

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

JANUARY 22, 2020

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:31 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute and a reminder that Board of Adjustment meetings are being videotaped and broadcast live.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT:	Mr. Calijone	Mr. Rabolli
	Mr. Jackson	Mr. Straffin
	Mr. Kearney	Mr. Whiteman

ABSENT:	Mr. Cannava	Mr. Montroy
	Mr. DeSilva	

ATTORNEY:	Mr. Ben R. Cascio, Esq.
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I. APPROVAL OF BILLS:

None to Present.

II. APPROVAL OF MINUTES:

None to Present.

III. MEMORIALIZING RESOLUTIONS:

None to Present.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received as the only parties present were with the Applicants.

V. PUBLIC HEARING(S):

**1. DOCKET #1457-19 – HENRY AND MARIBEL CORTES
186 HALIFAX ROAD, BLOCK 1, LOT 126**

Carried from December 18, 2019, Application for “C” Variances/waivers to construct a single-family home with retaining walls that are greater than 6 feet in height; Soil Movement Permit Application with waiver to create slopes of 1V:3H; construction on a lot that does not have frontage upon an improved or approved street; construction on a roadway that is not improved or approved; construction on an existing undersized lot.

Mr. Rabolli announced that this Docket is being carried to the Board of Adjustment Meeting scheduled for February 19, 2020. No further notice is required.

**2. DOCKET #1471-19 – ANTHONY D’ATRIA
142 ARTHUR COURT, BLOCK 70, LOT 49.01**

Carried from December 18, 2019, Application for a “C” Variance to construct and install an in-ground pool in a front yard on a corner lot.

Mr. Cascio stated that the Notice was in order.

Ms. Kirsten Osterkorn, Omlin & Osterkorn, 22 Madison Heights, Wyckoff, NJ approached on behalf of the Applicant, gave her credentials, and was sworn in by Mr. Rabolli as an expert Surveyor, Engineer and Planner.

Ms. Osterkorn stated that the D’Atria family has owned and occupied the property since 1998; the Filed Map is dated 1996. Mr. D’Atria and his family moved to the home in 2013. The proposed pool was originally to be constructed in the backyard. The survey revealed a wetland easement on the Filed Map. To avoid being in the easement, the location of the proposed pool has shifted more towards Stephens Lane. The required front-yard setback is 35 feet; the proposal for the pool is at 40.1 feet.

The property is located in the R-20 Zone. Being on the corner of Arthur Court and Stephens Lane, the property has two front yards. Everything drains and is graded to the West into the rear of the property. Referring to the Plans presented on the poster board, Ms. Osterkorn testified that when first looking at the property, the best placement for the pool would be the rear of the property. There is a retaining wall in the backyard area; the pool would sit just below the retaining wall. Attempting to avoid dealing with the DEP, going through the easement, staying out of those constraints, and factoring in the corner lot, the proposal was to stay

out of the front-yard setback. When reviewed by Boswell Engineering, it was looked at with the Ordinance that the actual front yard is taking the line of the building and going back to the rear property, with the rear yard being the footprint of the building extended to the back property line. The whole Southern part of the property, by Ordinance, is being considered the front yard.

Ms. Osterkorn summarized by stating that having a corner lot situation, the elements are very constrained, which led to the request for a C1 Variance for the proposed pool in a front yard. The proposed pool is still outside the 35 foot front yard requirement. It cannot be set back further due to the Wetlands easement. The drainage and impervious coverage are being handled; a seepage pit is being proposed. All bulk requirements are being met. Boswell Engineering's letter of January 2, 2020 referred to landscaping and buffering. The survey was done in September of 2019. Since that time, twenty (20) trees have been planted. The pool will sit lower than Stephens Lane and will be buffered. There is a brick retaining wall to the left. Ms. Osterkorn testified that there is no adverse impact.

Discussion took place regarding the distance from the Wetlands, the grading at the easement and the introduction of a new small wall to not disturb the easement. The pool will be fenced.

A motion to move into Work Session was made by Mr. Whiteman, seconded by Mr. Straffin. All voted in favor.

NOTE: Work Session was held immediately after the Public Hearing for this docket.

**3. DOCKET #1468-19 – ARMINE ARUSTAMYAN
15, 17 & 19 MOUNTAIN AVENUE, BLOCK 47, LOTS 28.01, 28.02 & 28.03**

Carried from January 15, 2020, Application for "C" Variances to permit the construction of retaining walls that are greater than 6 feet in height and encroach in the side and rear yard setbacks across lot lines in connection with the future development of each lot for a single-family dwelling.

Mr. Bruce Whitaker, Esq. of McDonnell & Whitaker, 245 East Main Street, Ramsey, NJ approached on behalf of the Applicant and stated that this is a continuation of the Public Hearing of January 15, 2020 where testimony was concluded at that time. The Board had requested an opportunity to review the revised plans. The plans are individual lot plans with the retaining walls showing, dated November 15, 2019, and overall plans for all three lots. All stipulations were addressed.

Mr. Rabolli commented that one of the concerns was to make sure there was Public Notice for awareness of the project. Mr. Cascio added to the record that Mr. Kelly, at the request of the Board, submitted a list of conditions of approval. Mr. Kearney voiced his concern about plans not being entered into evidence for this case, and requested conformation of the correct final plans. Mr. Cascio stated that **Exhibit A1 – Site Plan dated March 25, 2019, revised September 30, 2019, last revision date November 15, 2019** was the only exhibit marked into evidence at the previous meeting. Mr. Whitaker commented that the revised plans all have the same revision date of November 15, 2019. Mr. Cascio referenced Mr. Whitaker’s letter of January 21, 2020 and requested that they be marked into evidence:

- Exhibit A2** - Site Plan, Block 47, Lot 28.01; 15 Mountain Avenue
Dated June 11, 2018, revised November 15, 2019
Prepared by Surtech Surveying Technologies, Inc.
and Thomas V. Ashbahian.
- Exhibit A3** - Site Plan, Block 47, Lot 28.02; 17 Mountain Avenue
Dated June 11, 2018, revised November 15, 2019
Prepared by Surtech Surveying Technologies, Inc.
and Thomas V. Ashbahian.
- Exhibit A4** - Site Plan, Block 47, Lot 28.03; 19 Mountain Avenue
Dated June 11, 2018, revised November 15, 2019
Prepared by Surtech Surveying Technologies, Inc.
and Thomas V. Ashbahian.
- Exhibit A5** - Soil Movement Plan, Block 47, Lots 28.01, 28.02, 28.03
15, 17 and 19 Mountain Avenue
Dated March 25, 2019, revised November 15, 2019
Prepared by Surtech Surveying Technologies, Inc.
and Thomas V. Ashbahian.
- Exhibit A6** - Landscaping Plan – November 12, 2019, revised November
15, 2019
Prepared by Greenbelt Landscapes, Inc.

Mr. Rabolli marked all of the plans into evidence and dated them January 22, 2020. A copy of **Exhibit A1** was marked ‘Duplicate’ with a marked into evidence date of January 15, 2020.

Mr. Kearney thanked Mr. Whitaker for clarifying for the record.

Mr. Cascio read the Conditions of Approval from Mr. Kelly's report dated January 16, 2020 and asked the Members of the Board if there were any other concerns.

Discussion took place regarding the easements, drainage, access with no obstruction, the Maintenance Code, the possibility of gates and/or stairways at the discretion of the homeowner, and fences on the retaining wall. Mr. Rabolli referenced Mr. Kelly's comment regarding paving of the road. Mr. Cascio read from Mr. Kelly's letter dated December 4, 2019; The Applicant must be made aware that the road was paved in October of 2018; it is unlawful to excavate a newly paved road for a period of two years from when the road was paved.

There were no further questions or comments from Members of the Board. No members of the Public were present. Mr. Whitaker commented that another stipulation is that the retaining wall will be earth tone as requested.

A motion to move into Work Session was made by Mr. Whiteman, seconded by Mr. Straffin. All voted in favor.

VI. WORK SESSION

1. DOCKET #1471-19 – ANTHONY D'ATRIA 142 ARTHUR COURT, BLOCK 70, LOT 49.01

NOTE: Work Session was held immediately after the Public Hearing for this docket.

Application for a "C" Variance to construct and install an in-ground pool in a front yard on a corner lot. Carried from December 18, 2019.

For the newer members of the Board, Mr. Rabolli reviewed the definition of a front yard and the situation of having two front yards. He then summarized that the Applicant is seeking a C Variance and has demonstrated a hardship by having:

1. A corner lot with two front yards
2. Wetlands
3. Topography issues

Mr. Rabolli concluded that the Applicant has met the obligations of the C1 Hardship and there is no detriment to the Public Good with having a pool in a residential area.

A motion to approve was made by Mr. Straffin, seconded by Mr. Whiteman. A roll call vote revealed 6 aye votes by Mr. Calijone, Mr. Jackson, Mr. Kearney, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

A motion to go out of Work Session and return to Public Hearing portion of the meeting was made by Mr. Kearney, seconded by Mr. Whiteman. All voted in favor.

Mr. Rabolli called Docket #1468-19 – Armine Arustamyan.

**2. DOCKET #1468-19 – ARMINE ARUSTAMYAN
15, 17 & 19 MOUNTAIN AVENUE, BLOCK 47, LOTS 28.01, 28.02 & 28.03**

Carried from January 15, 2020, Application for “C” Variances to permit the construction of retaining walls that are greater than 6 feet in height and encroach in the side and rear yard setbacks across lot lines in connection with the future development of each lot for a single-family dwelling.

Mr. Rabolli summarized the Application stating that the Applicant proposes to build three homes on three lots on a very steep slope. Two of the lots are not through lots, the third lot is a through lot. The Applicant proposes a two-tiered retaining wall of 8 feet in height at each level. The Board’s concern is that the retaining wall is drastic, however, the property is dramatic. The C Variance aspect, the Hardship is dramatic. From an aesthetic point of view, having three tiers of 6 foot retaining walls or two 8 tiers of foot retaining walls would not be much of a difference. The Applicant has agreed to the conditions stipulated by Mr. Kelly. The retaining wall will be earth tone. If this Application is not approved, there is very little way to use the three lots to their full potential. Experts will meet at various stages to ensure that the construction stays on track with all the conditions for the right result.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Kearney. A roll call vote revealed 6 aye votes by Mr. Calijone, Mr. Jackson, Mr. Kearney, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

3. ANNUAL REPORT

Mr. Rabolli explained aspects of the Annual Report and asked the Members of the Board to prepare to discuss items that they would like to see included and/or revised to be brought to the next meeting scheduled for February 5, 2020.

VII. ADJOURNMENT:

A motion to adjourn was made by Mr. Whiteman, seconded by Mr. Kearney. The meeting adjourned at 8:16 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on February 14, 2020 for approval at the Regular Meeting to be held on February 19, 2020.