

## ALPINE ZONING BOARD OF ADJUSTMENT

Regular Meeting Monday, November 16, 2020 - 7:30 P.M.

(This meeting was held via ZOOM Webinar call due to the SARS-CoV-2 Pandemic and recorded in its entirety).

### CALL TO ORDER/PUBLIC ANNOUNCEMENT

This regular meeting of the Alpine Zoning Board of Adjustment was called to order by Chairman Glazer at 7:32 p.m., Monday, November 16, 2020 who read the following announcement 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 and the Governor's Emergency Declaration Adequate and electronic notice of this Regular meeting of the **Alpine Zoning Board of Adjustment** held on **Monday, November 16, 2020**, along with instructions to the public on how to access this meeting which is being held using the Zoom Webinar platform due to the COVID-19 pandemic has met the requirements of the law by means of being e-mailed to The Record and The Suburbanite on October 30, 2020, published in The Record on November 6, 2020, posted on the bulletin board of the lobby in the Borough Hall, posted on the door of the main public entrances, posted on the Borough website along with the applications for any matters being heard this evening and a copy filed in the office of the Borough Clerk. In addition, due to the current COVID-19 pandemic, notice provided instructions for review of documents by appointment with the Board secretary and that the public could e-mail questions or comments to the Board Secretary for the public record as appropriate. A notice has also been placed on the front page of the Borough website directing the public to the Municipal Clerk page for access to all public meeting agendas and instructions on how the public can participate.*

### ROLL CALL

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

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

### COMMUNICATIONS:

Letter from Attorney Capizzi dated November 3, 2020 extending and carrying McCaffrey Block 42 Lot 4 – 1010 Closter Dock Road to December 17, 2020. Applicant must re-notice.

### PROCEDURAL MOTIONS

**Resolution: Approval of Minutes: Regular Meeting October 15, 2020** upon a motion by Mr. Bonhomme seconded by Mr. Clores approved by all those eligible to vote.

**Resolution: Approval of Bills and Claims** Upon a motion by Mr. Clores, seconded by Mr. Bonhomme to approve the following Bills and Claims:

NJ Media Group	Meeting Notice Zoom 11-16-2020	Inv. 4447901	\$31.83
Azzolina & Feury	Haring 40/7	Inv. 70204	\$570.00

**Vote: Ayes:** Mr. Abad, Mr. Bonhomme, Mr. Clores, Mr. Cohen, Mr. Kupferschmid, Mr. Mayer, Mr. Glazer

### **HEARING: Haring Block 45 Alpine Drive Block 40 Lot 7 (continued from October 15, 2020)**

Mr. Abad recused. Matthew G. Capizzi, Esq. Capizzi Law Offices 11 Hillside Ave., Second Floor, Tenafly, NJ 07670 appeared on behalf and with Applicants Thomas and Christine Haring, Michael J. Hubschman, PE, PP Hubschman Engineering PA 263 A S. Washington Ave., Bergenfield, NJ 07621 and Chris Blake Architect 24 New Bridge Road, Bergenfield, NJ 07621.

Also appearing: Zoning Officer/Construction Code Official Alden Blackwell with Attorney Dermot J. Doyle of Huntington Bailey Attorneys for the Borough of Alpine and Matthew J. Ross, Esq. Mueller Law Group 19 Engle Street Tenafly, New Jersey 07670 on behalf and with neighbor Ralph Noback and their planner, Michael F. Kauker, PP of Kauker & Kauker, LLC, 356 Franklin Avenue, Wyckoff NJ 07481. Noted an additional six or seven members of the public were logged in during the zoom call and instructed on how to participate. Robert Peckar spoke.

Exhibits marked as follows:

A-12 Letter from Matthew G. Capizzi, Esq. dated November 6, 2020

A-13 Application for Zoning Review dated October 29, 2020 with attached

- Letter from Matthew G. Capizzi, Esq. dated October 29, 2020
- Letter from Hubschman Engineering dated October 29, 2020
- Revised Site Plan signed and sealed by Michael J. Hubschman, PE, PP consisting of one-page dated June 15, 2017 last revised October 27, 2020 annotated "added height calcs for perimeter above 445.81"

A14 Homeowner Plans approved by the Board in 2017 prepared by Thomas Haring consisting of four (4) sheets

A-15 Site Photos submitted in connection with 2017 Zoning Board Application

A-16 Set of Plans signed and sealed by Chris Blake, RA consisting of six pages dated April 13, 2020 last revised July 17, 2020 annotated "Zoning Review 6/15/20 "revised to overlay Homeowner Plans from 2017 atop Mr. Blake's drawings".

Note what is proposed has not been revised – added an overlay of owner's original sketch.

- A1 Site Plan + Zoning, Basement
- A2 First Floor Plan, Details
- A3 Second Floor + Attic Plan
- A4 Elevations
- A6 10-15-20 Elevation Comparison
- A7 10-29-20 Elevation Comparison

Received 11-13-2020 in advance of meeting 11-16-2020 and distributed via e-mail

A- 17 Applicant's Refreshed Notices due to COVID virtual meeting requirements

- Proof of Publication in The Record November 6, 2020
- Certified Mailing to Residents within 200' on November 6, 2020 per Tax Assessor's List dated September 10, 2020

A – 18 Zoning Officer's Review letter dated November 10, 2020

*And marked during the course of these proceedings:*

O – 1 Set of 3 Photos taken by Mr. Kauker

Review: Application continues from October 15, 2020 for this existing single-family split-level home at the corner of Alpine Drive and Schoolhouse Lane. In 2017 the Zoning Board granted a variance to increase pre-existing nonconforming building coverage from 13.77% to 14.63% for an addition based on Mr. Haring's sketches. Mr. Haring obtained building permits and began construction. Certain details including a transition dormer area on the right side were not reflected on plans and the Building Department issued a Stop Work Order. Applicants engaged an architect and engineer to prepare detailed plans, illustrate as-built construction and submit a new application for zoning review. Issues include clarifying the number of stories / the height which complies and variance for additional building coverage overage due to bay windows and eaves.

**Number of Stories.** Mr. Blackwell's August 19, 2020 letter **[A-4]** determined they exceeded maximum number of stories. Mr. Blackwell viewed right and left sides of the split-level house separately determining basement on left side met definition for Story Above Grade creating a three-story dwelling where only two and a half stories are permitted. Mr. Hubschman submitted revised plans dated October 29, 2020 proposing regrading with fill around the basement to disqualify it as a story which they believe resolves that issue. Mr. Blackwell affirmed in his letter dated November 10, 2020 **[A-18]** subject to their extending the fill and re-grading six feet out from the basement.

**Height.** The height of the building at 34.3 feet complies with the ordinance which permits a maximum of 35 feet. Applicant's engineer acknowledged an error on the 2017 site plan that indicated the height would be 26.1 feet but it was also noted Mr. Haring's sketches did indicate 35 feet. A height variance was not required then or now and no one picked up on the discrepancy at the time of the 2017 hearing.

**Building Coverage**<sup>1</sup>. As-built is 15.77% where 14.63% was maximum permitted by Board's 2017 approval due to the addition elements not depicted on the original sketches. Applicant now includes bay windows which generated additional eaves/overhangs. The overage does not include an [attic]<sup>2</sup> transition area extending atop the existing right side of the house. Applicant maintains this feature does not require a variance as it does not exceed maximum height or the footprint.

Applicant acknowledged detailed plans and revised permit applications need to be submitted to the Building Department for features not shown on the original plans.

Attorney Kates and Chairman Glazer asked parties to focus on the story issue first.

Attorney Doyle noted aspects of Mr. Blackwell's letter dated November 10, 2020 **[A-18]** call for comment from Mr. Frenzel particularly in regard to the grading around the basement and other open items that may remain from the August 19, 2020 letter **[A-4]**.

Mr. Blackwell remains under oath from the prior meeting and reviewed multiple open items. Referring to his August 19, 2020 letter **[A-4]** reviewing Zoning Application Z-34-2020, Mr. Blackwell explained he has no authority to permit changes to items previously determined by the Board. The Board will need to review and verify these plan revisions are acceptable:

- #3 Building Height represented to the Board as 26.1 feet increased to 34.3 feet.
- #6 Architect's As-Built Drawing A3 "Attic Landing" was not shown on 2017 plans.
- #7 "Attic Floor Landing Plan"/"Attic Floor Plan/Roof" not shown on 2017 plans.
- #9 Calculations for height and number of stories – Borough engineer will address.
- #10 Roof eave overhangs may not overhang the building where the floors below already overhang the building in the front and rear. Each overhang is two feet which when combined creates four feet of overhangs adding to coverage.

Mr. Blackwell referred to his letter dated November 10, 2020 **[A-18]** reviewing Zoning Application Z-49-2020 which only addresses the basement story above grade issue:

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<sup>1</sup> During the course of this hearing it was pointed out that the increased building coverage further triggers a variance for proposed improved coverage of 20.73% where 19.24% exists and 20% is maximum permitted.

<sup>2</sup> This transition area was variously termed "attic landing," "attic staircase" etc. during proceedings.

- #12 If they resubmit plans extending the proposed grading and fill six feet out from the basement it will no longer qualify as a Story Above Grade under UCC.
- #13 Neither the Hubschman plan nor Mr. Haring's sketch (A2) reflect the addition atop the right side of the building and no updated architectural plans received.

