

BOROUGH OF WILDWOOD CREST
Planning Board
Meeting Minutes – 5 July 2023 5 p.m.

The following are the minutes of the Wildwood Crest Planning Board as held on Wednesday July 5, 2023, at Borough Hall. The proceedings of the meeting are recorded and available for public inspection.

CALL TO ORDER:

Chairman Mr. Davenport called the meeting to order at 5:00 p.m., lead the Pledge of Allegiance and read the statement of compliance with the open Public Meetings Act.

ROLL CALL:

Patrick Davenport: present	Barbara Hunt: present	Brian Melchiorre: present
Don Cabrera: absent	Joe Franco: present	Angela Daniels: absent
Gerry D'Antonio: absent	Fred Mettler: present	Pete Cava: present
Brian Stuart: present	Vince Tenaglia: absent	Bradley Vogdes: present
Board Secretary Pamela Riper: present		
Solicitor David Stefankiewicz: present		
Engineer Joe Mohnack: present		

MINUTES:

Ms. Hunt moved to dispense with the public reading of the minutes of the meeting of 5 April 2023 and approve as distributed, Mr. Vogdes second, minutes approved as distributed.

Patrick Davenport: yes	Barbara Hunt: yes	Brian Melchiorre: yes
Joe Franco: abstain	Fred Mettler: abstain	Pete Cava: abstain
Bradley Vogdes: yes	Brian Stuart: yes	

Mr. Mettler moved to dispense with the public reading of the minutes of the meeting of 7 June 2023 and approve as distributed, Mr. Stuart second, minutes approved as distributed.

Patrick Davenport: yes	Barbara Hunt: yes	Brian Melchiorre: yes
Joe Franco: yes	Fred Mettler: yes	Pete Cava: yes
Bradley Vogdes: yes	Brian Stuart: yes	

RESOLUTIONS MEMORIALIZING BOARD ACTIONS:

Resolution PB-23-11 for Application PB-22-08 for 6501 Ocean Avenue a/k/a blk 50.04 lots 3, 4, 7 & 8 in Zone M-1A owner Mahalo Wildwood Crest LLC; seeking "C" Variance relief, preliminary site plan approval and final site plan approval.

Patrick Davenport: yes	Barbara Hunt: yes	Brian Melchiorre: yes
Joe Franco: abstain	Fred Mettler: abstain	Pete Cava: yes
Bradley Vogdes: yes	Brian Stuart: abstain	

APPLICATIONS:

Application PB-23-02 for 7301 New Jersey Avenue a/k/a blk 109 lots 20.01 in Zone R-1A owner Henia Montague; seeking "C" and "D" Variance. Adjourned to August 2 2023. No additional notice required.

On Motion of Mr. Vogdes and 2nd by Mr. Cava to adjourn application:

Patrick Davenport: yes	Barbara Hunt: yes	Brian Melchiorre: yes
Joe Franco: yes	Fred Mettler: yes	Pete Cava: yes
Bradley Vogdes: yes	Brian Stuart: yes	

Application PB-23-07 for 7606 Seaview Avenue a/k/a blk 105 lots 3 & 4 in Zone R-2 owner Gary and Theresa Calibey; seeking minor subdivision.

The Applicant was represented by Lyndsy Newcomb, Esquire of the Law Firm of Monzo Catanese DeLollis, P.C.

The subject property is an 80ft. x 100ft. located in the R-2 Zoning District and it is currently developed with a single-family dwelling.

Ms. Newcomb advised the Board that the Applicant is proposing to subdivide the subject property in order to create two (2) conforming 40ft. x 100ft. lots.

Lewis H. Conley, Jr., P.L.S. of Van Note-Harvey Associates, Inc. appeared on behalf of the Applicant. Mr. Conley was accepted by the Board as an expert in the field of land surveying and he was sworn in to testify with respect to the proposed Plan of Minor Subdivision, consisting of one (1) sheet, dated April 10, 2023, which was received by the Board, and which is incorporated herein as fact.

Mr. Conley reviewed and described the Subject Property and the existing site conditions for the benefit of the Board.

Mr. Conley advised the Board that the subject property previously consisted of two (2) individual 40ft. x 100ft. lots.

He indicated that the lots in question were consolidated by virtue of common ownership and the fact that a single-family dwelling was constructed which spanned both individual lots.

Mr. Conley testified that the Applicant is proposing to demolish the existing single-family dwelling located on site, and is requesting minor subdivision approval to recreate the two (2) original 40ft. x 100ft. (4000SF) lots. Mr. Conley advised the Board that the Applicant is proposing to construct new single-family dwellings on each of the proposed lots.

He noted that the proposed single-family dwellings will comply with all applicable area and bulk requirements, and no variance relief is requested or necessary at this time.

In light of the fact that the proposed lots comply with all applicable area and bulk requirements, this is a 'by-right' subdivision.

Mr. Conley testified that waivers have been requested for design standards such as providing contours, buffers, etc. as there is no construction proposed at this time.

Mr. Conley indicated that design standards would be addressed and reviewed at the time of construction, and if relief is necessary, the Applicants would pursue same at that time.

In response to a question posed by the Board, Mr. Conley testified that demolition of the existing single-family dwelling is scheduled to occur this fall and construction of the proposed single-family dwellings would commence shortly thereafter.

Board Solicitor David Stefankiewicz, Esquire advised the Board that the Applicant's proposal amounts to a 'by-right' subdivision, as the newly created lots will in fact conform to the area and bulk requirements of the R-2 zoning district.

The Applicant was advised that the Borough's ordinances require the payment of a fee of \$100 per lot for tax map maintenance purposes, and satisfaction of the aforementioned tax map maintenance fees would be made a condition of approval.

As a condition of approval, the Applicant will ensure that the existing structure located on site is demolished prior to the filing of the plan of subdivision.

As a condition of approval, the Applicant will obtain lot numbers and property addresses from the Borough Tax Assessor and reflect same on revised plans prior recording the plan of subdivision.

The Meeting was opened to the public for comment. No members of the spoke out in favor or against the application, and accordingly the public portion of the meeting was closed.

Board Solicitor David Stefankiewicz, Esquire reviewed the variance relief sought by the Applicant and provided the findings of fact for the record.

Findings of Fact accepted on motion of Mr. Vogdes and 2nd by Ms. Hunt

Patrick Davenport: yes	Barbara Hunt: yes	Brian Melchiorre: yes
Joe Franco: yes	Fred Mettler: yes	Pete Cava: yes
Bradley Vogdes: yes	Brian Stuart: yes	

The Board accepted the findings of fact and thereafter opened the Application up for deliberation.

During deliberations members of the Board found that the applicant had met the requirements of the Municipal Land Use Law and the Borough Ordinance for the proposed minor subdivision.

The Board further finds that the proposed minor subdivision is in fact a by-right subdivision as the proposed lots will comply with all applicable area and bulk requirements for the R-2 zone.

On Motion of Mr. Stuart and 2nd by Mr. Mettler to approve minor subdivision.

Patrick Davenport: yes	Barbara Hunt: yes	Brian Melchiorre: yes
Joe Franco: yes	Fred Mettler: yes	Pete Cava: yes
Bradley Vogdes: yes	Brian Stuart: yes	

Joe Franco, Pat Davenport, Barbara Hunt and Brian Melchiorre recuse themselves from the application hearing.

Application PB-23-01 for 6908 Atlantic Avenue a/k/a blk 62.02 lots 1, 2 & 3 in Zone R-1A owner Stephen and Jamie Del Monte; seeking interpretation of administrative officer decision.

Seeking an interpretation of the definition of 'Lot, Corner' set forth in § 85-11 of the Borough's Land Development Ordinance, to determine the manner in which a property owner designates the front, side, and rear yards of a corner lot, and an interpretation of § 85-82(k) to determine the manner in which the permitted height of a fence is determined.

The Applicant was represented by Nicholas Talvacchia, Esquire who outlined the nature of the application and the relief sought in connection with same.

It should be noted that at the time that the Application was originally filed, the Application included an appeal of the Borough Zoning Officer's August 29, 2022 denial of a zoning permit associated with the installation of a 6ft. fence in the side and rear yards of the subject property.

The Applicant also sought relief in the form of interpretation of the Borough's Ordinance specifically to determine the manner in which the side and rear yards of a corner lot are designated and the manner in which the height of a fence is determined.

At the June 7, 2023 Board Meeting, after a lengthy debate with the Board and Kevin Balistierri, Esquire, counsel of objectors Joseph and Jane Visalli, owners of the property located at 6900 Atlantic Avenue (the "Visalli Property"), the Applicant elected to withdraw the appeal of the zoning officer's denial of the August 29, 2022 zoning permit and chose to proceed solely on the request for an interpretation of the Ordinance sections in question.

Mr. Talvacchia advised the Board that the Applicant is requesting an interpretation of two sections of the Borough's Land Development Ordinance. Specifically:

An interpretation of the definition of 'Lot, Corner,' set forth within § 85-11 of the Borough's Land Development Ordinance and the manner in which the owner of a corner lot designates the front, side, and rear yards; and

An interpretation of § 85-82(k) of the Borough's Land Development Ordinance to determine the manner in which the permitted height of a fence is determined.

Mr. Talvacchia reminded the Board that the Applicant's request seeking an appeal of the Zoning Officer's August 29, 2022 denial of a zoning permit was withdrawn at the June meeting.

He indicated that the Board debated the Applicant's ability to proceed with an interpretation based upon a challenge asserted by Mr. Balistierri, and the Board ultimately determined that it was appropriate to proceed with the requested interpretation.

Mr. Talvacchia noted that the interpretation hearing is not specific to the Applicant's property. Rather, the request for an interpretation would apply generally throughout the Borough and would be a binding determination made by the Board with respect to the manner in which the rear and side yards of corner lots are designated, and the manner in which fence height in relation to an evaluation of average.

Mr. Talvacchia advised the Board that a corner lot, by definition, has 2 front yards, 1 side, and 1 rear.

He indicated that the Borough's Ordinance does not specifically define the rear yard for a corner lot as the Ordinance, as written, allows a property owner to designate the side and rear yard of a corner lot "at the time of application for a development review or a construction permit."

Mr. Talvacchia contended that, based upon the orientation of the subject property, it is obvious that the rear yard is the northern property line opposite of the frontage on Myrtle Road, and perpendicular to the frontage on Atlantic Avenue.

Mr. Talvacchia argued that the dimensions of the subject property and existing setbacks are relevant to the determination, and establish that the yard adjacent to the Visalli property is the rear yard of the subject property.

Mr. Talvacchia discussed the content of a December 15, 2022 letter from the Borough Zoning Officer further explaining the denial of the August zoning permit which references § 85-92(h) and historical platting patterns within the Borough as the basis that was utilized to determine that the yard parallel to the Atlantic Avenue frontage is the rear yard of the subject.

He indicated that the 85-92(h) deals with lot orientation associated with subdivisions and site plan applications, and does not apply to existing lots and situations such as the Applicants.

He argued that nothing in the Ordinance indicates that a rear yard must be located opposite of an existing front door.

Vincent Orlando, P.E., P.P., L.L.A., C.M.E. with Engineering Design Associates, P.A. appeared before the Board on behalf of the Applicant. Mr. Orlando was accepted by the Board as an expert in the fields of engineering and land planning and he was placed under oath and testified before the Board.

Mr. Orlando reviewed the definition of 'Lot, Corner' within §85-11 which defines a corner lot as "[a] lot at the junction of, and abutting on, two or more intersecting streets, where the interior angle of intersection does not

exceed 135°. Each corner lot shall have two front yards, one side yard and one rear yard, the side and rear yard to be designated at the time of application for a development review or a construction permit.”

Mr. Orlando testified that based upon the definition of a corner lot, an owner is permitted to designate or choose which side of their property will serve as the side yard and rear yard.

Mr. Orlando referenced the December 15, 2023 letter authored by the Borough Zoning Officer referring to § 85-92(h) which establishes design standards for subdivisions and site plan applications.

Mr. Orlando opined that § 85-92(h) is not applicable to the subject property as the section referred to by the Zoning Officer deals with historic platting patterns and the orientation of lots associated with subdivision or a site plan applications.

Mr. Orlando noted that the Applicant’s original zoning permit sought approval to install a pool in a rear yard which is clearly not a subdivision or site plan application.

Mr. Orlando testified that the Zoning Officer denied the requested zoning permit as he contended that the rear yard would be the yard opposite to the designated front yard; however, he indicated that this language or standard is not codified in any section of the Ordinance.

Mr. Orlando argued that the section referred to by the Zoning Officer does not apply to the designation of front, side, or rear yards for existing, developed lots.

Mr. Orlando testified that the corner lot definition is explicitly clear that an Applicant has the ability to designate their side and rear yard at the time of development or at the time of submission of a construction permit.

Mr. Orlando advised the Board that based upon the existing setbacks and orientation of the subject property it is clear that same has two front yards along Myrtle Road and Atlantic Avenue, and the side yard would clearly be the portion of the lot which provides a 7ft. setback, perpendicular to Myrtle Road, and the portion of the lot which provides a 25ft. setback, perpendicular to Atlantic Avenue, and adjacent to the Visalli Property, is clearly the rear yard.

In response to a question posed by the Board, Mr. Orlando testified that the definition of corner lot is the only section within the Ordinance which discusses corner lots and the designation of front, side, and rear yards.

He indicated that based upon the language in that section the Applicants were well within their rights to designate the side and rear yard at the time that they submitted their construction permit.

Board Members generally agreed that the Ordinance is clear and specifically allows an Applicant to designate the side and rear yard of a corner lot at the time of development or in connection with the review of a construction permit.

Mr. Orlando reiterated that the subject property has two front yards, one along Atlantic and one along Myrtle.

In response to a question posed by the Board he indicated that the Ordinance does not consider the address of a property when determining the location of a rear yard.

In response to a question posed by the Board, Mr. Orlando testified that the Subject Property meets the setback requirements and the existing setbacks would indicate that the rear yard is the yard adjacent to Myrtle Road.

With respect to the Ordinance establishing the method to determine the height of a fence, Mr. Orlando advised the Board that § 85-82(k) of the Borough’s Ordinance provides, “[t]he height of walls and fences shall be measured from the elevation of the average finished grade within 10 feet from the base of the wall or fence to its highest point. However, in no event shall any fence be higher than seven feet from the grade from which the fence is installed”

Mr. Orlando testified that the Ordinance is clear that a maximum fence height of 6ft. is permitted in the rear yard; however, he indicated that the section of the Ordinance is unclear in terms of why there is a reference to 7ft.

He argued that the height of the fence should be measured from the Applicant’s side of the property by determining the average grade along the entire fence line.

He opined that the reference to 7ft. would appear to be included in an effort to address the height of a fence for a property which has a lower grade than a neighboring property.

Mr. Orlando noted that the Applicant’s constructed a 12-inch retaining wall along north and west property line, and when the average grade is measured within 10ft. of the location of the fence, the fence is no taller than 7ft.

Mr. Orlando advised the Board that he reviewed a number of properties which recently installed fences within the Borough and he determined that no fence permits were issued which could provide guidance in terms of how the Ordinance has historically been applied.

Mr. Orlando argued that fence heights appear to have been historically measured from the average grade within 10ft. of the location of the fence, exclusively using the average grade of the property owner’s property to determine same.

Mr. Orlando indicated that the Zoning Officer contends that fence height is determined by evaluating the average grade using a 10ft. radius of the location of the fence which requires that the grade of the subject property and neighboring properties be evaluated; however, he advised the Board that the Ordinance does not support this position.

Mr. Orlando took issue with this position noting that accessing a neighbor's property to determine average grade presents practical difficulties as accessing a neighbor's property is typically not permitted.

Mr. Orlando argued that determining fence height should be appropriately limited to evaluating the average grade of a property owner's property and should not consider the average grade of an adjacent or neighboring property.

Meeting was opened to the public for comment.

Kevin Balistierri, Esquire appeared on behalf of Joseph and Jane Visalli, owners of the property located at 6900 Atlantic Avenue, who were objecting to the Applicant's proposed interpretation of the two Ordinance provisions in question.

Mr. Balistierri distributed a packet of exhibits containing photographs, correspondence, and print-outs of the Borough's Ordinance relevant to the interpretations in question which was received by the Board and which was marked as Exhibit O-1.

Mr. Balistierri advised the Board that his clients took issue with the contention that the owner of a corner lot can change the designated side and rear yard after the development of a property.

He indicated that based upon the historical orientation of the subject property, the rear yard is clearly parallel to Atlantic Avenue, and the side yard is clearly parallel to Myrtle Road and adjacent to the Visalli Property.

With respect to determining fence height, Mr. Balistierri indicated that the Ordinance provides that the average grade within 10ft. of the location of the fence is utilized to determine the permitted height of a fence. He stated that the logical approach would be to utilize a 10ft. radius from the location of the proposed fence which would include an analysis of the grade of the neighboring property as well as the subject property.

Philip Sartorio, P.P., A.I.C.P., a professional planner, appeared on behalf of the Visallis in opposition to the Applicant's proposed interpretations.

Mr. Sartorio was accepted by the Board as an expert in the field of land planning and he was placed under oath and testified before the Board.

Mr. Sartorio advised the Board that the pending Application requests an interpretation of two sections of the Borough's Land Development Ordinance, specifically the designation of the rear and side yards of a corner lot, and how to determine permitted fence height by analyzing the average grade within 10ft. of the location of the fence in question.

With respect to lot orientation and the definition of Corner Lot, Mr. Sartorio testified that the definition provides that the front, side, and rear are designated at time of initial development application.

Mr. Sartorio testified that he disagreed with Mr. Orlando's position that § 85-92(h) does not apply with respect to determining the designation of a side and rear yard.

Mr. Sartorio further testified that existing platting patterns provide that the historic lot orientation should dictate, requiring corner lots and lots fronting onto to north-south roadways to be oriented so that the main entry façade is facing the north-south directional street.

Mr. Sartorio referred to the definition of 'Lot Front of' within §85-11 which specifically defines the lot front as follows, "[i]n the case of a lot abutting one street only, the edge of the lot which abuts the street. When a lot abuts two or more streets, the front of the lot is that abutting side which is so designated on the lot plan by the owner; and abutting edges adjacent to the designated front shall be considered as sides of the lot. Any other edge abutting a street, which is not a front or side as above defined, shall also be considered a front."

Mr. Sartorio testified that based upon the referenced definitions and the provisions of §85-92(h), the subject property contains frontage along Atlantic Avenue which means that the yard parallel to said frontage would be the rear yard, and the yard adjacent to the Visalli Property and parallel to Myrtle Road is the side yard.

Mr. Sartorio referenced historical photos of the subject property noting that same was originally developed with a one-story rancher which was oriented towards Atlantic with the Rear oriented towards Seaview Avenue.

He indicated that a freestanding garage constructed in the 1970s and subsequent additions were completed which connected the principal structure to the detached garage.

Mr. Sartorio contended that the front yard has always been Atlantic Avenue and the side yard has always been the side perpendicular to Atlantic Avenue between the Del Monte and Visalli properties.

Mr. Sartorio informed the Board that there is no information or documentation which explicitly confirms which yard was designated as the side and rear yard at the time that the structure was originally constructed in 1948.

Mr. Sartorio testified that the Borough's Ordinance would allow a property owner to designate the side and rear yard at the time of development; however, he indicated that they cannot be changed after that original designation.

Board Members raised questions and concerns about the location of the detached garage. The Board indicated that based upon the location of the garage it would appear that the portion of the property adjacent to the Visalli property is in fact the rear yard.

Board Member Vodges indicated that the location of the garage, the manner in which same was constructed, and the setbacks which were proposed would seem to confirm that the property line parallel to Myrtle Road, and adjacent to the Visalli Property is the rear yard.

Mr. Sartorio disagreed and contended that the portion of the property adjacent to the Visalli Property is more appropriately viewed as a side yard.

Board Member Vodges indicated that the existing setbacks provide extrinsic evidence disputing Mr. Sartorio's claim and would further support the argument that the northern property line parallel to Myrtle Road is the rear yard.

Mr. Sartorio reiterated the definition of 'Lot Front of;' however, the Board questioned this argument/interpretation as the definition of Corner Lot specifically calls for and requires the designation of a rear yard.

The Board indicated that Mr. Sartorio's interpretation would support an argument which would provide that no rear yard exists whereas the definition in question requires a rear yard designation.

Mr. Sartorio reviewed and discussed §85-82(k) which establishes the method to measure fence height.

Mr. Sartorio testified that the Ordinance in question is clear and specifically provides that fence height is measured from average grade within 10ft. from base of wall or fence.

He indicated that the Ordinance in question does not reference 10ft. on one property and not an adjacent property. Stated otherwise he contends that the Ordinance in question insinuates a 10ft. radius on either side of the location of the fence to determine average grade.

Mr. Sartorio testified that a radius ensures that the impact of fence is minimized to neighboring properties and ensures that the fence is not too obtrusive.

At the conclusion of Mr. Balistierri's opposition presentation, two (2) additional individuals addressed the Board in connection with this Application, namely:

Carolyn Young, owner of the property located at 6909 Seaview Avenue, appeared and she was placed under oath to testify before the Board. Mr. Young expressed concerns in regards to the height of the fence at the subject property. She indicated that she understood that the interpretation that is requested would apply generally throughout the Borough and is not specific to the subject property. She indicated that the Borough's Land Development Ordinance speaks to a consideration of the "greater good" and she indicated that the Board should consider the impact that the interpretation will have on the community and development within same. She expressed concerns about space between fences and raised concerns about the height of the fence at the subject property and claimed that same blocked her views of the beach.

Erica Vastecki, owner of the property located at 300 E. Lotus Road, appeared and she was placed under oath to testify before the Board. Ms. Vastecki expressed concerns about fence heights and impact on neighboring property views and aesthetics.

No additional members of the public addressed the Board in connection with this application. Accordingly, the public portion of this application was closed.

Board Solicitor David Stefankiewicz, Esquire reviewed the variance relief sought by the Applicant and provided the findings of fact for the record.

During deliberations, Board Member Stuart indicated that the issue associated with the designation of side and rear yards of corner lots is clearly addressed in the Ordinance, specifically the definition of Corner Lot. He indicated that the Ordinance, as written, provides that the owner of a Corner Lot would get to decide where a side and rear yard are located at the time of development and/or at the time of the submission of a construction permit.

Mr. Stuart indicated that he believed that it was clear that the northern property line, perpendicular to Atlantic Avenue, is the rear yard.

Mr. Stuart stated that in his opinion the interpretation associated with the average grade to determine fence height would require a review of the average grade of both properties adjacent to the location of a proposed fence.

Board Member Vodges indicated that he agreed that the designation of a side and rear yard is explicitly clear in that the Ordinance allows the owner of a corner lot to designate same at the time of development or submission of a construction permit.

Mr. Vodges stated that the existing setback measurements of the subject property clearly show that the northern property line is the rear yard. Notwithstanding, he indicated that he believed, based upon the language set forth within the Ordinance, that the owner of a corner lot has the right to designate their side and rear yard at the time of development or in connection with the submission of a construction permit. With respect to average grade and determining the permitted fence height, Mr. Vodges indicated that he believed that the determination should be made on a case-by-case basis.

He expressed concerns that interpreting the ordinance to measure average grade using a radius of 10ft. to include an Applicant's property and adjacent property as same could result in the height of a fence which is below what is otherwise permitted by Ordinance.

Board Member Mettler raised concerns about the time that an Applicant/Owner designates a side and rear yard and the possibility that that designation can change after the initial designation.

Board Solicitor David Stefankiewicz reviewed the corner lot definition that the same provides that the designation is made at "the time of original construction or any time a construction permit is submitted."

Mr. Mettler agreed that the designation of the rear and side yards are permitted to be made by an owner/application.

He expressed concerns about determining average grade, and indicated that he believed that a 10ft. radius of the average grade on either side of the proposed fence is the correct approach.

Board Member Cava agreed with the statements made by other Board Members.

At the conclusion of Board deliberations, the Board found that the designation of a side and rear yard of a corner lot is the sole decision of the applicant/owner, and same can be designated at the time of development or any time that a construction permit is submitted

With respect to fence heights and average grade, the Board determined that it was appropriate to interpret the Ordinance to require that a 10ft. radius of the average grade should be considered when determining the permitted height of a fence.

On Motion of Mr. Vogdes and 2nd by Mr. Cava to approve interpretation of front yard/side yard of a corner lot:

Fred Mettler: yes	Pete Cava: yes
Bradley Vogdes: yes	Brian Stuart: yes

On Motion of Mr. Mettler and 2nd by Mr. Cava to approve interpretation determining fence height grade radius:

Fred Mettler: yes	Pete Cava: yes
Bradley Vogdes: no	Brian Stuart: yes

Pat Davenport leaves meeting at 5:55pm

Joe Franco leaves meeting at 6pm

Angela Daniels enters meeting at 6:03pm

Barbara Hunt, Brian Melchiorre and Angela Daniels return to the meeting.

Application PB-23-03 for 423-425 Louisville Avenue a/k/a blk 100.2 lots 15.03 & 15.04 in Zone M1-B owner Harold & Brunilda Hurwitz; seeking "C" variance.

The Applicant was represented by Cory Gilman, Esquire who outlined the nature of the application and the relief sought in connection with same.

Mr. Gilman advised the Board that the subject property is located in the M-1-B zone and it is currently developed with a single-family dwelling.

Mr. Gilman reminded the Board that the subject property was before the Board back in September 2022 in connection with a prior application to improve the outdoor space to include a pool, cabana, walkway, and patio area.

The Board approved the majority of the prior application, but denied variance relief associated with the proposed minimum front yard setback and maximum lot coverage.

Mr. Gilman advised the Board that the Applicant redesigned the proposed outdoor patio/cabana and swimming pool area in effort to improve the beachfront yard/entertainment area which is accessory to the single-family home that has been constructed on the interior lot.

The revised plans propose a reduction in the scope of the project in an effort to eliminate and minimize the need for variance relief.

The Applicant is now proposing a compliant front yard setback and has reduced the proposed lot coverage by approximately 4% compared to what was proposed back in September 2022.

Mr. Gilman indicated that the consolidation of lot, a required public easement/walkway along the beach, and the existing pool, driveway, and cabana, all of which have already been constructed, present practical difficulties in complying with the maximum permitted lot coverage of 55%.

Christina D'Arrigo, R.A. and Thomas D'Arrigo, R.A., with TJD Architects & Engineers, P.C., appeared before the Board on behalf of the Applicant. Ms. D'Arrigo and Mr. D'Arrigo were both accepted by the Board as experts in the field of architecture, and they were placed under oath and testified from the proposed site and architectural plans, consisting of five (5) sheets, dated January 27, 2023, which were received by the Board and which are incorporated herein as fact.

Ms. D'Arrigo advised the Board that a single-family dwelling has been constructed on the interior portion of the site, the proposed pool has been installed, and the cabana is currently under construction. She confirmed that the only variance requested is associated with maximum lot coverage as 55% is permitted whereas 70.6% is proposed, or 65.7% if the Board were to consider a 50% reduction in connection with the utilization of permeable pavers.

She reviewed the modified site plan and highlighted revisions that were made for the benefit of the Board.

Ms. D'Arrigo testified that the Applicant has substantially reduced the overall footprint of cabana, and she confirmed that same now meets the required 18ft. front yard setback.

She noted that the footprint of cabana and size of the pool were reduced in order to reduce proposed impervious coverage as 75% was originally proposed in September of 2022, and 70.6% is now proposed.

Ms. D'Arrigo testified that the Applicant has also incorporated grass and landscaping features around the pool area to further reduce lot coverage.

She noted that a required public walkway that was imposed in connection with the issuance of an NJDEP CAFRA permit was constructed using travertine pavers which resulted in an increase in lot coverage.

Ms. D'Arrigo testified that the Applicant could eliminate the travertine pavers in the area of the public walkway in order to implement grass which would reduce lot coverage to 56.3%; however, the Applicant believes that maintaining the travertine pavers in this area is a benefit to the public and the Borough as the Louisville Avenue entrance to beach was just redeveloped and improved.

She indicated that the driveway has also already been installed which is consistent with original subdivision approvals, and which also results in increased lot coverage.

Ms. D'Arrigo advised the Board that the Applicant elected to utilize permeable pavers in all available areas in an effort to mitigate lot coverage.

She indicated that the manufacturer of the permeable pavers indicates that same are 100% permeable, and she distributed a specification document which outlines the permeability of the pavers which was received by the Board and which was marked as Exhibit A-1.

The Borough's Ordinance does not specifically allow for a 50% coverage reduction for the utilization of permeable pavers; however, Ms. D'Arrigo advised the Board that she believed that a 50% coverage reduction was appropriate given the fact that the pavers themselves are 100% permeable

In response to a question posed by the Board, Ms. D'Arrigo testified that, if the pavers were accepted as 100% pervious, the subject property would be compliant with permitted lot coverage.

Ms. D'Arrigo opined that the proposed impervious coverage will not negatively impact stormwater or drainage as a stormwater management system was previously installed on site.

Ms. D'Arrigo opined that the application can be granted as there are no substantial detriments to the public good and the application does not impair the intent and/or purpose of the zone plan or zoning ordinance.

The site is less dense than what was originally approved to be constructed on site.

She further testified that the majority of the impervious area is associated with the public access walkway, the driveway, the pool, and the cabana; however, she contended that same will not negatively impact neighboring properties.

Ms. D'Arrigo opined that the purposes of zoning, outlined within N.J.S.A. 40:55D-2, are advanced in connection with this application and support the relief sought by the Applicant as it:

Provides adequate light, air and open space as the area in question is an outdoor entertainment environment, and the Applicant has reduced the overall height of the cabana while also relocating same to the rear of the property in order to minimize the impact to neighboring properties;

Promotes the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;

Provides sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens as the developed outdoor area is consistent with the permitted residential use and will preserve beachfront views and access; and Promotes a desirable visual environment through creative development techniques and good civic design and arrangement.

Ms. D'Arrigo advised the Board that the driveway, required public easement area, and outdoor pool/cabana areas present practical difficulties in complying with lot coverage requirements.

In response to a question posed by the Board Engineer regarding drainage, Ms. D'Arrigo testified that a stormwater management system was installed on site consisting of trench drains and sump drains. She further confirmed that proposed downspouts would be tied into the stormwater management system. A discussion ensued between the Board Engineer and the Applicant's professional in regards to the utilization of permeable pavers and the claimed 50% lot coverage offset.

Mr. Mohnack advised the Board that a lot coverage of 70.6% is proposed; however, same is reduced to 65.7% lot coverage with a 50% reduction associated with the permeable pavers if same is deemed acceptable to the Board.

Mr. Mohnack indicated that a lot coverage of 56.3% would be proposed if the Applicant was able to claim a 100% offset for the permeable pavers.

A discussion ensued about the maintenance of the permeable pavers and the impact that the substrate would have on the permeability of the pavers and the site itself. As a condition of approval, the Applicant will prepare and submit a maintenance plan for the permeable pavers, and same will be reviewed and approved by the Board Engineer.

Harold Hurowitz, the principal of NSH26, LLC and the owner of the subject property, appeared and he was placed under oath to testify before the Board.

Mr. Hurowitz testified that the permeable pavers in the driveway area were reviewed/inspected by Construction Office at the time of installation.

He indicated that the driveway was installed a year ago and he advised the Board that he has had no issues with drainage or water ponding on site. He contends that the stormwater management system functions properly, and any increase in coverage would have no impact on same.

In response to a question posed by Board pertaining to the public access walkway, Ms. D'Arrigo testified that the Applicant considered eliminating coverage in this area through the incorporation of grass and landscaping features; however, the Applicant's engineer objected noting that plantings would create a potential trip hazard and would amount to a violation of issued CAFRA permit.

Ms. D'Arrigo testified that the travertine pavers could be eliminated and replaced with grass; however, she indicated that same would be a detriment to the public and have a negative impact on public access in this area. Ms. D'Arrigo testified that the utilization of pavers is low maintenance, and creates an aesthetically pleasing element to the project and the general public.

Board Members raised concerns about the proposed lot coverage and the fact that same still significantly exceed what's permitted in the zone.

Board Members expressed concerns in regards to the fact that the driveway, pool, and cabana have already been constructed without complying with lot coverage requirements or without obtaining variance relief to exceed maximum permitted lot coverage.

Ms. D' Arrigo testified that the pool itself is approximately 829SF and same was reduced in size compared to what was originally proposed. She indicated that if the pool were removed the site would still exceed permitted lot coverage.

Ms. D'Arrigo expressed opposition to eliminating pavers on site; noting that hotels within the M-1-B zone are permitted to provide a maximum lot coverage of 85%. She indicated that the Applicant's proposal is significantly less than what could be implemented in connection with a permitted hotel.

She argued that the site is functional, and, on balance, the revisions made to the plan addressed the Board's prior concerns while still meeting needs of Applicant.

Board Members took issue with the request for a 50% offset for the utilization of permeable pavers as the Borough's Ordinance does not specifically permit an offset of lot coverage.

Borough Engineer Marc DeBlasio, P.E., P.P., C.M.E., prepared an Engineer's Report dated April 18, 2023 which was received by the Board and which is incorporated herein as fact. Joseph Mohnack, P.E., a professional engineer and employee with Mr. DeBlasio's office, appeared at the meeting and reviewed said Report for the benefit of the Board, and he note the conditions outlined therein. As a condition of approval, the Applicant will comply with any and all comments/conditions set forth within the Engineer's Report.

Mr. Mohnack confirmed the variance relief sought in connection with this Application.

The Meeting was opened to the public for comment. No members of the public addressed the Board in connection with this application. Accordingly, the public portion of this application was closed.

Board Solicitor David Stefankiewicz, Esquire reviewed the variance relief sought by the Applicant and provided the findings of fact for the record.

Findings of Fact accepted on motion of Mr. Melchiorre and 2nd by Ms. Hunt

Barbara Hunt: yes

Brian Melchiorre: yes

Fred Mettler: yes

Pete Cava: yes

Angela Daniels: yes

Brian Stuart: yes

Bradley Vogdes: yes

The Board accepted the findings of fact and thereafter opened the Application up for deliberation. During deliberations, the Board agreed that the proposed development is aesthetically pleasing and unique within the Borough; however, a majority of the Board expressed concerns in relation to the proposed lot coverage and they agreed that there was ample area on site to further reduce lot coverage to comply with the maximum lot coverage permitted in the zone.

Board Members indicated that the Applicant's proposal amounted to an overdevelopment of the site, and they agreed that the proposed cabana and 42ft. long pool, while beneficial to the Applicant, could have been revised to further reduce lot coverage.

Board Members raised concerns about the fact that the cabana and pool were built without required lot coverage approvals, and they disagreed with the Applicant's contention that the fact that these improvements exist create a hardship to the Applicant.

A majority of the Board agreed that the purposes of zoning identified by Ms. D'Arrigo would not be advanced in connection with this project.

The Board further found that that the proposed lot coverage would result in substantial detriments to the public good and same would impair the intent and purpose of the zone plan and zoning ordinance.

On Motion of Mr. Mettler and 2nd by Ms. Daniels to approve lot coverage.

Barbara Hunt: no

Brian Melchiorre: no

Fred Mettler: yes

Pete Cava: yes

Angela Daniels: no

Brian Stuart: no

Bradley Vogdes: no

ADMINISTRATIVE RESOLUTIONS: None

OLD BUSINESS:

Condo/Hotel Conversion

Bike Connectivity Path

Bulkheads

NEW BUSINESS: None

OPEN TO PUBLIC COMMENT: None

ANNOUNCEMENTS: The next regularly scheduled meeting is 2 August, there is one application scheduled at this time to go before the board on that date.

ADJOURN: On motion of Mr. Melchiorre, second by Ms. Daniels and unanimous voice vote, the Chairman adjourned the meeting 9:30pm.

Pamela Riper
Planning Board Secretary