheet Number A-7 entitled "Building Sections"
  - Sheet Number A-8 entitled "Building Sections"
  - Sheet Number A-9 entitled "Wall Sections"
- A – 12 Letter from Applicant's Attorney dated July 9, 2018 amending application
- A – 13 Borough Engineer's letter dated July 23, 2018
- A – 14 Letter from Applicant's Attorney dated August 3, 2018 amending application  
It was noted after packets went out that soil / septic application and report were not included. These exhibits were provided to the engineer and included in his letter of review. Provided to Board at meeting:
- A – 15 Soil Moving Application dated June 21, 2018 with NJAC Appendix B forms dated May 31, 2018
- A – 16 Soil Moving Report for Art Studio prepared by Piazza Engineering dated May 29, 2018
- And marked during the course of these proceedings:
- A – 17 Photo depicting a sample of proposed dark colored siding

Attorney Schepisi explained the property is 48.4 acres with multiple dwellings, structures, and appurtenances. Applicant seeks a height variance for a new accessory structure being an art studio for sole use by the applicant, her family and friends. Testimony will reflect the studio will not be visible from the property lines and there will be no impacts.

**Robert (Bob) Cullen** has been applicant's property manager for thirty plus years. This lot is 48.4 acres and they also own some surrounding lots. Mrs. Zoellner's hobby is painting including large murals. They found an art studio building they liked, researched the architect and engaged Mr. Milano whose design was chosen to blend into the surroundings.

**Andrea Piazza** testified to her credentials<sup>3</sup> and accepted by the Board as an expert in the field of professional engineering. Referring to her plans **[A-9]** Ms. Piazza noted Drawing T-1 depicts the location of the proposed art studio in the northeast corner 220 feet from the nearest house offsite. The area between the nearest house and the art studio is heavily wooded. No new driveway is proposed as the intent is to maintain a rural feel utilizing existing walkways to access the main house; as if you would come upon a barn in the woods while meandering along the paths. No vehicle parking area is anticipated. She last visited the site May 2018 and has worked with Mr. Cullen, the Zoellners and their friends for many years. The property has an old existing nonconformity being a twenty-foot setback in the northwest corner not anywhere the proposed. Drawing C-1 demonstrates no impact or adverse effect to adjacent neighbors as the nearest setback provides 84 feet to the north property line and just under 100 feet to the east property line.

The proposed is not a dwelling. No one will live there. They've sought waivers from the Board of Health for the septic system to provide for one 600 square foot field as they don't anticipate the effluent load would even be that requires for a one-bedroom home. The design will comply with NJDEP regulations. Questions on plumbing and interior design were deferred to the architect. They can comply with provisions of the Borough Engineer's letter dated July 23, 2018 **[A-13]**. They seek a soil moving permit for 1,161 cubic yards of soil and propose a stormwater management system as depicted on Drawing C-2 consisting of underground chambers to receive the roof runoff to preclude any problem with drainage onsite or offsite.

Regarding occupancy and use, Attorney Schepisi and Mr. Cullen noted this smaller building is intended only for use by the homeowner and a few family and friends; not more than 10-12 people and not open to the public. Although fully heated and air conditioned there will be no bedroom; only a small kitchen with a sink to clean brushes, bathroom, and small sitting area to review art books and enjoy a cup of tea. It is not intended as another residence and, although not their intent, if the property were ever subdivided the art studio would be considered accessory to the main house as depicted on T-1 or they would need come back to the Board.

**Thomas Milano** testified to his credentials<sup>4</sup> and referenced his plans **[A-11]** to explain the aim of the art studio design is to blend in with the surroundings and provide different means and locations to manipulate both natural and artificial light from various distances to the subject matter. A black metal stainless steel roof is used and the siding is a dark burnt cedar siding using a technique called "Shou Sugi Ban" to create a very dark building that blends into the trees as much as possible while windows reflect the surrounding trees and sky. Mr. Milano provided a sample picture marked **[A-17]** to show the proposed siding. The basement includes a workshop to make wooden frames and canvases and storage space. The first floor has a small foyer with the large double height studio (#1) on the right, a kitchen area with cleanup sink and small sitting area, a smaller regular height studio (#2) and a small lavatory consisting of only a sink and a toilet. The second floor contains studio #3 which has a vaulted ceiling and a loft gallery for personal display of art. There is no provision for parking. She intends to walk from her home to the studio. The proposed height is 26.04 feet where 15 feet is the maximum permitted which is needed for this specific use as an art studio relative to the types and sizes of canvases to be used. Denial of the variance would negatively impact this proposed use.

Attorney Kates questioned if the building would be used to teach classes to other artists. Attorney Schepisi responded no. While Mrs. Zoellner might ask a tutor in, she is not employing anyone per se for this venture.

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<sup>3</sup> NJ License in Professional Engineering since 1991; practicing since 1987, Founded Piazza Engineering in 1996, Bachelors and Masters in Civil Engineering Newark College Engineering in NJ Institute of Technology; Testified before numerous boards in Bergen County. Firm specializes in land development similar to this, residential, commercial and industrial site development and redevelopment.

<sup>4</sup> Licensed in NY, CT, MA & NJ. Has appeared before Boards but not in NJ.

Chairman Glazer asked if they'd considered constructing more of the structure underground to reduce the height. Mr. Milano stated yes but they were concerned with water issues. As it is they're proposing a substantial waterproofing system. Attorney Schepisi reminded they also needed to address lighting.

Mr. Clores questioned maximum height of other structures on the property. Mr. Cullen offered the tennis court is 35-foot-high and you could fit five of these art studios in that building. This lot is abnormally large for Alpine.

**Joseph Mele, PE, PLS, PP, LEED-AP, CPESC** testified to his credentials<sup>5</sup> noting he is standing in for Charles Heydt, PP, whose name is on the application and who works for him at Dresdner Robin. Mr. Mele is familiar with the application, plans, site, master plan and Borough Engineer's report **[A-4]** where applicant seeks a variance for height of an accessory structure exceeding the maximum of 15 feet being 26.04 feet. He concurs with the testimony of the engineer and architect that there will be no impact to any of the surrounding properties. The proposed structure is tucked far into the property, about eighty feet from the nearest property line where the requirement is only twenty feet. The additional height is justifiable because it still provides a light and air requirement as required under Municipal Land Use Law. They seek the variance under N.J.S.A. 40:55D-70(c)2 which the Board can grant if the deviation from the zoning ordinance will not have any detrimental effect on the intent and scheme of the zone plan and the public welfare. If the variance is granted the benefit bestowed will greatly exceed any substantial detriment. There is no substantial negative impact to the surrounding area or public welfare from the proposed. He recommends the variance be granted based on the location, the property lines being so far away, the heavily wooded buffer that's provided from that nearest property line and the architectural beauty. This is an accessory structure. No parking is proposed. It's not a destination. No roads lead to it. It is not something that the public would use as a primary use.

There were no questions from the audience or Board.

Opened for comments neighbor **Paul Tomasko, 87 Church Street**, states the applicants have been wonderful neighbors and along with their construction manager do high quality work as evidenced by the steady beautification of the property over the three decades they've owned. He has no objections, supports the application and hopes they'll approve it.

Mr. Frenzel commented that given the use as described he has no objection with the sizing of the septic system but would suggest there be a condition added to the approval that should there be any intensification of the use they would need to revisit this matter.

**Resolution:** Upon a motion by Mr. Clores seconded by Mr. Cohen to approve the application subject to the usual conditions and as noted during the course of this hearing.

**Vote: Ayes: Abad, Clores, Cohen, Glazer MOTION APPROVED**

### **Laoudis Block 22 Lot 7 – 17 The Espanade**

Mark D. Madaio, Esq., 29 Legion Drive, Bergenfield, NJ 07621 appeared with and on behalf of the applicants, Ted and Angela Laoudis along with their engineer, Michael Hubschman PE, PP of Hubschman Engineering, P.A., 263 S. Washington Avenue, Bergenfield, NJ 07621 and architect Robert Zampolin, AIA of Zampolin & Associates 187 Fairview Avenue, Westwood, NJ 07675

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<sup>5</sup> Licensed PE 15+ years, PP 8 years. Has testified before boards in NY & NJ as both PE and PP.

Application seeks a building coverage variance to connect the existing detached garage\* to the principle structure plus post construction height variance for the as-built conservatory being 22.04 feet where a maximum of 21.50 feet was permitted per prior resolution. \*[Note: at various times during the proceedings the terms carriage house and garage were used interchangeably.]

Exhibits noted by affirmation.

- A – 1 Proof of Publication on August 31, 2018 in The Record.
  - A – 2 Certified Mailing to Residents within 200' on August 28, 2018 per Tax Assessor's List dated July 26, 2018
  - A – 3 Application signed and received August 7, 2018 includes
    - Proposal and Reasons for Relief
    - Tax Assessor's 200 Foot Property Owners List dated July 26, 2018
    - Tax Collector's report taxes paid through 2018 2Q – tax collector does advise taxes are up to date
    - Sample Notice
  - A – 4 Zoning Officers Letter dated July 6, 2018
  - A – 5 Prior resolution Alpine Zoning Board of Adjustment adopted July 1, 2010
  - A – 6 Prior resolution Alpine Zoning Board of Adjustment adopted February 1, 2007 with Borough Engineers Letter dated January 29, 2007
  - A – 7 Prior resolution Alpine Zoning Board of Adjustment adopted April 5, 2005
  - A – 8 Prior resolution Alpine Zoning Board of Adjustment adopted April 8, 2004
  - A – 9 *Four color Photographs unlabeled and undated and not authored*
  - A – 10 *Site Plan prepared by Hubschman Engineering Drawing No. 1259-11 dated 6-18-2018*
  - A – 11 Architectural Plans prepared by Zampolin & Associated last revised July 25, 2018 consisting of 4 pages:
    - Sheet Number A-1 entitled "First Floor Plan"
    - Sheet Number A-2 entitled "Second Floor Plan"
    - Sheet Number A-3 entitled "Front & Right Side Elevation"
    - Sheet Number A-4 entitled "Left and Rear Side Elevation"
  - A – 12 Borough Engineers Letter dated July 6, 2018
- And included during the course of these proceedings*
- A – 13 Colorized version of plan marked A-10
  - A – 14 Photo Conservatory looking north