Mr. Frenzel remains under oath and identified four issues:

1. **Overall height in feet.** Overall height from existing grade to midpoint of the peak is 34.30 feet where 35 feet is the maximum allowed. No variance required.
2. **Building Coverage.** Increased from the 2017 approval plans due to minor projections at front and rear first and second floors basically for bay window features. Applicant acknowledges variance required.
3. **Story Above Grade / Proposed grading** Mr. Hubschman's plan provides two perspectives. 1) per Mr. Blackwell's original analysis calculating height above grade using perimeter of grade around just the left side of the house and 2) using perimeter of grade around the entire house as the ordinance defines Story Above Grade<sup>3</sup>. Mr. Hubschman's proposed grading **[A-13]** can be extended out six feet from the corners and sides of the building and in Mr. Frenzel's opinion that will render the basement definitely not a Story Above Grade.
4. **Overall height in the number of stories** This again can be viewed two ways: looking at each half of this split-level house or in the context of the entire house. By either analysis it is a two and a half story house.

**Looking at the house by separating left half and right half:**

- The right side does not really change. First floor living level (foyer, garage), second level (bedrooms) and an attic area above that. The proposed attic stairwell addition atop the right side of the building by definition is counted as a half story of habitable attic area. The right side is two and a half stories.
- The left side has a basement which, after regrading, would not count as a story, first floor (living room, dining room, kitchen), second floor (study, bathroom, family room) and a habitable attic area above that. The left side is two and a half stories.

To be classified as an attic the habitable area that has a ceiling height of seven feet or more cannot exceed a third of the floor area beneath it. He reviewed Mr. Blake's plans finding both the right and left attic areas are less than 33% therefore qualifying them as attic space (half-story) and not a full story.

**Looking at the entire house:** In this context the existing house has a first floor (kitchen, living room, dining room, foyer and garage) and a second floor (bedrooms) plus a second-floor addition as referenced on the architectural plan (study, bathroom, family room). Above both sides you have habitable attic areas as described being less than a third of the floor area below. The home is two and half stories.

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<sup>3</sup> §220-2 **STORY ABOVE GRADE** Any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade where the finished surface of the floor above the basement is more than six feet above the finished ground level for more than 50% of the total building perimeter.

Attorney Doyle questioned if the home was three stories based on added attic space? Mr. Frenzel explained he had re-reviewed. As a split-level the first floor does have slightly different elevations from one end to the other as does the second floor and attic, but it still comprises a two and half story dwelling by ordinance.

Attorney Ross questioned Mr. Blackwell's calculations who explained he relied on existing average grade as shown on drawing A2 **[A-9]** stated as 444.83 feet.

Attorney Kates asked Applicant's Counsel how they wished to proceed. Attorney Capizzi acknowledges deviations between the 2017 plan and as-built. With the exception of coverage, Mr. Blackwell has not indicated those deviations require any variances. If the Board accepts the premise that the only relief needed regards the coverage, they will dismiss their appeal and proceed for that variance. Attorney Ross understands Mr. Blackwell requests specific authority and Board approval for some deviations and wishes to address those issues with testimony from his planner.

**Chairman Glazer recommended they finalize the issues, specifically number of stories. The meeting was opened to the public for questions.**

Attorney Ross questioned Mr. Hubschman regarding his plan last revised October 27, 2000 **[part of A-13]**. Attorney Capizzi objected he had not yet authenticated the plan but was overruled having been received and marked by the Board thus a valid basis for questions at this time confined just to the issue of stories.

Under questioning by Attorney Ross, Mr. Hubschman explained the surveys, measurements and calculations used to establish the basement was not a Story Above Grade. Attorney Ross questioned discrepancies with his plans from the 2017 application [June 15, 2017 revision 1 dated August 21, 2017]<sup>4</sup>.

Focusing on the Building Height Schematic Attorney Ross questioned discrepancies of surveyed elevations:

	2017 plan	2020 plan
Mid-rear	443.4 feet	446.08 feet
Mid-front	446.4 feet	445.88 feet

Mr. Hubschman explained Mr. Blackwell required height based on the corners of the left side so latter measurements were taken at different points of the perimeter.

Referring to the Basement Schematic on the 2017 plan the average grade in 2017 is calculated at 443.9 feet. The "magic" number to determine Story Above Grade in 2020 is calculated at 445.81 feet based on a first-floor elevation of 451.81 feet where the 2017 plan lists the first floor at 446.39 feet. Mr. Hubschman conceded that was an error and that's why the height was wrong on that plan. In 2017 the calculation erroneously used the first-floor elevation from the right side rendering that basement schematic incorrect. The number used in 2020 is correct. To his knowledge there has been no change to the grade. The proposed fill is based on their calculation that the finished grade has to be at least 445.81 for more than 50% of the perimeter. This was added to the plan after one of Mr. Blackwell's letters; perhaps Revision 4 (July 17, 2020).

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<sup>4</sup> This plan was marked Exhibit A-6 as part of the 2017 application.

**Robert Peckar** of 23 Rionda Court sees a new story rising above the trees from his house to ask the difference between the right and left sides. Mr. Hubschman explained the ordinance didn't really take into account a split-level design. There is a four-foot difference between the first-floor elevation from right to left. Mr. Peckar questioned how they can build what looks like a tower on one side exceeding the height contemplated by ordinance to the detriment of neighbors? Mr. Hubschman explained they couldn't build over the right side which would have exceeded the height ordinance. The left side is now the higher side of the split-level but complies.

**The meeting was opened to the Board for questions.**

Mr. Mayer and Mr. Kupferschmid sought clarification regarding height, grading and number of stories. Mr. Hubschman clarified the grading does not change the height calculation but just puts them in compliance for the number of stories. The height as-built is 34.3 feet and did not change from the 2017 site plan which showed 26.1 feet in error. Mr. Haring's plan had indicated 35 feet as the intended height. They did not seek a height variance in 2017 and do not seek one in this application. It complies with the ordinance. Attorney Capizzi explained the 2017 application was for building coverage to make the areas of the addition a little deeper because of the narrowness of the footprint they were working with. He acknowledges the typographical error on the site plan but offered Mr. Haring's plans are substantially compliant with the as-built condition in the field today. With the exception of the transition area on the right side of the house, the overall massing you see on the left side is unchanged from 2017. The issue with the basement relative to number of stories was reviewed and back in 2017 missed by all parties including the building department and borough engineer.

A lengthy discussion followed. Attorney Ross offered his understanding this still had to be permitted by the Board because the Board previously granted relief for a height of 26.1 feet. Mr. Kupferschmid and Mr. Mayer disagreed; height and number of stories are moot points. Let's move on. Attorney Kates clarified in 2017 the Board did not focus on the height as an approval as it was not before the Board for a variance or bulk review. It was part of the zoning table, misapplied and the issue was not raised. Under the Municipal Land Use Law, the Zoning Board of Adjustment does not give Site Plan Review to single or two-family homes. Height just came in as part of the testimony to provide the Board with the overall picture which is customary. He does not believe it was the basis for a jurisdictional determination at that time. It became an issue now because of the discrepancy which he believes has been explained. Mr. Frenzel noted the definition for Story Above Grade involves a different set of calculations using the finished grade and Mr. Blackwell noted the definition for calculating building height uses original or finished grade, whichever is lower. Mr. Hubschman affirmed he used the existing grade which is lower.

Mr. Clores maintained concern with the discrepancy and appearance of the house.

Attorneys Doyle and Ross questioned disparities where the 2017 sketches showed only a peaked roof and no dormers or attic stairwell which prompted neighbor's concerns with height and number of stories. Mr. Hubschman deferred to the architectural comparisons while noting the height, despite the 2017 error, still complies and the grading will address the number of stories.

Mr. Peckar understood they don't need a variance if the height complies but asked for independent verification to ensure dimensions are correct. In response Attorney Capizzi asked Mr. Frenzel if he had reviewed and/or had concerns with the current plan set before the Board. Mr. Frenzel affirmed he reviewed and took no exception to anything on the plans. Mr. Clores noted they had found no problem with the original plans either.

Attorney Capizzi requested a determination on the issue. If they only need a building coverage variance there is no need for them to continue the appeal.

Being no further questions or comments on this issue Chairman Glazer asked the Board to render a decision with regard to the story issue.

**Resolution Regarding Story Question** Upon a motion by Mr. Bonhomme, seconded by Ms. Herries to accept that the building is two and a half stories. No variance required.

**Vote: Ayes:** Mr. Bonhomme, Mr. Cohen, Ms. Herries, Mr. Kupferschmid,

Mr. Mayer, Mr. Glazer

**Nays:** Mr. Clores

**MOTION APPROVED**

Attorney Capizzi dismissed their appeal. Mr. Blackwell was excused from the meeting. Attorney Capizzi requested and was granted a brief recess. (8:57 – 9:04 PM).

Attorney Capizzi called Mr. Hubschman to address building coverage per his plan revised October 27, 2020 **[A-13]**.

**Attic stairwell addition** atop a portion of the right side of the house does not extend past the pre-existing footprint of the house and, in fact, is set back a few feet from the front of the house. This does not count towards building coverage.

**Prior approval.** In 2017 they sought a variance for building coverage where the home's pre-existing building coverage was 13.77% and the Board approved 14.63% or about 130 square feet mostly for front and rear overhangs associated with the proposed second story addition.

**Increased building coverage per as-built.** The current as-built measures 302 square feet. The additional 172 square feet is mostly related to front and rear overhangs (that extend a bit around the left side of the house) and bay windows not shown on the original plans. Although not usually calculated, Mr. Blackwell determined as they overhang the overhangs they must be included. The new design elements are open to the ground and within required setbacks.

**Drainage.** They are limited by the septic setbacks (fifty feet required) which preclude installation of a seepage pit. Instead, to compensate for the increased building coverage, they will drain roof leaders to gravel areas near the proposed wall on the left side. He has discussed this with Mr. Frenzel; there is really no other solution.

**Planning.** Mr. Hubschman is a licensed planner since 1986, has testified in that capacity and been accepted as an expert in that field. He reviewed the architect plans provided by Mr. Blake and opined the eaves and bay windows provide an architectural enhancement balancing the views of the house and improving the streetscape. They are set back over fifty feet in the front yard and there is really no detriment. This is not bulk building but just overhangs. The ground below is grass, gravel or landscaped areas. There would be no substantial negative impact to the neighborhood. The building coverage although slightly larger than what the Board approved would be considered minor. The eaves are a typical feature that adds to it.

Attorney Ross asked how 5.77% over the permitted 10% is minor? Mr. Hubschman explained the home at 13.77% was built prior to the building coverage ordinance. The governing rule then used F.A.R. (Floor Area Ratio) so some houses are pre-existing nonconforming. Attorney Ross asked Mr. Hubschman how many residences had exceeded or been granted variances for building coverage in the R2B zone. Mr. Hubschman did not know.

Mr. Glazer questioned relevance as they view each application separately. Mr. Kupferschmid noted homes in this neighborhood predate current rules and most are substantially larger than what the code would permit now. Mr. Bonhomme noted these cases often come to light based on aesthetics alone.

Ms. Herries and Mr. Glazer requested review of the initial and proposed approvals. Mr. Hubschman advised the 2017 variance granted an increase to 14.63% from 13.77%. Mr. Glazer noted site plan calculations show 2,130 square feet or 14.13% which Mr. Hubschman affirmed is the current as-built coverage. Attorney Kates quoted the resolution: "The existing building coverage is at 13.77% and 14.63% is proposed due primarily to the design of the roof overhangs." Applicant now seeks an additional 1.14% or 15.77% for the bay windows and extended eaves. Mr. Kupferschmid asked if they're adding living space or encroaching on setbacks. Mr. Hubschman replied no, the windows and eaves provide aesthetics and shade but are not open to the floor and they're not adding usable floor space or square footage.

Mr. Kupferschmid asked the alternative if the Board says no. Mr. Hubschman replied they'd have to tear those elements off.

Attorney Capizzi offered the architect, Mr. Blake. Mr. Kupferschmid would like to hear his thoughts.

Chris Blake remains under oath. Referencing Sheet A-4 of his plan set **[A-16]** Mr. Blake described the eaves and windows.

**Rear elevation.** On the first floor five double hung windows create a bay window effect projecting slightly out from the main structure to bring in a lot of light and views. They do not extend down as far as the two doors on either side. The original plan had three double hung windows. The windows and skirt roof add a nice architecturally aesthetic feature to provide an interior function and some exterior relief from an otherwise boring two-story elevation.

**Front elevation.** A bay window exists on the first floor. They propose another bay window on the second floor. These functional and architectural features are preferable to plain double hung windows but trigger the extended roof overhangs to be counted as building coverage. A building without a roof overhang would look very peculiar, strange and boring. They are not excessive but provide depth, perception and carry through to the other architectural features of the house. They don't go to the floor so they don't create more floor space or livable usable area. They just give a little projection for aesthetics and viewing function from the inside; a traditional look.

**Split level.** Attorney Capizzi questioned loss issues with this type of design. Mr. Blake explained a split level creates a layout issue. They stack on top of each other. Stairs create a side-by-side kind of staircase to gain back some of the loss and you wind up with more of a vertical circulation pattern. You don't always want to step down five



or six steps to get to another section of the house. When you design another two or three rooms on one side of the building you can't really borrow from the other side of the building for it; the plate has to be big enough to accept the rooms you're going for.

**Massing / Impact on the neighborhood.** Compared to the 2017 version they really aren't producing anymore mass, just some more architectural elements. They would have had overhangs anyway but Mr. Blackwell felt the bay windows and corresponding overhangs triggered the code. These elements provide architectural appeal and break up mass so it's not just a big bulky building with punched windows.

**Transition (attic stairwell) area** Appears as a 5+12 pitch gable over the garage as viewed from the right-side elevation and includes a stair case up to the attic. Intent was for attic stair landing to mimic the original elevation. Again, the levels create a peculiar situation requiring the side-by-side steps with a landing that is a little bulkier. The front porch steps six feet out from the house and this element steps back six feet creating a tiered effect so the house looks less bulky and "in-your-face." The intent incorporates a fair amount of articulation in the elevations of the building.

Attorney Ross questioned dimensions of the attic transition area. Mr. Blake stated 24'5" by 12'4" as shown on Proposed Attic Floor / Roof Plan (A-3 of **[A-16]** and acknowledged stepping it back doesn't actually reduce bulk; it just helps appear smaller than if they brought it out to the face of the house. Mr. Kupferschmid acknowledges omission of this feature was a big mistake but no variance is required or relief requested. It does not impact setbacks, height or coverages. The homeowner did his own drawings and may have been unclear with process but that is for the Building Department to deal with and not the Board's jurisdiction. Mr. Blake reviewed the 2017 drawings and noted there was an indication of stairs on the floor plan but that incentive did not follow through into the exterior elevations. Attorney Capizzi advised they recognize they need construction drawings, permits, inspections, etc. from the Building Department for this element. Mr. Clores opines the Board can't condone the error. Ms. Herries asked if it was unusual to base approvals on homeowner sketches versus professional plans. Attorney Kates explained it is for Alpine and clarified that the Board did not approve or sanction the prior plans as one and two-family homes are exempt from Site Plan Approval. The Board's focus was on the variances presented at the time.<sup>5</sup>

Attorney Capizzi has no further witnesses.

**The meeting was opened to the public for questions. There were none.**

Attorney Kates asked if Attorney Ross had witnesses. He stated he would present Mr. Kauker and Mr. Noback.

**Ralph "Ted" Noback,** 57 Schoolhouse Lane was sworn. He lives catty-cornered across the street. He described his experience reading construction plans as a liaison between designers, architects and general contractors for major stores. He attended the 2017 hearing and had no difficulty with the design as then presented which Mr. Haring described as a modest addition being an office space for his wife and a small storage area above it. As construction proceeded, he could easily tell the height and bulk

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<sup>5</sup> As a side note to this application the Board did determine to review as part of its Annual Report, a requirement for applicants to provide professional signed and sealed plans as part of a Completeness Review.

were more massive than neighbors were led to believe at that Board meeting. He advised Mr. Haring to check with the Building Department, went away and upon his return he saw the dormers, height, and new dormer to the north and thought it looked like a cruise ship had docked across the street. If he thought the height was going to be 34 feet instead of 26 feet as shown on the 2017 plans, he would have objected and asked them to provide accurate professional drawings. The neighbors can speak for themselves but are unbelievably upset and he hasn't spoken to anybody that is happy with it. It looks massive and does not fit into the character of the neighborhood at all.

A lengthy discussion ensued. Mr. Kupferschmid opined they should review the ordinance as he did not feel bay windows should be counted as building coverage if they don't add floor area or livable space. The Board commiserated with Mr. Noback's concerns regarding bulk and height while noting as a quasi-judicial Board they are constrained by statute and their jurisdiction premised on conformity with the zoning ordinance. They don't enforce. Plan deviations are caught by the Building Department at time of permit applications or as-built plan review prior to Certificate for Occupancy. If a new variance is generated, they are referred back to the Board. Here conformity exists except for coverage. Mr. Mayer summarized they're looking at the eaves and bay windows – do they make them pull them off or allow them to keep them; that's their decision. Chairman Glazer agreed they Board should focus on the required variances for building coverage. He observed from the plan they would also require improved lot coverage of 20.73% where 19.24% is as-built and 20% is the maximum permitted. Attorney Capizzi offered the lot and building coverage are directly related.

**Michael Kauker**, was sworn, gave his credentials<sup>6</sup> and accepted as a professional planner. Applicant seeks variances for 15.77% building coverage and 20.73% lot coverage. Testimony shows the building height complies. That's a vertical measure of mass. They're now dealing with horizontal mass and whether its justified under N.J.S.A. 40:55D-70(c)1 hardship relative to difficulties within the structure which was the basis for the 2017 resolution and which the Board now needs to re-review

The (c)1 criteria provides “*whereby reason of exceptional narrowness, shallowness, shape of a specific piece of property...*” The structure on this 15,000+ square foot lot meets the setbacks and this is not an issue. “*... or by reason of exceptional topographic conditions...*” which applies only so far as the lot elevation is at the high point within this zoned neighborhood.

The building mass increases can be termed as an unimproved extension of this building beyond the bounds of the original (c)1 variance granted in 2017. In 2017 the house was cited as having an area of 1,856 square feet to which they sought to add 900 square feet for a total of 2,700 square feet. He calculated actual improvements and expansions of the structure as a product of the specific measurements provided by the architect in his site plan and found total usable building area within the interior of the structure has grown to 6,086 feet; an addition of 3,386 square feet. He can submit these calculations to the Board if they request. He further submitted a set of three photographs marked collectively as **Exhibit O-1** to show the elevations of the structure

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<sup>6</sup> Mr. Kauker has an active NJ PP license and appeared in Alpine in the past on a use variance application.  
*These minutes have been approved by the Zoning Board of Adjustment.*

relative to its position on the top promontory of a road with an eight to ten percent grade down 300 feet to the bottom of a hill demonstrating why this particular site is predominate in its physical influence on the surrounding neighborhood and exacerbates the appearance of mass. The R2B zone is composed of a fully built neighborhood comprising approximately 74 homes with a minimum required lot area of 10,000 square feet and virtually all of the homes surrounding this structure are well below its elevation. Hence any increase in this building's mass makes the building predominantly present and obtrusive within the neighborhood. To give the Board some idea of the extent to which this particular project has gone way beyond being consistent and compatible with the surrounding Zone Plan and the surrounding Zoning regulations, surrounding homes consist of about four one and a half story ranches and two or three two story colonials of about 1970-1975 vintage. Built to the max 10% coverage and vertical allowance the maximum for these homes would be 2,500 square feet compared to the subject property now over 6,000 square feet.

Mr. Kauker referred to the Borough's 2010 Master Plan:

Item # 4 page 7 "Major Problems or Concerns identified in the 2002 Master Plan" reads:

*"At the time of the Master Plan, the demolition of smaller residential structures and their replacement with larger dwellings was an increasingly common phenomenon in Alpine. The Plan identified it as a major concern because, on smaller lots in the community, the larger dwellings tend to appear too large for the lot on which they are located. As such, the Plan calls for greater control on the size of proposed residential structures, relative to both the size of the lots on which they are located and within the context of the neighborhoods they are in."*

and

Item #4 Size of Residential Structures page 10 "Major Issues Identified in the 2002 Master Plan:

*In order to address the pattern of existing dwellings being replaced with much larger dwellings that are out of character with the neighborhood, the borough enacted a 2½ story height limitation to limit the scale of buildings and promote compatibility of structures...."*

Although lengthy deliberation has rightly shown the structure is legally two and a half stories under the tight constraints of the ordinance in reality the horizontal mass as a product of the overage constructed without prior approval makes this application's burden greater and deserving of the Board's extreme serious scrutiny.

Following (c)1 criteria: "By reason of extraordinary and exceptional situation uniquely effecting a specific piece of property..." in this instance the unique situation of this site being at the peak elevation within the neighborhood only increases the substantial negative impact on the neighborhood and also a substantial negative impact on the intent and purpose of the Zone Plan.

The masses created by the dormered extensions and the internal massing and size of the structure as documented in the site plan and detailed in the architect's building elevations are the antithesis of consistent compatibility with the criteria and he opines would have a negative impact of the intent and purpose of the Zoning Ordinance and the welfare and well-being of surrounding residents having to look at a structure which clearly should not be permitted at that scale without particular consideration by the Board as to action that would mitigate the existing as-built condition and bring it further into compliance with the Zoning Ordinance. They are seeking an increase one and a

half times plus the 10% standard and should revisit the 2017 resolution for an accurate grasp of the extent to which this application could result in the diminution of the intent and purpose of the Master Plan and of a substantial negative impact on the well-being, health and welfare of the surrounding residents.

Attorney Capizzi asked if he thought removing the eaves and bay windows would resolve all the issues he just raised? Mr. Kauker responded yes and dramatically noting their planner had provided no testimony for the proofs required under Municipal Land Use Law. He recommends the application revert back to consistency with the 2017 approval. Attorney Capizzi advised the application before the Board does not provide that option; is Mr. Kauker familiar with the (c)2(i) basis to permit a variance on the basis of furthering the purpose of zoning by creation of a more desirable visual environment? Mr. Kauker stated he is but the 2017 resolution remains a basis for this application and compliance with height is not necessarily a benefit either in this instance. Mr. Kupferschmid concurred he has a problem with building height on smaller lots in Alpine and while it may be permitted, he too does not see as a benefit. Mr. Clores agreed. Attorney Capizzi offered the more they conform to the zoning table the less impact there is on the neighborhood and that's implicit and compliant with the bulk table. When you look at Mr. Blake's comparative plan set and as-built the only element not shown is the [attic] transition area. The majority of what they built conforms. They are trying to address the fallout, albeit self-created, from creating two bay windows.

Mr. Kauker continued that his calculations detailing the increase to 6,086 square feet of area are premised on the representations in the 2017 application where neither the basement nor the attic were cited as proposed active occupiable space where now they are proposed to be occupied: one as a rec room and the attic for a number of different uses and the full set of stairs to the attic with a landing area. The difference between what was represented to the Board in terms of active space bears no reasonable relationship to the zoning and surrounding houses which were built in accordance with the zoning.

Ms. Herries asked what the Board's scope of review would have been in 2017. Would they have had a say about the mass, height or number of stories? She understands neighbor concerns but isn't sure what they can do about it. Respectfully, Mr. Kauker offered 15.77%, which is not permitted, is one of the reasons the bulk is as big as it is. The Board has jurisdiction over that because it is a bulk variance. Additional coverage relates to overhangs which look like a flying fortress and are an insult to the neighborhood by design on a scale not permitted by zoning ordinance. The Board can evaluate and determine action consistent with MLUL. Mr. Glazer noted existing coverage at 14.13% is less than the prior approval prompting Mr. Kauker to state it would be a benefit to maintain that or revert back to the prior approval negating a need for a variance.

As part of the Board's analysis Mr. Kupferschmid questioned hardship related to the building/lot coverage issues. Mr. Hubschman corrected this is a (c)2 case. The increases are due to the bay windows and eaves not the dormers. Mr. Kupferschmid asked if they're just saying it looks better? Mr. Hubschman stated the (c)2 variance is based on aesthetics increased by the architectural elements. Attorney Kates asked Mr. Kauker to comment who stated respectfully he does not believe it can proceed as a

(c)2 variance which requires benefits outweigh detriments and the benefits must inure to the surrounding neighborhood; not the applicant and not the site.

Mr. Glazer offered the question then is it a benefit to have the architectural interest as compared to the additional bulk of the additional size of the addition. Mr. Kupferschmid noted the concerns of the neighbors to ask what the Applicant can do to minimize or mitigate the concerns. Mr. Glazer asked if they would revert back to the original. Attorney Capizzi offered if they remove the offending features, they don't need a variance but that's not their application. Mr. Hubschman concurred and offered by way of mitigation they could add some landscaping to soften the bulk.

Mr. Kupferschmid asked to hear from the applicants why they are where they are right now as saying it looks better doesn't seem like a qualifiable hardship.

**Thomas Haring** was sworn. He's lived in this home for about six years. He explained the difficulties in designing an addition for the split-level house where the existing attic was tight and full of blown insulation. He drew the intent to have stairs on his plan but not the detail as he didn't know how he was going to do it. He figured that out after they started construction and cleared away all the insulation and old building material. He was also concerned with matching the left and right sides of the house keeping in character with the original architecture and ratios so it wouldn't look like an addition. Once he figured it out and started work on the stairs he didn't realize at that moment he needed to go back and update his permits. The attic stairs are tricky because it's a split level and the landing just lets you get from one part of the house to another. The Stop Work Order was issued around February 2020. Mr. Blackwell came and said he needed a permit and he re-applied. Since then they've been living under a tarp through all this crazy weather. Regarding Mr. Kauker's testimony as to living space Mr. Haring stated nothing had changed from the original 900 square feet. He knew he couldn't exceed 35 feet in height so that's what he drew on his plans had it measured for separate times by Mr. Hubschman because neighbors said it was too tall. He opted for bay windows for aesthetics and didn't realize these features would count as added coverage. He knows some neighbors are unhappy but said others including professionals are telling him it's proportionately nice. He would absolutely consider landscaping to soften. He considered his neighbors in his design went out of his way to make it more balanced. He pushed the windows into the corners so they would be offset from the neighbors affording both privacy and added the skirt roof in back to soften the height. He is sorry that he created a confusion or misunderstanding with his drawings. He understands he needs to get a building permit for the attic landing area and comply with any inspections.

Upon questioning from Attorney Ross Mr. Haring affirmed his 2017 testimony contained in minutes and the resolution that his basement was built over a rock ledge creating a variable ceiling and was dark, damp with limited storage space. Mr. Haring stated the basement is still unfinished and he had to remove a section of the drop ceiling for his head to fit through while using the treadmill there. The house came with a masonry fireplace but somebody had sealed it. Attorney Ross noted use of the treadmill and Mr. Blake's plans indicating a new gas insert for the masonry fireplace to ask if he plans to renovate the basement. Mr. Haring said he's thinking about it. Attorney Ross explained his line of questioning relates to the variance granted in 2017 based on (c)1 hardship

that they couldn't use the basement so his wife wanted extra space above. He felt this speaks to Mr. Haring's credibility; what he said before is disproven by the plans in front of them now. One of the questions earlier was hardship and now there's no hardship being claimed and instead it's (c)2 variance. Attorney Capizzi objected noting Attorney Ross will be afforded time for closing arguments or testimony on this issue.

Mr. Kupferschmid questioned relevance. Attorney Ross pointed out the Board used that claim as the basis for the hardship and now claim (c)2 because they realize they can't maintain a (c)1 as Mr. Blake's plans contradict his prior representations. Mr. Kupferschmid cautioned Attorney Ross that may be a stretch and perhaps a bit insulting to the applicant. They're trying to find out why a (c)2 is valid. Attorney Ross stated he is just saying the representation is contradicted by evidence.

Attorney Kates sought to focus on the proofs in the statute noting the resolution approving the 2017 application rejected a (c)2 analysis. To quote:

*"The focus of a (c)2 case is not in the characteristics of the land that, in light of current zoning requirements, create a "hardship" on the owner, warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community. It is difficult to conclude that an expansion of a preexisting single-family home, rather than the absence of any home, presents a "benefit to the community."*

He concluded the Board rejected the (c)2 analysis and went to a (c)1 analysis and determined that the deficiencies of the 2,000 square foot current home then, whether the basement was used or not used, was a basis to justify what was considered by the Board to be a minor variance at that time. Now they are going back to (c)2 analysis for the added coverage and perhaps Mr. Hubschman can explain what community benefit is being derived by what is presented in the new application?

At this point noting the late hour, Attorney Capizzi requested a continuance whereupon he will return with a dedicated planner. Without objection, this matter will be carried to the next meeting scheduled for Thursday, December 17, 2020 at 7: 30 PM via Zoom webinar extending the time within which the Board can reach a decision.

**ADJOURNMENT** at 11:16 p.m. upon motion by Mr. Cohen, seconded by Mr. Bonhomme, and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary