

**ALPINE ZONING BOARD OF ADJUSTMENT**

Regular Meeting Thursday, December 17, 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., Thursday, December 17, 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 **Thursday, December 17, 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 December 1, 2020, published in The Record on December 7, 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	Absent	Anthony Barbieri	Present
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 December 8, 2020 extending and carrying McCaffrey Block 42 Lot 4 – 1010 Closter Dock Road through January 31, 2021. As determined later in meeting next meeting will be January 21, 2021. Applicant must re-notice.

**PROCEDURAL MOTIONS**

**Resolution: Approval of Minutes: Regular Meeting November 16, 2020** upon a motion by Mr. Barbieri, seconded by Mr. Bonhomme and approved by all those eligible to vote.

**Resolution: Approval of Bills and Claims** Upon a motion by Mr. Clores, seconded by Mr. Abad and approved by all those eligible to vote to approve the following Bills and Claims:

NJ Media Group	Meeting Notice Zoom 12-17-2020	Inv. 4491269	\$30.40
Azzolina & Feury	Haring 40/7	Inv. 74005	\$456.00

**HEARING: Haring Block 45 Alpine Drive Block 40 Lot 7 (continued from October 15 & November 16, 2020)**

Mr. Abad recused. Mr. Barbieri viewed recording of November meeting and is eligible to sit as is Alternate member Ms. Herries.

Exhibits marked in the course of this meeting:

A – 19 Affidavit Anthony Barbieri viewed recording of meeting November 16, 2020.

A – 20 Sheet 8 of a Plan by Chris Blake, AIA titled “Building Coverage Plan” dated December 5, 2020.

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, Chris Blake Architect 24 New Bridge Road, Bergenfield, NJ 07621 and David Spatz, PP Community Housing & Planning Assoc. 60 Friend Terrace, Harrington Park, NJ 07640

Also appearing: Matthew J. Ross, Esq. Mueller Law Group 19 Engle Street Tenafly, New Jersey 07670 on behalf and with neighbor Ralph Noback. Members of the public who spoke to this application were: Robert Halasz, Eun-Rae Jo, Marlyn Friedberg, Robert Peckar, and Cheryl Woertz.

Review: Application continues from October 15, 2020 and November 16, 2020 for this existing single-family split-level home at the corner of Alpine Drive and Schoolhouse Lane. Appeal dismissed at November meeting on Board's determination structure is a two and a half story building and height complies. Applicant acknowledged original sketches did not include detail for attic landing which needs to be provided to building department. This feature does not require a variance. Variances requested for additional building coverage due to addition of bay windows and corresponding extension of eaves which carries over to necessitate an improved coverage variance:

- Proposed building coverage of 15.77% where 14.13% exists, 10% is maximum permitted by ordinance and 14.63% maximum permitted per Zoning Board's 2017 resolution.
- Proposed improved coverage of 20.73% where 19.24% exists and 20% is maximum permitted.

At the conclusion of the prior meeting, Attorney Capizzi requested a continuance to prepare and present additional planning testimony to justify requested relief. He will now present testimony from Mr. Blake and Mr. Spatz who will address the planning criteria and Mr. Kauker's November testimony. Attorney Ross affirmed Mr. Kauker's testimony was concluded. No other exhibits.

**Chris Blake** remains under oath. He prepared a Building Coverage Diagram marked **A-20**. Mr. Blake explained 2,205 square feet was approved in 2017 but the as-built building coverage is 2,377 square feet; a difference of 172 square feet consisting of:

35 square feet: “Disconnect” between approved 2017 engineering and architectural sketch which, while vague, indicated the 165 square feet as built.

49 square feet: 16 s.f. for the front bay window and 33 s.f. for the rear bay window

88 square feet: additional for second floor front and rear eaves

Mr. Blake noted typically bay windows and overhangs are not included in coverage and overhangs are typical on 80-98% of homes. The zoning officer requested they be included in this case because they create “an overhang over an overhang.” The building footprint does not change. The bay windows have sills, do not extend to the

floor and do not increase floor area. These are elevated architectural features that enhance the building rather than increase bulk.

Attorney Ross received affirmation the bay windows were not on 2017 plans. The eaves were but are now being factored in because they overhang overhangs. Mr. Blake does not understand the disconnect that occurred between the 2017 engineering plans and the architectural plans which were prepared by the owner. Mr. Blake demonstrated the overage locations and elevations using Exhibit A-20. The front and rear bay window are 10-11 feet and 7-8 feet above the ground respectively and roof overhangs are at least 25 feet above the ground.