Attorney Madaio seeks the Board's help to fix a problem. The house is fully constructed but the owner cannot obtain a Certificate of Occupancy due to outstanding issues. The conservatory roof peak is slightly too high by less than a foot. Secondly to avoid a coverage issue the applicants constructed a detached garage. For reasons that are not clear from the record prior counsel at a prior hearing offered the garage second floor would remain only storage, perhaps to assure the Board this would not be used or rented as a separate residence. The owners would, however, like to use this space for an office or billiard room, any number of things. Mr. Madaio candidly acknowledged the Laoudis's illegally finished the second-floor garage which was the first structure built and have been living there during the construction as it became more convenient to oversee construction by staying there than returning to their other home. Applicants would actually prefer not to connect the garage to the main house which would invoke a building coverage issue. Rather they seek to have the Board reverse the prior statement that the garage second floor could only be used for storage and to retain as finished occupiable livable space albeit with whatever restrictions the Board deems necessary such as removing the kitchen appliances.

**Michael Hubschman, PE, PP** was sworn and accepted having been before this Board on numerous occasions. Mr. Hubschman explained due to high groundwater conditions relative to the pond across the street they had to fill the area of the conservatory more than five feet. Although the conservatory is only about 16.5 feet high visually the ordinances requires them to measure from the original grade and thus they had sought and obtained approval for a height of 21.50 feet. While not visible to the naked eye or viewable from neighbors due to distance and vegetative screening the as-built height was determined to be 22.04 feet or about six inches more than the prior approval. He distributed a photo marked **[A-14]** to show the excess caused

by the small triangular piece at the roof peak just below the finial (which does not count towards height) and the distant evergreen buffering in the background. No one would notice it.

The second floor of the carriage house is livable space and they don't know why someone suggested that it be storage only. There's nothing in the record that explains that nor anything in the resolution. Mr. Blackwell's denial letter for the Certificate of Occupancy<sup>6</sup> indicates "the plans submitted in this area show that the attic area of the garage was to be unfinished." They exceeded the scope of their requested plans. Mr. Blackwell continued, "Normally an issue like this would be resolved by the resolution of the penalty and the submission of new plans and obtaining construction permits for the extra construction. However, since at the Alpine Zoning Board of Adjustment meeting on June 3, 2010 testimony was presented that use of the garage attic: Mr. Watkins stipulated this would be for storage. This is not the case and a revised set of plans for the attic will need to be submitted and approved by the Zoning Board" before they can use that attic area.

Attorney Kates noted the zoning note says if connected the building coverage would increase to 10.66%. Attorney Madaio again stated they are willing to eliminate that variance.

Discussion followed with Board members questioning what is there now. Mr. Madaio didn't see why they couldn't keep their bathroom but stipulated to removal of the kitchen and that there would not be a bedroom and no one would sleep there. The space would be for the sole use of the owners. He noted Mr. Zampolin is present if they have any architectural questions.

There were no questions or comments from the public.

The Board expressed concern that typically there are added requirements such as fire protection for areas designated as occupiable space. It was clarified that there is a laundry room and a lavatory on the first floor. This would not change. The second-floor has a study area, kitchen and a full bath with tub. Mr. Madaio stated the kitchen will be removed and replaced with a sitting or den area to remove any indicia that this could be used as a separate living unit. Towards this end the Board did not see the need for there to be a full tub in the bathroom. If they were to use the area for a gym, a shower would suffice. Furthermore, the area is not to be used as sleeping quarters.

**Resolution:** Upon a motion by Mr. Cohen, seconded by Mr. Clores to approve the application for post construction relief for the height of the conservatory and removal of the "storage only" designation for the second floor of the garage so that the space may be used as finished occupiable space for sole use by the homeowner conditioned upon there be no sleeping quarters and that the kitchen and bathtub be removed.

**Vote: Ayes: Abad, Barbieri, Clores, Cohen, Glazer MOTION APPROVED**

Mr. Madaio asked if the Board's determination could be relayed to Mr. Blackwell in order to help expedite their CO application.

**OTHER BUSINESS** None

**ADJOURNMENT** at 10:00 p.m. upon motion by Mr. Cohen seconded by Mr. Abad and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary

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<sup>6</sup> Zoning Officer's letter dated May 21, 2018 as quoted was not provided with the application. As referenced but not marked during the course of these proceedings a copy was obtained from the Zoning Officer and provided to both Attorneys Kates and Madaio for clarification post meeting.