

**WILDWOOD CREST LAND USE BOARD MEETING
ZONING BOARD OF ADJUSTMENT
Meeting Minutes – 21 March 2017
Borough Hall, 6101 Pacific Avenue**

draft

Chairman Pete Cava called the meeting to order at 5:00 pm, led the Pledge of Allegiance, and read the Open Public Meetings Act and announced emergency exits.

Secretary Rogers took roll call: Carr; present; Cava, present; Hornsby, absent; Seijas, present; Compare, absent; Stuart, absent; Levy, absent; Tenaglia, present; Rosenfeld, present; Solicitor Robert T. Belasco, Esq., present; Zoning Officer Malia, present; Secretary Rogers, present. A quorum was declared.

Solicitor Belasco swore in Zoning Board members Seijas and Rosenfeld. Chairman Cava presented Mr. Tenaglia and Mr. Rosenfeld their certificates for completion of the mandatory training.

Minutes from the meeting of 17 January were distributed for review and approval or correction. Mr. Carr moved to approve the minutes as distributed; Mr. Tenaglia seconded. Roll call: Carr, yes; Seijas, abstain; Tenaglia, yes; Rosenfeld, abstain; Cava, yes. Minutes approved.

There was one application to come before the Board:

ZB-17-03-01: Monarch Condominium Association, 5501 Atlantic Ave.; a/k/a blk 6.03, lot, 21; seeking "c"1 variance relief from height requirements (Land Use Ordinance Section 85-82) to erect a 6' fence in the front yard. The association was represented by Chris Gillin-Schwartz, Esq. Mr. Gillin-Schwartz summarized the application, saying the pool is on Atlantic Ave., and there is a problem with "pool hopping". (The practice of unauthorized members of the public entering the pool area and using the facilities.) He distributed a photo which was marked as exhibit A-1 showing the location of the pool and the fence and noted that the Borough Land Use Ordinance permits a 4' fence in a front yard, and they are seeking to erect a 6' fence. Ellen R. Cericola, owner of a unit in the Monarch condos, who spoke on behalf of the condominium association, was sworn in. Ms. Cericola testified that she has owned a unit in the building since 2009 and has witnessed and been informed of many instances of "pool hoppers". She said people enter the pool by jumping the fence, and the association has concerns for safety and liability as this occurs most often after hours. Mr. Carr asked if the evergreen trees (arborvitae) as shown on A-1 would remain if the application is approved. Ms. Cericola replied that the fence installers would make the determination. Mr. Tenaglia asked if the association has any other security measures like cameras in place. Ms. Cericola said no, but the association has consulted with the Crest Police Dept. as to what wording could be used signage to discourage trespassers. She said the association has also considered issuing pool passes to members, but there is no one on site to monitor this after hours. In answer to Mr. Seijas, Zoning Official Patrick Malia explained the timeline of the application and showed pictures (which were part of his report) of an overhead view which indicate the location of the pool in question and the surrounding fence. Ms. Cericola said the plan is to increase the height of the fence to 6' at any possible access point, leaving the height at 4' in an area abutting the association's adjacent courtyard. Mr. Malia noted the fences on Atlantic Ave. are on the property line, adding that the trees are on Borough property but maintenance is the responsibility of the property owner. Mr. Tenaglia asked if the fence could be moved back on to the association's property to a location that would permit the 6' height. Ms. Cericola said the kiddie pool and pool equipment are located in the area near Atlantic Ave. and cannot be relocated. Mr. Seijas asked if there have been any similar applications. Mr. Malia said no, and there are many pools in the Borough in a like location. Mr. Seijas opined that the Land Use Ordinance has "failed" regarding fences for such pools. Mr. Malia quoted the UCC, saying 4' is the minimum height requirement for a pool surround fence. Mr. Gillin-Schwartz said this is a unique situation in resort towns. Questions were raised regarding the angled fence and site triangle for the neighboring driveway. Mr. Gillin-Schwartz said the new fence would be installed in the same footprint as the current fence, maintaining the site triangle.

Mr. Malia read his report and the Board Engineer's report into the record. Both are attached hereto and made part hereof. Solicitor Belasco reiterated the relief sought and explained the "c" variance criteria and purposes of the zoning act reminding the Board to weigh the benefits and detriments of the application.

Mr. Seijas opened deliberation saying the application presents a peculiar and practical difficulty; there is an inherent hazard in a front yard pool with a 4' fence. He opined it would be difficult to deny the application considering the safety concerns.

Mr. Tenaglia expressed concern that this is no different than many other pools, and the property owner should be policing the issues.

Mr. Seijas pointed out the difficulty in self-policing in a congested area.

Mr. Carr added that there are large trees already, and adding 2' to the fence would not have a significant impact and would help with safety issues. He said he sees no detriment.

Mr. Tenaglia said they could fill the kiddie pool and move the fence back.

Ms. Cericola interjected that the pool equipment is also located in that area and would be impossible to move.

Mr. Gillin-Schwartz stated that denying this relief would impact the health, safety and welfare of the community.

Mr. Rosenfeld said granting the variance would not guarantee safety, but he sees no detriment. Solicitor Belasco reminded the Board that each application stands on its own merits, and no precedent is set by the granting of a variance.

Mr. Cava said the situation exists and asked as to the type of fence the applicant is considering and if the Board would like to add the type of fence as a condition.

Mr. Tenaglia asked if they are allowed to build a fence, what would prevent them from building a concrete wall. Mr. Malia replied that such a wall would require additional variance relief. Mr. Tenaglia reminded the Board that there are many pools like this and no other has applied for such variance relief.

Mr. Carr said safety concerns are the crux of the matter.

Mr. Gillin-Schwartz summarized saying approval of the application would promote the purposes of zoning.

No members of the public spoke for or against the granting of the variance.

Solicitor Belasco read the findings of fact into the record. Mr. Seijas moved to accept the findings of fact; Mr. Carr seconded. Roll call: Carr, yes; Seijas, yes; Tenaglia, yes; Rosenfeld, yes; Cava, yes. Findings accepted.

Mr. Seijas moved to approve the application as presented; Mr. Carr provided the second. Roll call: Carr, yes; Seijas, yes; Tenaglia, no; Rosenfeld, yes; Cava, yes. Application approved.

There were resolutions memorializing Board action.

There were no administrative resolutions.

There was no old business.

Under new business, Solicitor Belasco instructed the Board that in the event any member is approached by an applicant or potential applicant, no conversation should take place or opinion be rendered regarding the application. The applicant should be directed to contact the Zoning/Construction Office with any inquiries.

Mr. Seijas reminded the Board that it is not a function of the Board to suggest changes to applications at the time the application is being heard. The Board should act on the application as presented.

No members of the public spoke.

The secretary informed the Board that there are applications to be heard in April and May.

On motion of Mr. Carr, second by Mr. Carr, the Chairman adjourned the meeting by affirmative voice vote at 6:05 p.m.

_____ Secretary