Mr. Glazer noted overhangs between the first and second floor. Mr. Blake explained the top overhang appeared on the original plan and was approved in 2017 but not included in building coverage. Minus bay windows they would be over by 35 square feet which represent two feet of roof overhang around the second-floor cantilevered addition. 2017 architectural intended but did not carry over to the engineering plan.

The meeting was opened to the public. Instructions provided. No questions.

**David Spatz**, was sworn, testified he's appeared previously and deemed qualified. He reviewed 2017 and current plans and exhibits, viewed the property on several occasions, reviewed the Master Plan Re-examination reports and November's Zoom recording. They are seeking a variance for 172 square feet of coverage although all but 130 square feet was included in the 2017 approved plan; they were just not required to be included in the calculation of coverage at that time. Typically building coverage relates to the footprint and other projections are often not included but were in this instance. These are eaves and bay windows that have no impact. They provide no increased floor area or livable space. They provide no additional impervious coverage or impacts to drainage. Mr. Hubschman previously testified necessary drainage improvements will be provided.

Mr. Spatz reviewed Mr. Kauker's testimony. It focused on mass and not the variance itself. Testimony on floor area and height was not relevant and this hasn't changed. Mr. Kauker cited the 2010 Master Plan Re-examination report "*the plan identified the demolition of smaller residential structures and their replacement with larger dwellings*" as a major concern but later acknowledged coverage was a lesser issue on this oversized property. Mr. Spatz opines the proposed supports the Master Plan by modifying an existing structure, consistent with the size of the property, to blend with the original home and the neighborhood. The Planning Board adopted a new Re-examination report on September 22, 2020 indicating fewer smaller homes were left to be replaced and this was a lesser concern. Here they are renovating an older home resulting in less impact than a demolition/rebuild would incur. While C-1 hardship was discussed, C-2 criteria can be met where the bay windows and eaves are relatively small projections that provide a more attractive look, do not increase floor area, provide depth and enhance the look benefiting both neighborhood and municipality. Such aesthetic improvements can serve purposes of zoning as noted in the Home Builders or Burbridge cases and support the small variance requested. *[Specific citation not provided and he acknowledged these cases related to use variances.]* Regarding negative criteria there is no "substantial" negative impact. The variance for the bay windows and eaves totals only

172 square feet which is 1.14% over what was approved in 2017 which is relatively minor. There's no impact to drainage on or off site. The variance can be granted.

Responding to Attorney Capizzi, Mr. Spatz affirmed creation of a desirable visual environment is a purpose of zoning. This meets several positive criteria and case law relies on that purpose for the ability to grant variances. Another purpose is reuse and preservation of natural resources. There is no impact to the site from the variances. The improvements are designed to make an existing building more habitable, a little more generous in space but fully within height, floor area ratio and coverage limitations. Additional grading will help soften the appearance of height which conforms. The setbacks conform.

Opened for questions.

In response to questions from **Attorney Ross**, Mr. Spatz repeated testimony that the features are an aesthetic benefit to the neighborhood adding architectural interest. He did not look if other buildings had bay windows. Attorney Ross asked how the benefit of bay windows substantially outweighs the detriment of exceeding the coverage limitation. Mr. Spatz replied bay windows are not usually included in coverage being elevated and not adding to floor space. The improved aesthetics outweigh any negative. Although bigger, the modification proposed is better than a tear down / rebuild. It conforms to height. It is bigger than the zone permits but only in terms of coverage that is elevated above ground due to a technical calculation and not in terms of coverage that has an impact. His claim that the proposed preserves natural resources relates to the lesser amount of materials disposed in land fill from demolition or required to build a brand-new house. The only disturbance is some limited grading.

Mr. Bonhomme asked the purpose of the overhang. Mr. Spatz and Mr. Blake offered mainly aesthetics but they also serve to provide shade and screening reducing heating and air conditioning costs and to keep water out of the house.

Mr. Glazer noted the inclusion of overhangs in coverage is not new to the Board.

Mr. Frenzel clarified for perspective. Taking a birds-eye view, the 2017 engineer's plan indicates the roof size is 35 square feet less than what exists and the bay windows and overhangs between first and second floor would not be visible. 35 square feet is only 0.23% of the entire lot coverage. The bay windows are a numerical exercise causing building coverage to rise to 15.77% but the physical coverage is still only 35 feet and that is negligible.

Mr. Clores expressed concerns with the plan discrepancies and the number of features added during construction without prior approvals. Attorney Capizzi acknowledged noting these are small but complicated issues by virtue of the bay windows which triggered use of a different set of calculations.

