

ALPINE ZONING BOARD OF ADJUSTMENT

Regular Meeting

Thursday, September 17, 2015 - 7:30 P.M.

(This meeting was taped in its entirety).

CALL TO ORDER/PLEDGE OF ALLEGIANCE/PUBLIC ANNOUNCEMENT

This regular meeting of the Alpine Zoning Board of Adjustment was called to order by Chairman Glazer at 7:30 p.m., Thursday, September 17, 2015 at the Alpine Borough Hall, the Pledge of Allegiance recited and the Public Announcement read according to the requirements of N.J.S.A. 10:4-6 et seq.:

In accordance with the provisions of the Open Public Meetings Law, the notice of this regular meeting held Thursday, September 17, 2015 has met the requirements of the law by being published in The Record as part of the Annual Notice on January 7, 2015, posted on the bulletin board in the lobby of the Borough Hall and a copy filed in the office of the Borough Clerk.

ROLL CALL

Richard Glazer	Present	Bob Burns	Present
Tony Clores	Present	David Kupferschmid	Present
Anne Ronan	Absent	Richard Bonhomme	Present
Steve Cohen	Absent	Anthony Barbieri, Alt I	Absent
Jeffrey Mayer	Present		

Staff Present on Dais: Board Attorney Michael Kates,
Borough Engineer Gary Vander Veer, Board Secretary Nancy Wehmann

COMMUNICATIONS

1) Copy of Borough Engineer's 6/18/2015 letter to the Construction Code Official re: Conway Block 70 Lot 3 – 11 Litchfield Way re: update regarding items yet to be fulfilled. No action required. (Resolution 4/16/2015)

PROCEDURAL MOTIONS

Resolution: Approval of Bills and Claims Upon a motion by Mr. Clores, seconded by Mr. Bonhomme and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, September 17, 2015 to approve the following Bills and Claims:

<i>Kates, Nussman, et.al.</i>	<i>5-01-21-185-021 Apr mtg</i>	<i>Inv. 20307</i>	<i>200.00</i>
<i>Azzolina & Feury</i>	<i>Escrow Schwartz 22/2</i>	<i>Inv. 63831</i>	<i>508.25</i>
<i>Azzolina & Feury</i>	<i>Escrow Schwartz 22/2</i>	<i>Inv. 64026</i>	<i>564.75</i>
<i>North Jersey Media Group</i>	<i>Escrow Conway 7093</i>	<i>Inv. 3852019</i>	<i>19.85</i>

MOTION CARRIED

Resolution: Return of Escrow Upon a motion by Mr. Bonhomme, seconded by Mr. Clores and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, September 17, 2015 to return the following escrow which have been reviewed and approved by the Board Attorney and Borough Engineer.

Steven & Robin Abramow Trust AC 70138	Block 74 Lot 3 34 Warren Lane	Application 9/16/2014 Resolution 11/20/2014	\$232.54
--	----------------------------------	--	----------

MOTION CARRIED

Resolution: Approval of Minutes: Regular Meeting April 16, 2015

Upon a motion by Mr. Mayer, seconded by Mr. Bonhomme and approved by all those eligible to vote at this regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, September 17, 2015 to approve the minutes of the regular meeting held on April 16, 2015.

MOTION CARRIED

NEW HEARING**Jeffrey & Iris Schwartz, Block 22 Lot 2 – 12 Tulip Tree Lane**

Matthew G. Capizzi, Esq 11 Hillside Ave., 2nd Fl., Tenafly, NJ 07670 appeared on behalf and with Applicants Jeffrey and Iris Schwartz, Michael Hubschman, PE, PP of Hubschman Engineering, 263A Washington Avenue, Bergenfield, NJ 07621 and Ken Ochab, PP, 1216 Fair Lawn Avenue, Fair Lawn, NJ 07410. No one from the public spoke to the application. Applicant seeks a "D" variance to construct an in-ground swimming pool and patio in the Buffer (B) Zone. Attorney Capizzi notes the site is a unique split zone with the front portion in the Residential (RA) Zone and rear portion in the Buffer (B) Zone. The latter does not permit construction of any improvements except for public or private conservation areas. This is essentially the same as Mr. Schwartz's parent's 1992 application which was approved by the Board but lapsed. The prior application was treated as a "c" or bulk variance. More recently the Board determined Buffer Zone applications should be treated as "d" or use variances.

Chairman Glazer asked Attorney Kates to read the definition for a "d" variance. Attorney Kates stated, "*N.J.S.A. 40:55D-70(d) allows for a variance to depart from regulations to permit a use or principal structure in a district restricted against such use or principal structure and, in the absence of inherently beneficial uses (i.e. houses of worship) which does not apply in this case, the applicant is required to prove special reasons comprised of planning considerations in the general interest of the community that suggest that a variance can be granted.*" Borough Ordinance §220:9E states, "*the buffer zone can only be used for public or private natural conservations areas.*" The burden on the applicant is high as they must provide proofs as to special reasons and satisfy positive and negative criteria to demonstrate the use is a benefit and not a detriment to the surrounding properties or Zone Plan. The Board changed its approach from treatment as a "c" to "d" variance, acknowledging the Governing Body's creation of the separate conservation-type zone that does not allow any uses except those that are consistent with non-build or preservation uses, and has since been consistent with that application to all properties in the split zone. That said, variances have been granted by the Board where the request is consistent with the idea of preservation. A weighted majority of five is required for approval.

Attorney Capizzi asked the Board to consider context differentiating between a stand-alone Buffer Zone and a split zone with an existing dwelling. He'll submit proofs the rear yard was manicured lawn dating back to the 1980s. No tree removal is required. The proposed pool and patio would be tucked into the pre-existing outdoor terrace area that already extends 25 feet into the 200 foot Buffer Zone. Photos will establish heavy vegetation and landscaping precludes any views from Route 9W thereby consistent with and continuing the intent of the Buffer Zone.

Exhibit List noted as follows and supplemented during the course of the proceedings.

- A – 1 Proof of Publication The Record dated August 8, 2015
 - A – 2 Proof of Mailing To Residents August 7, 2015 within 200' per Tax Assessor's list dated July 30, 2015
 - A – 3 Application Form signed and dated May 13, 2015 revised June 8, 2015 including:
 - Proposal and Reasons for Relief dated May 12, 2015
 - Tax Collector's proof of taxes paid through 2015 3rd Quarter
 - A – 4 Zoning Officers Letter dated April 9, 2015
 - A – 5 Set of three colored photos undated
 - A – 6 Set of Site plans prepared by Michael J. Hubschman PE PP of Hubschman Engineering signed and sealed consisting of 2 pages dated February 17, 2015 last revised #2 June 4, 2015 "Modified Pool & Spa"
 - Drawing No. 2718-4 entitled "Pool Plan"
 - Drawing No. 2718-5 entitled "Soil Erosion and Sediment Control Plan, Details and Notes"
 - A – 7 Soil Moving Report prepared by Hubschman Engineering dated February 15, 2015
 - A – 8 Drainage Report prepared by Hubschman Engineering dated February 17, 2015 Rev. 1 June 4, 2015
 - A – 9 Prior Zoning Board Application October 6, 1987
 - A – 10 Prior Zoning Board Application September 3, 1991
 - A – 11 Prior Zoning Board Application February 4, 1992
 - A – 12 Letter from Borough Engineer May 29, 2015
 - A – 13 Letter from Borough Engineer June 17, 2015
 - A – 14 Applicant's email August 17, 2015 extending to September 17, 2015 (lack of quorum sufficient to hear the use variance)
- Marked during the course of proceedings¹:
- A – 15 Colorized version of A – 6 Drawing No. 2718-4 entitled "Pool Plan"
 - A – 16 Additional set of 4 color photos prepared by Michael J. Hubschman PE PP dated August 5, 2015
 - A – 17 Photo board presented by Ken Ochab, Planner
 - A – 18 Photo board presented by Ken Ochab, Planner

Michael Hubschman, PE, PP was sworn and having testified before the board on numerous occasions accepted as an expert in professional engineering. Mr. Hubschman referred to a colorized version of the pool plan [**Exhibit A-6**] marked [**Exhibit A-15**] to describe the site:

Existing Conditions This is a 2 acre lot fronting Tulip Tree Lane and backing up to Route 9W with mostly level topography. An existing single family dwelling constructed in the 1980's is located 202 feet from the rear property line with a front yard setback of 77 feet. An existing patio area is located to the north rear of the house. 55,315 square feet or 63% of the property is located in the Buffer "B" Zone with the remaining front portion in the R-A Zone. Lot width and frontage comply with bulk requirements. The northerly side yard setback complies at 50.9 feet. The required rear yard setback is 100 foot in the R-A Zone but 200 feet in the Buffer Zone. A pre-existing patio is 172.25 feet from the rear property line as described in the 1992 approval and was probably built with the home. Building coverage is 6.3% where 9% is the maximum permitted. Improved lot coverage is 15.83% where 25% is the maximum permitted. The proposed would increase this to 18.58%.

¹ Note Exhibits A – 15, A-17 and A-18 were not retained for the file.

Existing Landscaping Additional photos [Exhibit A-16] depict heavily buffered views from Route 9W. Thickly wooded vegetation comprised of a mix of deciduous and evergreen trees include a large arborvitae hedge, hollies and laurels cover the rear property to a depth of 70 feet on the north increasing to about 130-140 feet on the south. It was difficult mapping the existing fence as it weaves through the thick woods.

Proposed Pool and Patio Design The design is the same as the 1992 approval except they now propose to tuck the spa into the pool rather than locating it outside. The pool would be 18 x 40 feet located 8 feet from the house with a small patio. Public pools are required to be 10 feet from a building. There is no requirement for a private pool but any closer would really not be safe. The pre-existing patio is 172.2 feet and the new patio area would be 169.5 feet from Route 9W. The pool is flush with the ground on a level lot and would not be visible from Route 9W. No grading is required so they are only excavating and removing 153 cubic yards for the pool. This would be a minor soil moving permit under the purview of the Borough Engineer. The space is lawn area with no tree removal required. Runoff directed from small lawn drains to a Cultec chamber on the south side. There are no other feasible locations on site as the 200 foot buffer zone comes right up to the back of the house. They cannot move the pool closer to the house.

Fence Per Mr. Vander Veer's letter of June 17, 2015 [Exhibit A-13 Item II.7.] Mr. Hubschman advised an existing five foot chain link fence along the rear will be repaired and additional fencing installed along the sides including self-closing, self-locking gates to comply with the fencing requirements for a pool.

Chairman Glazer opened for questions from the public. There were none. Chairman Glazer opened for questions from the Board.

Chairman Glazer questioned rock removal. Mr. Hubschman advised they have not done test pits but assume removal of soil and bedrock to a depth of 8-9 feet for the pool will be required. Chairman Glazer advised caution not to disturb the foundation if approved.

Attorney Kates questioned the prior resolutions. Attorney Capizzi noted they involved different criteria. It was denied twice with Board concerns about scale relative to the buffer and approved the third time after they made it smaller and pulled it closer to the house. Mr. Bonhomme noted that approval was subject to landscaping.

Mr. Vander Veer questioned grading to ensure water from the pool deck flows into the drains. Mr. Hubschman replied grading needed is minor. There'll be no runoff to neighbors.

Ken Ochab, PP was sworn, provided his credentials² and deemed qualified as an expert in his field. He was planner for the original applications, has reviewed this application, the Zoning Ordinance, the 1994 and 2002 Master Plans and made several site visits taking photos. He traced discussion to establish the buffer zone back to 1978 relative to land donations by the Rockefeller family which included part of the Palisades Interstate Parkway. Requirements went into effect as part of the Zoning Ordinance requiring a 200 foot buffer from Route 9W. He opined intent of the Buffer Zone is twofold being 1) to enhance views for motorists and preclude the more developed views seen in Fort Lee and Englewood Cliffs

² License #2149, educated Rutgers University, in the field 40 years with 10 years Bergen County Planning Board, 15 years NJ Meadowlands Commission, private consultant since 1990 representing applicants and Boards. He is the Planner for Ridgfield Park. Has sat on principally Boards of Adjustment in Glen Rock, Franklin Lakes, Waldwick and Fair Lawn.

and 2) to protect property owners from traffic on Route 9W thereby preserving their peace, tranquility and quality of life.

Mr. Ochab presented photos **[Exhibits A-17 & A-18]** he took in May or June 2015 depicting views of the proposed pool area to show the current lawn area where post construction one would walk down steps from the pre-existing patio to the new pool and patio tucked in along the back of the house. Photos also depict extensive landscaping surrounding the sides and rear of the property. From the area of the proposed pool one cannot see Route 9W for the large natural vegetative buffer area in the background. Foreground shows a twenty foot row of established arborvitae evergreens with a smaller row of Linden trees in front which will continue to grow. The planted rows of trees continue up the sides of the property screening neighbors' views.

Mr. Glazer questioned distance to the neighbor and height of the arborvitae. Mr. Ochab noted the pool would be about 70 feet from the north property line and the neighbor's house is another 50 feet or about 110-125 feet total. The arborvitaes are at least 15 feet high. Photos show only the tip of the neighbor's chimney over the tree line.

Attorney Kates and Mr. Bonhomme questioned when the lawn area was established. Mr. Ochab recalled it was already there in 1989 when he started on the project. At that time there was no landscaping and only the natural buffer in the rear. This was prior to creation of the B Zone.

Mr. Ochab addressed "d" variance criteria.

Positive criteria The proposed location is particularly suited and conforms to the intent and purposes of the Master Plan and Municipal Land Use Law. They have a two acre parcel with 63% in the Buffer Zone and a 75 foot front yard setback which leaves only 39% and a narrow building envelope of actual land area to construct the home and amenities. The house was constructed prior to the zone change with a front yard setback of 77 feet thus the prior resolutions were treated as "c" variances from the 200 foot setback along Route 9W. They cannot move the house forward and side or front yards are not appropriate for a pool. Thus from a planning perspective and despite the B Zone, the proposed location, adjacent to the existing patio and tucked against the house, is particularly well suited and the most appropriate. It is consistent with the goals in both 1994 and 2002 Master Plans of providing sufficient space and appropriate locations having to do with residential life and land use. This is a quality of life issue providing for a pool in the most appropriate location with the least amount of impact. While master plans don't specifically discuss pool locations they do discuss in general that these amenities should be part of the Borough's land use plan and policy.

Negative criteria Based on his review of the documents, photos and site visits he can see no impact to the surrounding property or neighborhood. This is one of few sites along Route 9W with such total screening. Beyond the landscaping with evergreens and deciduous trees to the side and back lies a thickly wooded natural buffer at a depth of 140 feet on the south end to 70 feet on the north end shielding views from Route 9W or the neighbors. The house screens views from the lot on the opposite side of Tulip Tree Lane which is currently vacant. There is no impairment to the Zone Plan because the intent of the buffer zone is maintained. Only 5% would be disturbed for the pool, a minimal amount.

Special reasons Besides the site being particularly well suited this application is unique as it presents a real quality of life issue. The property owners have a two acre parcel and a desire to provide this amenity for their children and grandchildren but find they can't do it due to the zoning restriction. Typically there would be no need to argue for a pool as a use variance.

Mr. Glazer opened the hearing for questions. There were no questions from the public.

Mr. Kupferschmid asked how the existing patio got in the buffer zone. Mr. Ochab recalled it was built when the house was constructed which Mr. Capizzi thought was about 1986-1987. Mr. Kupferschmid asked when the B Zone was created. Mr. Ochab replied 1995. Mr. Bonhomme noted the September 3, 1991 **[Exhibit A-10]** resolution shows the pool at 36.5 feet into the buffer zone which was denied. Then the February 4, 1992 resolution **[Exhibit A-11]** as approved shows the pool only 28 feet into the buffer zone.

Jeffrey Schwartz, the Applicant, was sworn and testified the patio was included with the original plans and building permit. He stated they received a variance for the patio to encroach. About a year and a half later they applied for the pool.

Mr. Kupferschmid asked why they never built the pool after it was approved years ago. Mr. Schwartz explained his father developed Parkinson's Disease at age 54-55 and they had to deal with that.

Attorney Kates questioned if the pool width could be reduced to lessen the encroachment. Mr. Ochab noted the original request was for 25 feet which they reduced to 20 x 40 and then 18 x 36 for the 1992 approval. The proposed is 18 x 40. The length is not a concern.

Mr. Burns questioned the fence. Mr. Hubschman reviewed the proposal and requirements which Mr. Vander Veer affirmed are needed to comply with the pool code.

Being no further questions or comments Attorney Capizzi summarized. The proposed is a common accessory structure designed to be sensitive to the intent and purpose of the B Zone by tucking the pool and new patio behind the existing patio area requiring no tree removal. The level topography will not require significant site work. The original approval was conditioned upon landscaping and one benefit of the passage of time has been the accomplishment of that as clearly evidenced by the photos. The quality of what is there today shows the Applicants have an intention to create and maintain that existing buffer not only for their own benefit but for the benefit of the Buffer Zone.

Mr. Kupferschmid felt the negative criteria were definitely met and with 63% of the property in the Buffer Zone the proposed would not be a significant impairment to the neighbors. He further noted the property's developmental history and the prior approval. Other applications before the Board have not show the original intent, design and desire as this one has. This appears to have been in the works for a very long time and just got caught in the process. Chairman Glazer noted while the Board could decline he agrees that clearly the current patio will be elevated over the proposed pool and would not have an impact.

Upon a motion by Mr. Kupferschmid, seconded by Mr. Clores to approve the application.

Vote: Ayes: Clores, Burns, Kupferschmid, Mayer, Glazer **Nays:** Bonhomme

MOTION CARRIED

OTHER BUSINESS

Mayor Tomasko advised the quarterly newsletter will be coming out later this month and will include updates on the following.

- Reversion to the former curbside recycler and anticipation of improved service.
- Alpine Swim Club membership was 38 Alpine families and 18 out of town. Alpine's beautiful underutilized pool is challenged by competition from individual back yard pools. The fee is more competitive than surrounding towns some of who are closing because they can't meet operating expenses. Mary Kupferschmid heads the volunteer board that runs the club.
- The McCaffrey litigation involving multiple building code violations has been settled. The site will be remediated and financial compensation paid to the town.
- The general election will include a municipal referendum question asking residents to continue the open space tax levy of .005 cent per \$100 assessed value approved in 2005 for another ten year period. This funding provides tremendous leverage when applying for support from the State and County should an opportunity arise in keeping with the Borough's Open Space Plan.

ADJOURNMENT at 8:42 p.m. upon motion by Mr. Clores, seconded by Mr. Bonhomme and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary