

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

MAY 6, 2020

The combined public/work session meeting of the Board of Adjustment held via Remote Zoom Conference beginning at 7:34 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.

PARTICIPANTS: Mr. Calijone Mr. Kearney
 Mr. Cannava Mr. Rabolli
 Mr. DeSilva Mr. Straffin – in at 7:45 p.m.
 Mr. Jackson Mr. Whiteman

ABSENT: Mr. Montroy

ATTORNEY: Mr. Ben R. Cascio, Esq.

PROFESSIONALS: Ms. Geraldine Entrup, Administrative Officer

I. APPROVAL OF BILLS:

None to present.

II. APPROVAL OF MINUTES:

A. MINUTES OF APRIL 15, 2020

A motion to approve was made by Mr. Whiteman, seconded by Mr. Jackson. All eligible members voted in favor.

III. MEMORIALIZING RESOLUTIONS:

- 1. DOCKET #1463-19A – CF MARMOSSET TEB, LLC by APML1, LLC
555 MACARTHUR BLVD, BLOCK 135, LOT 61.02**

Withdrawal of the Original Application without prejudice and Resolution of Approval of the Amended Site Plan Application to make modifications to the Site Plan to increase the size of van parking spaces, reduce the number of van loading positions and to provide a van queuing area. The Amended Application is permitted as a field change with the Board's right to bring the Applicant back in if necessary.

The Resolution prepared by Mr. Cascio was provided to the Members of the Board prior to the meeting.

A motion to approve was made by Mr. DeSilva, seconded by Mr. Jackson. A roll call vote revealed 4 aye votes by Mr. Cannava, Mr. DeSilva, Mr. Jackson, and Mr. Rabolli.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public participated.

V. PUBLIC HEARING(S):

**1. DOCKET #1472-19 – MAHWAH BUSINESS PARK
65 RAMAPO VALLEY ROAD, BLOCK 41, LOTS 1, 2, 9 & 10**

Application for a "D" Conditional Use Variance proposing a 400 parking space lot for the outdoor storage of vehicles associated with Ramsey Auto Group, to be carried to May 20, 2020. No further notice is required.

Mr. Rabolli commented that this Application may or may not lend itself to a Zoom Hearing, which will be determined prior to the May 20, 2020 hearing date.

**2. DOCKET #1475-20 – ANTHONY ALTADONNA
222 MAHWAH ROAD, BLOCK 99, LOTS 11 & 12**

Application for "C" Variances for exceeding maximum lot coverage and a side-yard Setback to construct a 10'x16' accessory structure.

Mr. Cascio stated that the Notices were in order.

Mr. Anthony Altadonna, Homeowner of 222 Mahwah Road, Mahwah, NJ approached, was sworn in by Mr. Rabolli and referred to a photo of the partially constructed shed. Mr. Altadonna stated that he discovered that the shed did not comport with setback requirements due to the undersized lot for the Zone after the construction had begun. His understanding was that the required setback was one half of the standard; 10 feet on one side, so he read it as 5 feet, which is also the minimum. Mr. Altadonna

stated that he was then informed that the requirement was one half of the 15 feet; 7 ½ feet due to the size of the shed.

Discussion took place regarding the size of the shed being 10' x 16', which would be an accessory structure vs. 10' x 12' shed, and concern with impact to the neighbors. The immediate neighbor to the left, who would be most impacted, was not participating on the call. Mr. Altadonna commented that there was approximately 40 feet between his property and the neighbor. The fence between the properties belongs to Mr. Altadonna. The neighbor has no fence, pool or playground. The neighbor has seen the structure and had no objections that Mr. Altadonna is aware of.

Mr. Altadonna described the shed as a 10' x 16' Gambrel type with a curved roof and is 13 feet tall. The top three feet will be used to store garden equipment, rakes, etc.; the entire structure will be used for storing the lawn mower, larger garden equipment, and patio furniture. The structure sits on four to five inches of ¾" stone that provides for water penetration and flow. No electricity or plumbing will be installed. The shed is to be utilized for backyard storage; not intended for living or any other type of use. The floor is made of CDX ¾" pressure treated plywood, 4x4 skid foundation which rests on gravel for airflow to avoid moisture. The photo shows that the flooring is raised, netting will be placed around it to keep out rodents. The grade in that area is lower compared to the rest of the yard and will be level when completed. From peak to ground the height is 14 feet; the shed is 13 feet, the 4x4 flooring and base are approximately 1 foot.

Mr. Rabolli stated that there is no issue with the overhang cutting into the setback; bay windows and front stoops generally do not count toward encroachment. The neighbor on the southeast side is 21 feet away. There is 30 plus feet between the property line and the house behind it. Mr. Kearney referenced several other structures in the neighborhood and commented that this structure is not unique to the neighborhood and is not abutting the immediate neighbors.

Mr. Altadonna stated that he would move the shed if there is an issue with the setback being 7 ½ feet vs. 5 feet. Mr. Jackson questioned height stipulations, limitations, and language in the Code. Mr. Altadonna described his home as a two-story Colonial. Mr. Cascio commented that the Zoning Permit Application was denied. Mr. Altadonna responded that he was verbally told that the Zoning Permit Application was denied due to lot coverage; that 7 ½ feet is required due to the size of the shed which is actually an accessory structure.

Mr. Rabolli stated the three issues:

- 1) Lot Coverage
- 2) Side-yard, rear-yard setbacks
- 3) Accessory structure vs shed

Ms. Entrup commented that setbacks in the R5 or R15 Zones are 10 feet and 15 feet. Accessory structures can be half of the larger, which is past practice. The requirement would therefore be 7 ½ feet, where Mr. Altadonna has 5 feet.

Further discussion took place regarding past practice vs Code. Mr. Cascio commented that when the Board grants a variance, if not written in the Ordinance there is no variance to grant. The specific section of an Ordinance is normally quoted. Mr. Rabolli agreed that the Township needs to be specific in its drafting and that the ambiguity of the Ordinance favors the property owner. Mr. Kearney recalled that a Variance to build the home on this lot was granted by the Board in 2001 due to the undersized lot. Mr. Califone commented that the lot is 13,125 square feet; the size of the shed is 21.1%, which is 1.1% over the approved lot coverage amount.

Following lengthy discussion Mr. Rabolli suggested that the matter be moved with the Resolution stating 5 feet, not 7 ½ feet; an accessory structure within the height and rear-yard setback requirements. Mr. Cascio stated that an undersized lot is special reason to grant the Variance, as it represents hardship to the Applicant.

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

VI. WORK SESSION

1. DOCKET #1475-20 – ANTHONY ALTADONNA 222 MAHWAH ROAD, BLOCK 99, LOTS 11 & 12

Application for “C” Variances for exceeding maximum lot coverage and a side-yard Setback to construct a 10’x16’ accessory structure.

Mr. Rabolli summarized stating that the issues have been analyzed and there is no need for a side-yard setback Variance due to the interpretation of the Code; smaller rather than larger, the correct number is 10 feet – 5 feet for an accessory structure. The rear of 21 feet is not an issue. The height of 14 feet is not an issue. The lot coverage, based upon the existing house and lot size is the issue.

Mr. Cascio confirmed that the lot coverage requirement is 20 feet, the proposed lot coverage is 21.1% for an overage of 1.1% or 144 square feet.

A motion to approve was made by Mr. Jackson, seconded by Mr. DeSilva. A roll call vote revealed 8 eye votes by Mr. Califone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Rabolli, Mr. Straffin, and Mr. Whiteman.

Mr. Rabolli stated that the matter has passed and that a Resolution will be prepared for the May 20, 2020 Board of Adjustment Meeting. Mr. Rabolli explained the 45 day

appeal process to Mr. Altadonna and informed him that if he were to proceed prior to the 45 days, it would be at his own peril.

2. FUTURE BOARD OF ADJUSTMENT MEETINGS VIA ZOOM

Discussion took place regarding the type of Applications that may not be suitable for Zoom meetings. Timeliness of presenting Applications before the Board has to be taken into consideration, but may be expanded under COVID Regulations, with Applications being extended up to 180 days. Mr. Cascio stated that it is the Applicants' choice and right to present via the Zoom Platform. Mr. Cascio added that he had sent out the new COVID Regulations and that the Board is doing a good job complying.

Mr. David May, who joined as an Attendee, commented that the Council meetings have worked successfully and that the key was notification to the Public.

A motion to move out of Work Session and Adjourn was made by Mr. Kearney, seconded by Mr. Whiteman. All voted in favor. The meeting adjourned at 8:45 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on June 12, 2020 for approval at the Regular Meeting to be held on June 17, 2020.