Mr. Frenzel noted while the attic staircase and windows exceeded the scope of the building permits those are enforcement issues for the construction code official and not the Board. The Board has accepted that the height complies and the basement is not a story above grade.

Asked what would happen if the variance was denied, Mr. Blake offered they would have to replace the bay windows with flat ones. To shave off the 35 feet of rear roof overhang they'd need to dismantle the cantilevered addition. Attorney Capizzi noted their rear yard setback is 75 feet where 15 feet is the minimum. Re-renovation would not have any perceptible impact on the view but would have a significant impact on the utility of the space.

Attorney Capizzi asked the Board to summarize their concerns and permit him time to confer with his clients. Concerns included discrepancies and lack of adherence to approved plans. Neighbors are concerned with height, bulk and privacy. This application presents a challenge. The issue may appear *de minimus* but not in the context of impact to neighbors, and whether the aesthetic benefit accrues to them or just the applicants. Is the greater damage hardship for the applicant or harm to zoning; punishment or benefit?

**Recess.** 9:06 to 9:20 p.m to permit Attorney Capizzi time to confer with the applicants.

Attorney Capizzi called Tom Haring for testimony adjusting proposed improvements.

**Tom Haring** remains under oath. Mr. Haring apologized for any confusion and entered into a lengthy review of his 2017 application and his justification for the bay windows and eaves for aesthetics, balance and security being able to see all around without opening his windows. Other homes in the neighborhood may be smaller but for how long? If you look at the property behind him it is 16 feet higher. So yes, they look bigger to people below him but if somebody builds a new house above him it will be huge. They will provide nice landscaping and a retaining wall and grading on the left side that will shrink the building from the bottom landscaping and a retaining wall.

**Christine Haring** was sworn and also apologized in a lengthy and emotional review of the application thus far. Attorney Capizzi asked for a continuance to allow him more time to confer with his clients as they are not in sync on how to proceed. Ms. Haring overruled stating they really need to conclude this tonight.

Opened to the public for comments.

**Cheryl Woertz**, 31 Forest Street, was sworn and spoke in favor of the application. She doesn't think 35 feet makes a big difference. Their house is deteriorating while they await resolution and they should be able to build their house.

**Glenn Woertz** 31 Forest Street, was sworn and also spoke in favor of the application. He is a licensed home inspector in NY and NJ and inspected the Haring's house when they bought it as a somewhat tired 1960's split. What they built so far is a vast improvement done with great effort and conscientiousness and he doubts the issues raised substantially effect the habitability, value or safety of surrounding properties.

**Attorney Ross** opined the application's theme is that it's easier to ask for forgiveness than permission. They did not build what was approved. The Board granted approval in 2017 because Mr. Haring claimed hardship citing he could not finish his basement due to a rock ledge but now we see the basement is finished. They seek a C-2 variance

arguing the aesthetics benefit the community but the Board rejected that very argument in 2017. He urged the Board to deny the application.

**Robert Halacz** prefers to let them finish their house and let them live their life.

Attorney Capizzi reviewed testimony. Applicants understand they must comply with the rules. Doing the work themselves and not being experts, they didn't realize the bay windows required a permit update; there was no malicious intent. Most construction was done pursuant to the 2017 Board approval and validly issued building permit. When the building inspector stopped the project advising plans didn't show the bay windows and attic stairwell, they did not minimize the need for a variance but assembled a team and have tried to illustrate to the Board only 35 square feet is really new and the attic stairwell does not need a variance. The Board is not bound to reject a (c) 2 argument as in 2017 as the case stands on its own; separate and apart. In hindsight they would have hired a professional architect at the start but they have endured the hardship and expense of living with the unfinished construction for nine months. Missteps and how we got here is not relative to the analysis of the variance criteria. They've heard from the neighbors. Mr. Blake and Mr. Spatz testified as to the benefits of the bay windows and eaves and that they cause no substantial negative impact. The positive criteria providing is satisfied by the proposed development furthering the Master Plan. Negative criteria is also satisfied where proposed building coverage is elevated above ground level, portions were approved in 2017 and only included now due to the bay windows. Overhangs were not a substantial negative impact in 2017 and certainly can't be today. Setbacks comply to Alpine Drive is 44.5 feet where only 20 feet is required and to the rear property line is 74.6 feet where only 15 feet is required. The Board could impose conditions such as a specific landscape plan to offset some of the negative impacts but asked the Board to help applicants retain what has been constructed, finish their project and enable everyone to move on. Regarding statement that the house is deteriorating, Attorney Capizzi acknowledged securing unfinished portions is an issue between the applicant and the building department while reminding they cannot proceed to obtain the permit updates until the Board decides on the variances.

**Marlyn Friedberg** stated the home looks like a hodge podge and does not look architectural planned. She doesn't think it fits into the existing architecture of the area.

Mr. Clores noted they are not approving the building just considering windows and eaves. Board members noted their limited scope. A large part of how they got here was the architectural plans were not prepared by a professional architect and conflicted with the engineering plans. While sympathetic to the neighbors' concerns with overall mass the home is on a hill and that is not something they can address. If denying permission are they making a situation worse relative to the aesthetics and waterproofing? Will that really help the neighbors?

Attorney Ross questioned written comments supplied to the Board. Attorney Kates determined they could not be received in evidence based on the hearsay rule. The sponsor or letter writer has to be present to submit to cross examination or questions. Letter writers were so advised and in attendance to enter their comments.

**Robert Peckar** was sworn and read his letter into the record:

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

"Initially I wish to share with you my disappointment with the last meeting. In regard to the discussion about the height of the addition, as constructed, the Board was quick to accept the post facto justifications about errors in the original submission from the same engineering firm that is responsible for those errors-if in fact they are errors. The Board was also quick to accept the argument from the applicant's attorney and engineer that a split-level house should be considered in two separate parts, allowing one part to be deemed at a lower elevation than the other by virtue of architecture of a split level home. In other words, the applicant's home is not a single home, but two! Since the meeting I have endeavored to find legal justification for that decision and I have been unable to do so. Perhaps it exists, but I have not been able to find it.

What is particularly troubling is that the Board's quick acceptance of the height as "allowable without needing a variance", even if technically correct, ignored the complaints of neighbors. My complaint, Mr. Rae Jo's complaint and other neighbors' complaints were that the installation of the windowed dormers at 30-35 feet elevation created, effectively, a tower of windows looking down on the neighbors. The privacy of every neighbor, myself included, has now been compromised. I am advised by other neighbors who have been previously involved with this application that the dormers were never included in the drawings submitted to the Boro in the first place. Would you, the members of the Board, look forward to having a neighbor construct a look-out tower from which they could peer into your property and home? Had the addition been built to the height it is without the dormers, perhaps this situation would not be as offensive as it is. I urge the Board to re-open the discussion about the roof, height and dormers and adjust its determinations to protect the interest of the community, not just this one applicant seeking permission to keep what was built at variance from, and in spite of, their representations to the Boro.

Others are represented by attorneys who will make legal arguments, but I am an attorney as well and I am familiar with the laws relating to variances. The applicants are only entitled to relief under two sections of N.J.S.A. 40:55D-70(c)(1) and (2). Section 1 requires a showing that the applicant would suffer a hardship from strict adherence to the applicable zoning code, because there are unique and exceptional characteristics of the subject property. Section 2 requires a showing that the applicant's proposed changes do not comply with the applicable zoning code, but that the municipal land use law's aims would be advanced (not tolerated but advanced) by granting a variance and the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

Respectfully, the applicant cannot satisfy either. They made material misrepresentations to the Board in 2017, namely that the topography of their property prevented them from finishing their basement; thus, they required a variance under (c)(1) to add the new "second floor" and attic for additional space. However, I am advised that the basement is finished and was so prior to the applicants seeking a variance in 2017. Also, in 2017, the Board rejected the applicant's argument that their renovations benefitted the community by adding improved aesthetics to the area. As to this last point, I will leave it to others who live in close proximity to their home to argue about the "improvements" to the aesthetics.

Perhaps the most annoying part of this process for me has been the obvious arrogance of the applicant and the seeming willingness of the Board to move towards granting variances in their favor despite their past misrepresentations, the sloppiness of the supporting engineering, and their complete disregard for their neighbors. There are significant issues in addition to the one I focus on (the intrusion into our privacy), but I come down to this simple proposition: If zoning variances are to provide relief from hardship while maintaining the basic character of the community by requiring adherence to zoning, then why would this Board grant variances and accept questionable engineering justifications when the only one's suffering the hardship are the neighbors?

I respect and appreciate the time and energy that all the members of the Board donate for the benefit of our community. I request that you please take these comments, as well as those from other neighbors and their advisors, in your deliberations and craft a result that respects our interests and rights at least as much as the applicants'."

Mr. Kupferschmid, while appreciative of his comments, objected to his statement that the board "quickly" rushed to approve the height clarifying they have not approved the application but it complies with the height ordinance. They're not happy with the height but have no jurisdiction. Mr. Frenzel clarified that his testimony did not treat the split level as two separate homes but demonstrated the home complied to height and story above grade no matter what set of measurements were used.

A lengthy discussion ensued on what could be done, in addition to landscaping and the grading and retaining wall to reach a reasonable accommodation between the applicant and opposing neighbors. The Harings again rejected their counsel's advice to carry the matter to consider possible plan revisions.

Mr. Peckar suggested they eliminate the two attic doghouse dormers that look down on his and Mr. Rae-Jo's homes or replace the windows with a decorative façade you can't see through. Mr. Haring offered their goal was to move their exercise room up to attic taking advantage of natural light. Mr. Mayer suggested replacing the doghouse

dormers with skylights. Mr. Blake displayed A – 4 elevations of his plan [A-16] to denote the two gable or doghouse attic dormers facing south. Mr. Bonhomme cautioned a large skylight in the steeply pitched roof opening left after the dormers are removed might still allow them to look down on the neighbors if it is not positioned higher in the ceiling; they may have to fill in some of the roof. Mr. Haring noted this section is already roofed and shingled. It will be an additional expense and more work but he will do it. Mr. Peckar offered the purpose to be served would be to eliminate windows that look down into the neighbors adding Mr. Rae Jo is impacted by the dormer windows facing south and also the set of five windows facing east. As there was some confusion with the word "dormer" Mr. Haring clarified no additional doghouse dormers or windows are planned for the attic staircase section which is currently unfinished and tarped; just what is shown on the plan. That section faces north and no one is concerned with that.

**Attorney Ross**, representing Ted Noback, stated they would withdraw their objections predicated on Mr. Kupferschmid's suggestion the doghouse dormers are removed and no other window dormers are planned for the attic staircase area. Mr. Kupferschmid understands neighbors perceive the window dormers add bulk and, looking down on neighbors creates a privacy issue. Removing the doghouse dormer windows completely and possibly replacing with a skylight would address this.

**Mr. Rae Jo** was sworn. His home directly faces the east side of the Haring home. Eliminating the dormers will help Mr. Peckar but not him. He asked for a modification to close off the five windows at attic level to protect his privacy. He had spoken with Mr. Haring back in February and thought they had come up with an agreement, which has not been mentioned yet, of inserting a fixed outside shutter so the angle would prevent the direct invasion of being able to look down into his property but at the same time allowing daylight and air to come into the interior space. In return he had stated he would not object to the variance. Mr. Haring recalled he had offered internal wooden blinds that would have the same effect. Mr. Rae Jo preferred they be external and fixed. Mr. Blake affirmed he is familiar with external louvres.

Discussion continued on the pros and cons of the solutions offered.

**Resolution:** Upon a motion by Mr. Kupferschmid, seconded by Mr. Mayer to approve the requested coverage variances conditioned on Mr. Haring's agreement to remove the two existing doghouse dormers on the south side of the attic in their entirety.

*Discussion.* Mr. Kupferschmid added if the applicants choose to put in skylights that will be their business. He does not feel a condition regarding the attic windows facing east is appropriate. Mr. Glazer expressed hope that Mr. and Mrs. Haring will, at the least, install some kind of blinds on the inside for their benefit as well as the neighbors.

**Vote: Ayes:** Mr. Kupferschmid, Mr. Mayer, Ms. Herries, Mr. Glazer

**Nays:** Mr. Barbieri, Mr. Bonhomme, Mr. Clores

**MOTION APPROVED**

Attorney Capizzi thanked the Board and public for their patience. Mr. Glazer thanked urged Mr. and Mrs. Haring to respect Mr. Rae Jo's request for louvres that will guarantee him some significant amount of privacy whether internal or external but preferably of a fixed nature. Mr. Clores reminded they will have to comply with the applicable fire and building codes.

**2021 Meeting Dates** without objection the 2021 meeting dates set as follows for purposes of the annual notice. All fall on the usual third Thursday with the exception of September being the 4<sup>th</sup> Thursday as Yom Kippur falls on the third Thursday.

January 21, February 18, March 18, April 15, May 20, June 17, July 15, August 19, September 23 (4<sup>th</sup> Thursday), October 21, November 18, December 16.

**2021 Budget** without objection recommendation to keep the 2021 budget the same as 2020.

**ADJOURNMENT** at 11:08 p.m. upon motion by Mr. Glazer, seconded by Mr. Herries and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary