

ALPINE ZONING BOARD OF ADJUSTMENT

Thursday, December 20, 2012 - 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 Richard Glazer at 7:32 p.m., Thursday, December 20, 2012 at the Alpine Borough Hall, the Pledge of Allegiance recited and the Public Announcement read according to the requirements of the Sunshine Law: *In accordance with the provisions of the Open Public Meetings Law, the notice of this regular meeting held Thursday, December 20, 2012 has met the requirements of the law by being published in The Record as part of the Annual Notice on January 6, 2012, 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	Absent
Ann Ronan	Present	Richard Bonhomme	Absent
Larry Shadek	Absent	Steve Cohen, Alt I	Present
		Anthony Barbieri, Alt II	Present

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

MEMORIALIZATIONS – Kim Block 60 lot 4 – 27 Forest Street

Attorney Kates circulated and reviewed the resolution memorializing action taken at the November 15th meeting.

Resolution: Upon a motion by Mr. Glazer, seconded by Mr. Barbieri at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, December 20, 2012 to memorialize a resolution for Dr. Sean Kim approving an application for variances to demolish a detached garage, shed and patio and construct a new addition to his existing single family home consisting of an attached two-car garage with second story. The variances approved are for improved lot coverage, building coverage and distance for a retaining wall from pavement subject to conditions as outlined in the resolution for this property located at 27 Forest Street designated as Block 60 Lot 4 on the Tax Assessment Map of Alpine, New Jersey, Bergen County.

Discussion: Mr. Clores observed the damaged fence was removed as promised at the last meeting.

VOTES: AYES: Barbieri, Burns, Glazer

MOTION CARRIED

A copy of the resolution is appended to these minutes.

NEW MATTER**Minnetian Block 72 Lot 26 – 39 Warren Lane**

Elliot W. Urdang, Esq. having offices on 19 Engle Street, Tenafly, NJ 07670-2812 appeared on behalf of the applicants, **Christopher and Anna Minnetian**, along with **Michael Hubschman**, PE, PP 263A South Washington Avenue, Bergenfield, NJ 07621 and **James Paragano** of James Paragano Architect LLC 88 Maple Avenue, Suite 100, Morristown, NJ 07960.

Attorney Urdang explained the Minnetians recently purchased this property and propose to remove the existing structure and construct a new home. The proposed dwelling would not need a variance except for the unique shape of the property which has a "hitch" or "jog" along the middle of the left side property line that cuts in ten feet deep for a length of about 80 feet. They are seeking a variance to permit a side yard setback of 20.26 feet on that side where 30 feet is required. He intends to present testimony justifying the variances under both c(1) due to the unique shape of the lot and c(2) the reasons for the design, particularly in regard to the garage.

The following exhibits were listed for the record.

- A – 1 Proof of Publication in The Record on 12-6-2012
- A – 2 Affidavit of Service Certified Mailing to Residents Within 200' on 12-3-2012 per Alpine Tax Assessor's list dated 11-1-2012
- A – 3 Application received 11-16-2012 signed by owner includes:
 - Proposal & reason for relief
 - Property Deed recorded 10-11-2012
 - Tax Assessor's list dated 10-11-2012 (identical to list dated 11-1-2012)
- A – 4 Zoning Officers letter dated 10-30-2012
- A – 5 Proof taxes paid through 2012 4Q
- A – 6 Soil moving permit application
 - Check list for determination of completeness for review of soil moving applications resubmission not dated
 - Application for soil moving permit signed but not dated
- A – 7 Drainage Report provided by Michael J. Hubschman PE Hubschman Engineering dated 10/8/2012
- A – 8 Soil Moving Report provided by Michael J. Hubschman PE Hubschman Engineering dated 10/16/2012
- A – 9 6' Boulder Retaining Wall provided by Michael J. Hubschman PE Hubschman Engineering dated 10/12/2012
- A – 10 5' Reinforced Concrete Retaining Wall Calculations provided by Michael J. Hubschman PE Hubschman Engineering dated 10/12/2012
- A – 11 Fourteen photos provided by Michael J. Hubschman PE Hubschman Engineering dated 10/5/2012 labeled P1 through P14
- A – 12 Engineering Plans consisting of four pages provided by Michael J. Hubschman PE Hubschman Engineering 263A S. Washington Avenue, Bergenfield, NJ 07621 dated 10-9-12012 with revisions as noted
 - Sheet 2856-4 entitled "Site Plan" Revision #1"per AF letter dated 10-23-2012" dated 10-26-2012

- Sheet 2856-5 entitled "Soil Erosion and Sediment Control Plan: Details Revision #1 "per AF letter dated 10-23-2012" dated 10-26-2012
 - Sheet 2856-6 entitled "Existing Conditions Plan" Revision #1 "per AF letter dated 10-23-2012" dated 10-26-2012
 - Sheet 2856-8 entitled "Cross Sections" No Revisions
- A – 13 Architectural Plans consisting of one page provided by James Paragano, of James Paragano Architect LLC 88 Maple Avenue, Suite 100, Morristown, NJ 07960 dated 10-12-2012

From our files:

- A – 14 Borough Engineer's letter dated 10-23-2012
A – 15 Borough Engineer's letter dated 11-8-2012
A – 16 Borough Engineer's letter dated 11-23-2012

And marked during the course of these proceedings:

- A – 17 Colorized version of the Site Plan submitted to the Board [A-12 Sheet 2856-4] (not retained)
A – 18 Architectural Plan provided by James Paragano, revised 12-20-2012 Sheet Z2 front elevation only
A – 19 Architectural Plan provided by James Paragano, revised 12-20-2012 Sheet Z1 Floor Plan and elevations (Revision of A-13)

Michael Hubschman, PE, PP was sworn and deemed qualified to provide expert testimony in his fields. Referencing his site plan [A-17] Mr. Hubschman described existing conditions. The property is located on the westerly side of Warren Lane north of Closter Dock Road in the R-1 zone. Lot area and width complies. Topography reveals a downward slope of about five feet from north to south across the front and almost 12 feet from front to back leveling off towards the rear. An anomaly exists on the left side where a 10' by 80' strip or "jog" cuts in midway down the property line. Mr. Hubschman opined this was probably done to accommodate an existing garage on the adjacent lot to the south. On that property, the dwelling is about 60 feet and a portion of the Demarest Brook 30 feet from the property line. The proposed dwelling would conform if the lot was a perfect rectangle but, as is, they seek a setback of 20.26 feet for that portion where the lot width narrows. Mr. Hubschman noted the width of the proposed house is 75 feet which is considered narrow. The first floor level garage is proposed for the right side of the building because of the slope and provides for only a 26 foot backout to preserve the ten foot tree buffer. The only way to avoid the encroachment would be to place the house all the way in the rear where the septic systems are proposed. However, as test pits in the front revealed only four feet to rock and the property slopes to the rear, they deemed the logical location for the septic systems to be in the rear so no pumps are required. This design is similar to a home recently developed on the north side.

Mr. Hubschman offered the variance is justified under (c)1-a due to the shape of the property being unique to the neighborhood as shown on the key map [A-17] and also under (c)1-c as this shape presents a peculiar and exceptional practical difficulty. As additional proofs he finds no detriment to the public good as the jog is located towards the middle of the house and a proper side yard is apparent from the street line view, the southerly neighbor is about 90 feet away and if the lot were re-developed the

house would likely be even farther way to accommodate the Demarest Brook under updated regulations. The only nearby structure on that lot is a small double door detached garage. He further opined there wouldn't be any substantial impairment of the Zone Plan or Ordinance because the majority of the lot does provide the 30 foot setback, there is provision for adequate light, air and open space, the brook provides a substantial buffer between the dwellings and everything else in the application conforms to the zoning ordinance.

A soil moving permit is required mostly for the septic systems: Cut 1,740 cy Fill 2,527 cy Import 1,222 cy Export 435 cy Total Moved 2,962 cy. Two waivers are sought:

- 1) fill more than five feet above original grade where they need 6-7 feet to level a patio at the back of the house due to the slope and
- 2) allow a small area of 3:1 slope in the front where 4:1 is the requirement. This will minimize the disturbance while still being mowable and maintainable.

There were no questions from the public.

Mr. Burns questioned alternate locations for the house and Mr. Hubschman pointed out they are at the required 30 foot setback on the north side and could not move the house in that direction. They located the septic systems in the rear where the grade is conducive and there is 10-11 feet of dirt over rock vs. only 4 feet in front which would be uphill from the house.

Mr. Burns questioned the history of the odd lot line and Mr. Hubschman offered the jog is shown on a final plat from the 1950's. Board members opined the garage had been there a long time.

Mr. Kates questioned proposed conservation easements noted on the plan. Mr. Hubschman explained anything within 300 feet of a C1 waterway requires a DEP plan and they have to provide a 2:1 ratio of wooded area on site for any trees they remove and this has to be dedicated by deed.

Mr. Clores asked if the Flood Hazard application had been submitted. Mr. Hubschman confirmed they did so about three months ago and the 90 day comment period ends January 9th.

James Paragano, was sworn and deemed qualified to provide expert testimony in his field.

Mr. Paragano described the house as a mild L-shape with a main two-story block and the other portion of the L being one and a half stories. The house will comply in every way except for the left side yard setback as described by Mr. Hubschman. The house has typical elements commensurate for this level of home: foyer, living room, dining room, family room, library, kitchen/sun room and 3 car garage on the first floor and on the second floor a master bedroom, three children's bedrooms and a guest wing over the garage in the half story wing. The first floor is 2,852 s.f. and the second floor is 3,380 s.f. for a total of 6,232 s.f. The exterior consists primarily of a hip roof structure which reduces the volume as the roof faces slope in towards the building.

Primary materials are stucco, brick, limestone, painted mill work, cedar shutters and either a slate roof or asphalt shingles.

Mr. Paragano stipulated that the original proposed height of the chimneys, as had been noted by Mr. Vander Veer, will be reduced to eliminate any need for a variance. It was noted that the easel exhibits used by Mr. Paragano were revisions of his previous submission to the Board. These plans revised 12-20-2012 consist of Sheets Z-2 and Z-1 respectively marked Exhibits **[A-18]** and **[A-19]**. Mr. Paragano continued that the attic will comply; it will be unfinished and have a fixed stairway leading to it.

Mr. Paragano explained options they explored to eliminate the variance such as placing the garages in front facing the street. This would enable them to slide the house over but it would only allow for a two car garage. This design would not be commensurate with the neighborhood and the Applicant desires room for 3 cars. A second option would locate the garages under the building. This design would require they slide the building to the minimum front yard setback but this design would just barely accommodate a two car garage and the driveway, would be within the conservation easement, and provide for a steep 12% grade. The building would be more prominent, would result in a walk-out basement visible from the road, and would not be as good environmentally. As designed the house makes a nice presentation to the street and is a far better design.

Opened to the public for questions, **Martin Cybul, 38 Warren Lane** stated he lives directly across the street and was concerned the notice included a catch all phrase for "any and all relief". He received affirmation they are only seeking soil moving and the variance for side yard setback, not height. Mr. Cybul then had no objection.

Mr. Burns questioned the pool design and purpose of the five foot poured concrete wall. Mr. Hubschman stated the purpose was to bring the in-ground level with the rear yard due to the slope via three tiers (2 walls) transitioning down 10 feet to the pool: a walk out basement, a mid-level and then the pool level with the rear yard.

Chairman Glazer questioned the northerly protrusion (sun room). Mr. Hubschman stated the room protrudes about 6.5 feet but still complies with the 30 foot side yard setback. They still couldn't move the whole house over because they need the 26 foot turnaround area for the driveway and garage plus 10 feet for the buffer.

In summary, Mr. Urdang reiterated the application is straightforward; but for that notch they would not require a variance. The variance is justified as a hardship (c)1a due to the unique shape and (c)1c which shape creates practical difficulties and it is apparent that there is no impact substantial or otherwise. The neighbor's garage is the only proximal structure and their house is far away. The variance is also justified under (c)2 as a better planning alternative where other options create their own difficulties being closer to the road with a steeper driveway. There is no perceptible detriment.

Opened for public comment, **Martin Cybul**, stated he had no objection to the variance. He did request close monitoring of the stormwater management reminding there is a high water table and the stream with which the engineers have to contend.

Mr. Vander Veer noted comments in his letters had been addressed by the testimony.

Mr. Clores questioned construction of the septic systems. Mr. Hubschman assured him that Health Officer Galdi had witnessed the test holes and construction.

Resolution: Upon a motion by Mr. Clores, seconded by Mr. Cohen to approve the application of Christopher and Anna Minnetian for a variance to permit a side yard set back of 20.26 feet where 30 feet is the requirement along with a soil moving permit for their property located at 39 Warren Lane Block 72 Lot 26 subject to the usual conditions.

Vote: Ayes: Cohen, Clores, Burns, Barbieri, Ronan, Glazer

MOTION CARRIED

Sabathia Block 71 Lot 22 – 44 Litchfield Way

Elliot W. Urdang, Esq. having offices at 19 Engle Street, Tenafly, NJ 07670-2812 appeared on behalf of the applicants, **Carsten C. and Amber Sabathia** along with **Massimo Piazza, PE**, of Piazza Engineering 2-14 Fair Lawn Avenue, Fair Lawn, NJ 07410, **Peter Dito, RA** of FDS Architects, 19 Engle Street, Tenafly, NJ 07670 and **Burns F. Benson, LA** of paulkeyes landscape architecture, 111 North Summit Street, Tenafly, NJ 07670.

Alan M. Bell, Esq. having offices at Jacobs and Bell, 26 Franklin Street, Tenafly, NJ 07670 appeared on behalf and with **Donald J. Aibel** and **Elizabeth Herries**, owners of Block 71 Lot 23 - 9 Marie Major Drive, Alpine, NJ, in opposition to the application.

Mr. Urdang explained Applicants seek relief to construct an addition to their existing dwelling. The variances sought are:

- Building coverage - 10.4% where 9% is the maximum permitted
- Side yard setback - 35.9 feet where 50 feet is required
- Length of garage doors - 63 linear feet where 40 feet is the maximum permitted.
- Waiver to intrude into the tree buffer.

The following exhibits were noted for the record:

A – 1 Proof of Publication The record 12-6-2012

A – 2 Notice to Residents within 200'feet 5-3-2012 based on Tax Assessor List 10-11-2012

A – 3 Revised application received 11-21-2012 signed by owner includes:

- Rider to Application: Proposal & Reasons for Relief
- 200' Property Owners list from Tax Assessor dated 10-11-2012
- Zoning Officers letter dated 3-9-2012
- Prior Zoning Board resolution approved 3-2-2006
- Proof taxes paid through 2012 4Q

A – 4 Engineering Plans consisting of two pages provided by Massimo Piazza PE, PLS, Piazza Engineering 2-14 Fair Lawn Avenue; Fair Lawn, NJ 07410 both dated 2-22-2012 Revision #3 dated 10-10-2012 noted "Architectural Revisions"

- Sheet C-1 entitled "Site Plan"
 - Sheet C-2 entitled "Grading and Drainage Plan"
- A – 5 Architectural Plans consisting of six pages provided by Peter J. Dito, RA of FDS Architects Northern Valley Design Center 19 Engle Street Tenafly, NJ 07670 dated 11-3-2011 Revision 3 10-16-2012
- Sheet P-1 entitled "Proposed Site Plan / Zoning"
 - Sheet P-2 entitled "Proposed Partial Found./Bsmnt"
 - Sheet P-3 entitled "Proposed Partial 1st Flr Plan"
 - Sheet P-4 entitled "Proposed Partial 2nd Flr Plan"
 - Sheet P-5 entitled "Proposed Partial Front/Rear Elevations"
 - Sheet P-6 entitled "Proposed Left Elevation"
- A – 6 Landscape Plan consisting of one page provided by Burns F. Benson, LA of paulkeyes landscape architecture 111 North Summit St., Tenafly, NJ 07670 dated 11-5-2012
- A – 7 Four Photographs dated 2-23-2012
- A – 8 Azzolina & Feury letter dated 11-30-2012

Marked during the course of the hearing:

- A – 9 Set of 8 Photos taken by Mr. Dito this week
- A – 10 Colorized version of [A-5; P-3]
- A – 11 Colorized version of [A-5; P-4]
- A – 12 Colorized version of [A-5; P-1] 3-dimensional perspectives
- A – 13 Colorized version of [A-5;P-6] 3-dimensional perspectives
- A – 14 Colorized version of [A-5;P-5]
- A – 15 Landscape Exhibit (Photos taken last Friday of existing views)

Set of Photos presented by the opposition:

- O – 1 View of Opponents: Master bedroom windows
- O – 2 View of Opponents: Rear windows eating area/kitchen; glass enclosed pool is to the right
- O – 3 View from Opponents deck of glass enclosed pool and conservatory
- O – 4 View from Opponents deck of Applicant's rear yard and pool
- O – 5 View from Opponents property line at ground level of Applicant's rear yard and pool
- O – 6 View from Opponents bedroom window looking down on Applicant's rear yard and pool

Massimo Piazza, PE, was sworn and deemed qualified to provide expert testimony in his field.

He described existing conditions. The property is 90,636 s.f. located on the south side of Litchfield Way. Topography shows a 40-45 foot slope from northeast to southwest. Adjoining properties to the west are rectangular but this is an irregular shaped lot that narrows from front to back. The site is currently improved with a single family dwelling, in-ground pool, fairly long drive with court, porte-cochère to garages on the east side, septic systems and retaining walls. The parking court directly in front of the house is visible from the street through piers and open fencing. The home was constructed around 2009 by a former owner.

Mr. Piazza described the proposed. The plan is for a 2½ story addition along the easterly property line with extended drive. Retaining walls will be required to level the grade. The distance from street to addition is about 140 feet and 160 feet to its first jog into the new drive. The closest setback from the east property line is 35.9 feet where 50 feet is required. The addition would be 130 feet from the house to the east which is set about 23 feet higher in elevation. Septic fields will not require modification but tanks may need to be relocated closer to the field and away from a proposed pergola as noted on his plan C-2 [of A-4]. He was the engineer for the original construction. The septic system was designed for a 7 bedroom house and this will not change. A total soil moving volume of 450 c.y. is mostly fill. He will correct a plan error; no export is proposed. They do seek a waiver to show structures within 200 feet as they show only the easterly neighbor who is most affected and other homes are a substantial distance away. They need waivers for construction within the 20 foot tree buffer for new construction of the driveway, retaining walls, grading, and relocation of seepage pits. He opined there would be no detrimental impact for the seepage pits. Although they are removing lawn area they propose additional landscaping.

Mr. Piazza offered the side yard variance sought is somewhat attributable to the irregular shape of the property. A review of old file maps showed consistent lots with parallel lines up until the two westerly lots, 23 & 24, where it appears they needed to make up some lot area and rotated lot lines so the lots would conform to the zone's acreage requirement. This skewed the subject lots property line so that the width at the rear or south side (219.55 feet) is narrower than the north frontage on Litchfield Way (257.48 feet). If the lot were a rectangle straight back from Litchfield Way the easterly side yard setback would be 55 feet and they could more than comply.

The existing building coverage is 8.5% or 7,741 s.f, where 9% is permitted and 10.4% or 9,385 s.f. is proposed; a difference of 1,229 s.f. The proposed plan will comply with improved lot coverage at 25%. If lot lines were parallel the proposed building coverage would be 9.7% or 6,678 s.f.

Opened to the public for questions, **Alan Bell, Esq.** questioned the existing square footage and width of the house. Mr. Piazza responded 7,741 s.f. and approximately 127-128 feet wide. He was not the engineer for the subdivision. His rationale for the irregular shape is supposition. Creation of the lot preceded construction of the house. He was the engineer for the house which, per the builder's option, was constructed right up to the 50 foot side yard setback. The opposite side yard setback is 64.68 feet and has a steeper grade. Mr. Piazza conceded they may have considered it would be cheaper to cut in on the east rather than fill in the west when locating the house. If constructed, the depth of the house through the addition will be about 115 feet. There are four garages existing, three on the main house and one detached garage on the other side of the porte-cochère. They would permanently remove that one garage door and convert that area into storage. Proposed garages would accommodate 4 cars and require a variance to permit two additional double sized garage doors in addition to the three single garage doors that would remain for a total length of 63 feet of garage doors where only 40 feet is permitted. All garage doors would face the house on Lot 23 albeit at different elevations. The rear of the house on Lot 23 as oriented is about 80 feet from the property line.

Mr. Bell asked if the addition could be shifted to the west. Mr. Piazza opined they probably could graphically and engineering-wise but the architect would need to speak to internal design. He noted they did not want to have garages on both sides of the house, the steep grade might impact feasibility and the extended drive would put them over improved coverage. While he did not do a full analysis that plan might result in more or additional variances including height.

The Applicant also owns the lot to the rear of his property, Block 72 Lot 9 but Mr. Piazza does not know what it's used for; he was not asked to consider building the additional garages on that lot.

In summary, Mr. Bell questioned and Mr. Piazza acknowledged that the applicant seeks a side yard variance of 14.1 feet or 30% of the requirement, a variance for the length of garage doors at 63 feet or 63% of the requirement, a waiver from the 20 foot tree buffer to allow a driveway and retaining wall around it to be about 2 feet from the property line and permission to remove two 24" trees and one 18" tree plus several others.

On redirect Mr. Urdang asked Mr. Piazza if he had done any computation on the area of Lot 23. Mr. Piazza stated he used the file map with metes and bounds descriptions filed in the Bergen County Clerk's office to calculate gross areas for Lot 23. It is approximately 85,141 s.f., less than the 87,120 s.f. required in this 2-acre zone. If the subject lot were a rectangle Lot 23 would be 79,000 s.f., substantially less than the existing size.

Being no further public questions, the Board was invited to question Mr. Piazza.

Mr. Clores questioned the proposed retaining wall which Mr. Piazza acknowledged would be visible from the adjacent lot and two feet from the property line to permit a proper back out area of 30 feet from the garage.

Mr. Vander Veer noted no soil moving permit application was received which is required in order to consider the waivers. Mr. Urdang acknowledged they would need to return for that consideration.

Mr. Vander Veer questioned drainage structures. Mr. Piazza stated 4 seepage pits would be re-located, 2 added and he would provide the revised calculations. Mr. Clores asked how close they are to the wall. Mr. Piazza noted the wall is only about 2 feet high and the seepage pits would be about 10-11 feet away. Mr. Vander Veer pointed out they will need to address locations relative to the septic systems with the Health Officer. He is also concerned that transmission lines for the roof drains are shown about five feet from the field. Mr. Piazza offered they could install a pond liner and treat the roof line as a sanitary line with a solvent cement connection to prevent disposal field water from entering it or stormwater from exiting it; he would comply with any recommendations from the Health Officer. Mr. Vander Veer advised per State Best Management Practices, a deed restriction would be required for the water quality treatment device to insure it is inspected and maintained on an annual basis and these requirements must appear on the plan. Mr. Piazza stipulated to same as well as that the

size of a stormceptor being re-located will have to be verified or recalculated relative to the expanded driveway.

Mr. Glazer questioned testimony regarding the lot line noting the subdivision existed for many years. Mr. Urdang offered this is a legal question where, similar to the prior application, they seek to prove hardship relative to the unusual shape, a substantial tapering from front to back where they would comply if it were a rectangle. Mr. Glazer pointed out four irregular shaped lots nearby. Mr. Cohen questioned if the issue was the irregular shape or because the house could have been moved 14.8 feet to the west. Mr. Urdang responded the Applicant didn't build the house which does comply and the lot's shape is only one criteria impacting their ability to build.

Mr. Bell disagreed offering the builder situated the house on an existing lot resulting in a self created hardship that can run from the prior owner to this Applicant. Mr. Urdang claimed the opposite and offered this is an argument for summation.

Mr. Burns also questioned Mr. Piazza as to why it could not go on the other side. Mr. Piazza stated they had a brief discussion but moving it to the west side could involve additional variances related to expansion of additional driveway, grade issues, retaining walls, and height based on average grade. Mr. Clores noted they would still be nonconforming as to the length of garage doors. Mr. Cohen questioned the side yard setback on that side and Mr. Pizza noted they would still need a variance to create the 30 foot backup area but Ms. Ronan questioned if it would be as close and Mr. Piazza conceded it would not be.

Peter Dito, RA, was sworn and being his first appearance before a board in Alpine presented his credentials: He graduated Pratt Institute with a Professional Architecture degree, has been licensed since 1992 and is a partner with FDS Architects. He's appeared before numerous boards in nearby municipalities.

Mr. Dito is familiar with the site, prepared the plans received by the Board **[A-5]** and provided additional and enhanced exhibits during the course of his testimony.

To show existing conditions, Mr. Ditto referred to **[A-9]** consisting of 8 photos he took yesterday and today. Photos depict the front of the house and side of the proposed addition. The proposed driveway wall would be similar to the existing one. There are thick woods between the subject lot and the lot to the east and photos show a worst case scenario taken in the dead of winter. Applicant's landscape architect will describe plans to further enhance this area to screen views from the neighbor.

[A-10] shows the first floor layout of the existing home and proposed addition. Mr. Dito offered it is practical to design all the garages on one side as opposed to scattering them and creating more impervious pavement on both sides. They would link the proposed 4 car garage to the existing structure via a mudroom and enclosed breezeway/gallery which also permits the functional practicality of transit between garage spaces. This separation lessens the appearance of just a row of garage doors. The area of the proposed addition is 1,645 s.f. with 1,253 s.f. of that for the garages. The mudroom houses a stair as the only egress to the second floor addition above the garage. Air conditioning units that are currently situated in the space of the proposed

mudroom would be moved to a proposed courtyard outside of the gallery and screened with a wall and fence. This area will also serve as the refuse area, a practical location easily accessible from the kitchen. Placement of the addition on the westerly side would not be practical relative to the design of the existing house.

The Applicant has nicer and collectible cars that he does not use every day that are currently housed in the existing garages. He would like to move those cars back to the new garages to free up existing garages for his everyday cars. As a professional athlete he has multiple staff and wishes to free up the front courtyard area by parking cars further back. Originally they designed a tandem garage to reduce the number/length of doors but this put the entire addition in the side yard. With this design they've tried to push it as far as they can inside the building envelope noting the side yard setback line as shown on **[A-10]**. Any further would block views from the sole kitchen window.

[A-11] depicts the proposed second floor addition which is 1,460 s.f. and only accessible from the stair to the mud room. It is not connected to the main second floor as this intended to be Mr. Sabathia's space, a "man cave"/office set up with a training room, memorabilia room, bathroom, and game/sitting area open via balcony over the mudroom. No bedrooms or cooking facilities are included; only a small wetbar, refrigerator, and dishwasher for snacking.

[A-12] depicts 3-dimensional exterior perspectives from the left and rear sides. A seamless addition is proposed respecting existing architecture. The rear view shows the kitchen window that would be blocked if they moved the addition further in. A proposed open gazebo is designed similar to one on the other side of the pool.

Mr. Dito explained as they try to match the architecture they also use the fairly steep slope and the height will be at or just below the average height of the existing structure. **[A-14]** depicts roof elevations as the addition would be viewed from both the street and rear yard. The addition would be about 140 feet from and lower than the street so it would be difficult to see especially with the existing and proposed screening. It has been scaled smaller than the main structure but will not look like an addition.

Mr. Urdang asked Mr. Dito what of the addition will actually be visible to the neighbor on Lot 23. Mr. Dito referred back to the photos on **[A-9]** to show the thick natural wooded area enhanced with evergreens behind the driveway wall. All of the evergreens shown are on the Applicant's property and they propose to supplement these plantings. The neighboring house is higher, thus the evergreens make it difficult to see cars parked in the court. The garage doors would also be hard to see. You would likely see some of the second floor in winter and the roof of the house in summer. Mr. Urdang asked if the proposed addition would have a substantial negative aesthetic impact on the neighbor and Mr. Dito opined no, as it would actually screen the pool from the neighboring property which is a positive.

The meeting was opened to the public for questions of the architect.

Referring to the photos **[A-9]**, **Mr. Bell** asked if Mr. Sabathia has 7 cars as he is proposing 7 garages. Mr. Dito did not know. Mr. Bell noted numerous cars parked in

front when he visited to ask if other people park there during the day. Mr. Dito stated yes and they are trying to eliminate that. Mr. Bell asked if the workers would be using the garages rather than parking in front. Mr. Dito offered workers could park in front of the new garages housing the cars used infrequently; it would make a great staging area. Mr. Bell clarified they would be taking cars from the front of the house and placing them on the side facing his client's house. Mr. Dito affirmed. Mr. Bell asked if there is a wrought iron fence on top of the driveway wall. Mr. Dito explained no, only in the front of the house. On the side the wrought iron railing fence is at the property line behind the driveway wall. Mr. Dito affirmed the center photo is a view towards the home on Lot 23. Mr. Dito preferred using **[A-12]** to show the location of the proposed addition but Mr. Bell referred to **[A-9]** to show and confirm three large trees that would have to be removed. Mr. Dito noted screening trees would also be relocated. Mr. Dito also affirmed they considered using the opposite side but felt this was a better design. Referencing **[A-10]** Mr. Bell questioned if the A/C units and refuse area were being moved closer to the side yard. Mr. Dito affirmed but noted they are presently next to the existing garage without screening but they propose to construct a low wall with a decorative wrought iron fence that would screen views and create a better condition than currently exists. Mr. Bell asked if this area was currently inside of the setback but as proposed would encroach into the side yard and Mr. Dito affirmed. The addition will require one additional compressor be added to those already there. Mr. Bell asked if he could have designed the garages without using two double doors. Mr. Dito noted they originally thought they could do a tandem garage requiring fewer doors but then the whole addition would be in the side yard. Mr. Bell asked if they could put one single garage door in the center but Mr. Dito explained the garage wouldn't be big enough to maneuver around inside and if they moved it over it would be too close to the kitchen and breakfast nook windows. It would then look like an addition. They designed the gallery/mudroom as a means to push it back and over as far as they could. Mr. Bell asked if they couldn't eliminate the proposed pergola, move it further back and over and still retain some view from the window; they're looking at the garage wall now. Mr. Dito felt it would block too much of the view. Mr. Bell asked if the application stems from Applicant's desire for a "man cave." Mr. Dito replied that's part of it. The proposed game room with a pool table would be separate from a playroom that exists in the house and would be more of an adult space where they could sit around and talk business. Mr. Bell questioned height where the addition would be about 3-4 feet lower than the main house and the garages a bit lower. Mr. Bell asked if Mr. Dito had been on the neighbor's property and he responded he had not. Mr. Bell asked how he can be sure the neighbors won't see the cars or garage doors. Mr. Dito conceded he is speculating based on his view from the Applicant's property. Mr. Bell further asked that when Mr. Dito opined it is a positive for the neighbor to view a four car garage wall versus a swimming pool that is just opinion and he affirmed. Mr. Bell questioned if that opinion was as a planner/architect or subjective and Mr. Dito affirmed it was subjective.

Burns F. Benson, LA was sworn. He is a Registered Landscape Architect in NJ. This is his first appearance in Alpine. He has an undergraduate degree in horticulture, a Master's degree in landscape architecture, practicing since 2003 and licensed since 2009. He was deemed an expert in landscape architecture by a Board in Englewood, NJ. Mr. Benson took pictures last Friday of existing views from Lot 24 towards Lot 23. These were mounted on an exhibit marked **[A-15]** and reduced sized versions were

circulated. Mr. Benson wished to reiterate Mr. Dito's description of the views. The pictures depict the existing screening which blocks views of cars parked in front of the existing driveway. All of the evergreens are planted on the Applicant's property. The neighbor's side of the property is wooded with mature trees that will come into leaf in the summer and include an under planting of immature trees such as beeches.

Mr. Benson referred to his plan **[A-6]** to describe proposed enhancements. To screen along the property line, they will add Norway spruce trees to existing plantings, continue these along the upper wall and, as the space narrows, switch to 7 – 8 foot tall Green Giant Arborvitae. Both are relatively fast growers, deer resistant and will fit in the space. The Green Giants planting heights could be increased to 10-12 feet or 12-14 feet and grow 1-2 feet per year to a mature height of 60 feet. Spruce grows 2-3 feet per year to a mature height of 100-120 feet. Tree heights of 40-50 feet would completely block out views of the roof. Within 5 years views of the garage doors would be blocked and some of the façade. Mr. Benson believed the neighbor currently cannot see too much of the existing cars and lower part of the garage doors and the view after construction would not be much different. As the trees grow they will see even less. The section of wall closest to the property line would be planted with a row of Skip Laurel.

The meeting was opened to the public. **Mr. Bell** requested clarification regarding views from the house and what currently exists along the property line. Mr. Benson responded on the Applicant's side there is 8-10 foot tall Norway spruce mixed in with a few cypress. He does not know the planting height or their age but they were probably planted when the house was built; roughly 4 years ago. Trees slated for removal are two 24", one 18" and two 8" caliper. Mr. Bell presented/circulated a photo **[O-6]** depicting a view from Lot 23 to the Applicant's rear yard with the pool somewhat visible through the existing spruce trees. Mr. Bell offered the Norway spruce would not block views of the new garages because of the downward line of site to question if they are relying upon arborvitae to screen that view. He further questioned the smaller line of Skip Laurel which Mr. Benson stated if planted at a height of 5 feet will grow to about 7-8 feet at maturity and fit into the two foot distance between the wall and property line.

On redirect, Mr. Urdang asked if it were Mr. Benson's opinion that the arborvitae proposed will perform the same blocking function as the Norway spruce and Mr. Benson affirmed. The change is to provide variety and to fit into the space.

Ms. Ronan asked if the maximum height for the plantings would be impacted by how close they are planted next to each other. Mr. Benson offered while they will ultimately reach mature height they would not get as wide as they normally do. Ms. Ronan questioned this as they're competing with each other in a small area near blacktop. Mr. Benson responded they have plenty of soil on the other side and because they won't get as wide they have a smaller root zone; he did not feel height would be affected. Ms. Ronan questioned impact of shade from the deciduous trees but Mr. Benson felt they would get plenty of afternoon sun and sufficient sunlight as the existing plantings are thriving. Mr. Clores asked if the purpose of the Skip Laurel is just to hide the wall and the driveway and Mr. Benson affirmed. Mr. Barbieri requested clarification that the neighbor is at a high elevation so they are always looking down and Mr. Benson affirmed.

Having concluded his presentation, Mr. Urdang requested a five minute recess which the Board granted (10:09 – 10:14 p.m.).

Opened to the public for comment, Mr. Bell called his client, **Elizabeth Herries** to testify. Ms. Herries was sworn and stated she lives at 9 Marie Major Drive with her husband, Don Aibel and their son. They have lived there almost 16 years. The applicant's house was built 3-4 years ago and her rear yard abuts their side yard. Her home is significantly higher because of the elevation of the land and because their living quarters are on the second floor of the house they look down on the Applicant's property. She felt awkward opposing as they are lovely people and their sons are friends. The Applicants visited them last February with proposed plans and at that time said they wanted to add a number of garages with guest quarters on top to accommodate family from California; different from tonight's testimony. Ms. Herries described her living quarters stating they spend most of their time in the rear second floor spaces that includes their master bedroom, two large decks, kitchen, living and dining areas comprised with an entire wall of glass that looks out to the west towards the Applicant's property. An enclosed pool and lower level conservatory are also entirely glass enclosed and oriented towards the west. Mr. Bell presented photos marked [O-1] through [O-5], circulated to Board and Mr. Urdang who stated no objection to these or [O-6]. Mrs. Herries described the photos:

[O-1] master bedroom windows

[O-2] view from the deck showing glass enclosed pool to the near right with glassed kitchen eating area above. If looking at the house from the rear the bedroom would be on the left and the eating area further over so the bedroom is the closest part of the house to the Applicant's property.

[O-3] glass enclosed pool and conservatory.

[O-4] taken from the bedroom/adjacent deck shows view of Applicant's rear yard/pool area where she understands the proposed addition would be constructed. Also shows some of the trees slated for removal.

[O-5] taken from ground level at the property line looking toward Applicant's pool.

[O-6] taken from their bedroom window shows existing garages at somewhat of an angle as their houses line up differently. Their house is on a corner and oriented towards Marie Major Drive while the Applicant is oriented towards Litchfield Way. They can see the existing garages and pool in summer; the spruce trees are not adequate. She stated the photos are accurate depictions taken very recently.

Ms. Herries stated it is with great regret that they object to the addition because they feel it is just too close and will profoundly impact their privacy and the enjoyment of their property and quality of life. Their entire living area looks out on this vista and contrary to a prior witness they would rather look out on a grassy yard versus the equivalent of seven garage doors. She only learned tonight that cars currently parked in front would be moved to the driveway outside of the new garages and this is distressing because it means as people come and go they're going to hear car doors slamming and have to look at cars that will be that much closer. They do not believe the landscape plan will provide adequate screening, certainly not in their lifetimes, and a number of big trees will be removed that currently do help with screening. Just to be looking out at this long 115 or 140 foot wall of seven garage doors is not a happy prospect and to have their driveway come within two feet of the property line seems unacceptable to them.

Mr. Urdang questioned Ms. Herries repeatedly regarding the views noting there had been substantial testimony by using a similar architectural style and supplementing the landscaping her views would not be very different then they are now. He noted all of the evergreens are on the Applicant's side and only deciduous trees are on her side. Ms. Herries disagreed noting they only see the back edge of the Applicant's house now but would see a lot more building with the proposed. The elevation of her home and fact that their living space is on the second floor means the trees will not reach sufficient height in her lifetime to adequately screen. Their quality of life would be diminished because where they see grass now and a lovely pool they would see a very, very long structure with seven garage doors and there is no question that would be a detriment. She further explained it is really the totality of the project they object to being the combination of encroachment into the setback area, removal of major trees in the tree buffer line and additional garage doors.

Mr. Clores questioned if planning testimony was necessary. Mr. Urdang offered a planner takes the information and presents it in the context of the positive and negative criteria which he will present in summation but he could provide if the Board felt it was warranted. After a brief discussion the Board and Mr. Urdang agreed it was not.

Summations

Opposition. Mr. Bell put forth while it's never easy for neighbors to object to another neighbor's desire to use their property and their house the way they would like but sometimes, as in this case, the neighbor's desire is over reaching and can certainly have an impact upon the adjoining property. The Applicants are good neighbors with a lovely home. Nevertheless, their 7,000 + s.f. home was built after the lot was created. A claim of hardship due to irregular shape should not apply as the the Applicant's predecessor in title chose to erect this house and for whatever reason, probably monetary the builder chose to erect the house right at the 50 foot side yard setback and design a house that was extremely wide and chose to place four garages on one side of the house. This type of hardship carries through from owner to owner and should also apply to the Applicants. Mr. Bell cited Egeland v. Board, 405 N.J. Super. 329 (App. Div. 2009), a case that stated there is no requirement that the current owner had been involved in the creation of the hardship. The Applicant has other means to avoid this major impact to his clients such as moving the addition further in or to the other side. No one said it couldn't be done, only that it might cost more. The proposed would have a very negative effect on his clients because of the way the homes are oriented to each other. Instead of looking at a corner of the house they would now see a wall of garages only 34-35 feet off the property line. To say their intention to park cars along the extended driveway will not have a deleterious effect is wrong.

The Applicant has not met the burden of proof for hardship: the property is not uniquely shaped, the relief requested is substantial requesting space for four extra cars and a "man cave" above it within 35 feet of the 50 foot required property line, and a significant waiver to encroach into the tree buffer which is extremely significant when you consider parking cars two feet from property line relative to associated sound as well as sight.

Mr. Bell further pointed out no testimony was heard that granting this relief would not be substantially detrimental to the public good or that there would not be a substantial impact on the Zoning ordinance or Zone Plan. This would have an extreme negative impact on his clients as this is a rear yard to side yard orientation and his clients whole house is oriented towards the rear of the property. Furthermore the degree of relief sought is substantial being a 30% side yard encroachment and a 63% increase over the permitted garage door length. These are major variances that can be avoided and the Board has not looked upon these type of variances favorably in the past particularly in these situations where the proposed does not address a need but a desire. His clients just want the Applicants to obey the side line and tree buffer requirements.

Applicant. Mr. Urdang responded, with all due respect, Mr. Bell confused certain principles. Firstly, the statute does not apply need versus desire as demonstrated in a NJ Supreme Court case Lang v. Zoning Board of Adjustment, 160 N.J. 41 (1999) where they chastised the Appellate Court reversing an approval for a pool variance stating it was not their business (nor implicitly the Boards) to decide what's needed or not. The issue is only whether there is sufficient justification to grant the variance. Secondly, he disagrees with Mr. Bell that this is a self-created hardship. In this situation the house complied and testimony spoke to the steep slopes on the opposite side as the reason for the proposed location; while it may translate into money there was certainly a topographical reason. The law specifically lists the shape of a property as justification for a hardship variance and testimony revealed the lot has a significant deviation from front to back where if the lot were a rectangle they would have complied to the side yard setback. They've satisfied the positive criteria by showing the significant amount of parking in the front court which is often clogged with vehicles affecting the perspective of the entire public as they look in on this parking area and the addition will get some of that parking out of this area. As to the negative criteria the property presumably most affected would be Lot 23 and that witness expressed it is a "quality of life" issue disregarding the substantial testimony that the proposed addition is lower in height than the existing house, is at a significant distance from their house, the existing and additionally proposed significant landscaping would, both at planting height and mature height, effectively obscure the garage doors which seem to be the principal complaint. The issue becomes when you are in a community such as Alpine, what is the reasonable entitlement of your vista of a neighboring house? This is not an issue of need but what the applicant proposes to do and there are sufficient reasons under the law to justify it both in changing the parking from the front and allocating it to the rear and in terms of the shape of the lot. We do not feel there is any substantial detriment to the public and the use of the word substantial is important. Any variance will introduce some degree of discordance but this application does not rise to the level of substantial because considerable care has been taken to breaking up the façade and shielding the views. He feels they have provided adequate proof and asks the relief be granted.

Ms. Ronan offered the witness was disagreeing with, not disregarding, testimony to the effect that that one line of greenery and arborvitae would have and she was within reason in suggesting that one line would not compensate for the encroachment that this structure would establish. Ms. Ronan is also concerned that the whole purpose of the man cave as described and associated traffic as described is actually business

related where this is a residential community and all their zoning is about residential use. She is disturbed by that aspect and is against the variances.

Mr. Cohen stated hearing their intent to move cars from the front of the house to the side which is closer to the neighbor, who would be losing any buffer zone because they're almost on the property line, bothers him a great deal. It's almost creating a parking lot and he finds that to be almost an encroachment on the neighbor purposely.

Mr. Burns recalled his earlier question why they can't move it to the other side of the house. He feels they have the three car garage which can stay where it is; it seems to be mostly for everyday use. The proposed garage would be for classic cars or storage and he doesn't see why they can't put it on the other side of the house which would increase the width of parking for visitors and that would eliminate one variance and they'd just have to fight for the garage doors and building coverage.

Mr. Glazer recalled a home in Alpine with only 40 linear feet of garage doors but utilizing car elevators they have space for 21 cars. Mr. Glazer opined this application asks too much in terms of the Code seeking an excess in building coverage which they rarely grant; a side yard setback that puts a driveway two feet from the property line and exceeds the permitted linear feet of garage doors by 23 feet.

Mr. Glazer asked if Mr. Urdang wished to continue the matter and Mr. Urdang asked that the zoning issue be decided.

Resolution: Upon a motion by Mr. Cohen, seconded by Mr. Clores to deny the application.

Vote: Ayes: Cohen, Clores, Burns, Barbieri, Ronan, Glazer

MOTION CARRIED

PROCEDURAL MOTIONS

APPROVAL OF MINUTES Resolution: Regular Meeting November 19, 2013

Upon a motion by Mr. Barbieri, seconded by Mr. Burns and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, December 20, 2012 to approve the minutes of the regular meeting held on November 19, 2012.

MOTION CARRIED

APPROVAL OF BILLS AND CLAIMS Resolution:

Upon a motion by Mr. Clores, seconded by Mr. Cohen and approved by all those eligible to vote at the regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, December 20, 2012 to approve the following Bills and Claims:

Kates, Nussman, Rapone Ellis & Farhi	Retainer	2-01-21-185-021	400.00
Kates, Nussman, Rapone Ellis & Farhi	Alpine Citgo 49/8	Inv. 17134	940.00
Kates, Nussman, Rapone Ellis & Farhi	Kim 60/4	Inv. 17217	986.50
Azzolina & Feury Engineering	Alpine Citgo 49/8	Inv. 58872	80.25
Azzolina & Feury Engineering	Kim 60/4	Inv. 58875	294.25
Azzolina & Feury Engineering	Sabathia 71/22	Inv. 58708	26.75
Azzolina & Feury Engineering	Sabathia 71/22	Inv. 58873	642.00
Azzolina & Feury Engineering	Minnetian 72/26	Inv. 58880	347.75
Azzolina & feury Engineering	Luk 39/8	Inv. 58712	936.25

MOTION CARRIED

NEW BUSINESS

2013 Meeting Dates Proposed meeting dates were circulated. Mr. Clores advised he will not be at the January meeting. Dates will be submitted to the Borough Clerk for publication.

2012 Annual Report/Review of 2012 Resolutions. Chairman Glazer recalled discussion to ask the Mayor and Council to reconsider the requirements treating generators as accessory structures not permitted in a side yard. He noted air conditioners are permitted and in some instances there should be exemption based on size. Attorney Kates will draft an analysis and cover letter for review at the next meeting.

COMMUNICATIONS - None

ADJOURNMENT at 11:05 p.m. upon motion by Ms. Ronan, seconded by Mr. Clores and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary