

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**MAY 19, 2021**

The combined public/work session meeting of the Board of Adjustment of the Township of Mahwah held via Remote Zoom Conference was called to order at 7:30 p.m. 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. It was noted that adequate notice of the meeting was provided specifying that this meeting would be held remotely and that electronic notice of both general access instructions and specific meeting invitations were posted to the Township Website.

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.

<b>PRESENT:</b>	Mr. Calijone	Mr. Montroy
	Mr. Cannava	Mr. Rabolli
	Mr. DeSilva	Mr. Straffin
	Mr. Jackson	Mr. Whiteman
	Mr. Kearney	

**ATTORNEY:** Mr. Ben R. Cascio, Esq.

**PROFESSIONALS:** Mr. Michael J. Kelly, PE, Boswell Engineering  
Ms. Deb Lawlor, FAICP, PP,  
Colliers Engineering & Design, Inc.  
Ms. Geraldine Entrup, Administrative Officer

**I. APPROVAL OF BILLS:** None to present.

**II. APPROVAL OF MINUTES:**

**1. MINUTES OF MARCH 17, 2021**

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

**2. MINUTES OF APRIL 7, 2021**

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

**III. MEMORIALIZING RESOLUTIONS:** None to present.

**IV. OPEN TO THE PUBLIC:**

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public participated on the Zoom call or wrote in comments.

**V. PUBLIC HEARING(S):**

**1. DOCKET #1489-21 – NICOLE REUTER  
102 SOUTH MAHWAH ROAD, BLOCK 93, LOT 1.02**

Application for a “C” Variance for exceeding maximum lot coverage to install an in-ground pool.

Mr. Cascio stated that the Notices were in order.

Both **Mr. & Mrs. Reuter of 102 South Mahwah Road** were sworn in by Mr. Rabolli. Mrs. Reuter stated that the addition of the pool would put the lot coverage at 22% where 20% is permitted. The existing coverage for the patio, deck and driveway plus the pool will result in a 2% overage of permitted lot coverage.

Mr. Kelly added that the lot is undersized, being in a 15,000 square foot Zone, they have 12,307.5 square feet. Based on their existing lot coverage, if the lot was 15,000 square feet they would be at 18% and within the permitted coverage.

Mr. Rabolli opened the questioning to Members of the Board for Mrs. Reuter.

Questions from Members of the Board included; will the pool buffer up to the neighbor’s property cause a hardship, is a patio or walkway around the pool included in the plans, the height and location of the proposed fence, the slope.

Mrs. Reuter responded, stating that installation of the pool will not create a hardship to the neighbors. There is 15 feet with no one directly behind them. There is an existing patio and they are not installing a walkway due to drainage. The Application does not include extending the fence. There is an existing fence across the back. Regarding the

slope, Mr. Kelly commented that the yard would have to be leveled which should not be an issue, and the required setback of 10 feet is met at 10.5 feet.

There were no further questions from Members of the Board for Mrs. Reuter.

Mr. Rabolli opened the questioning to the Board Professionals for Mrs. Reuter.

Mr. Kelly inquired about removal of trees. Mrs. Reuter stated that no trees were being removed. Mr. Kelly added, that if approved, the Applicant's Engineer will have to design drainage improvement, i.e., a seepage pit, to contain runoff.

There were no further questions from the Board Professionals for Mrs. Reuter.

There were no questions from members of the Public for Mrs. Reuter.

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

*Note: Work Session immediately followed the Public Hearing for this Docket.*

**2. DOCKET #1487-21 PALISADES PROPERTIES, LLC  
316 FOREST ROAD, BLOCK 168, LOT 9**

Application for a "D" Use Variance for a Sober Living Home in existing dwelling, continued from March 17, 2021.

Four (4) Members of the Board recused themselves from this Application; Messrs. DeSilva, Kearney, Montroy and Straffin. If deemed a Rule of Necessity to have seven (7) Members of the Board vote, a Planning Board Member may be required to vote on this Application.

**Mr. Edward Purcell, Esq., Price, Meese, Shulman & D'Arminio, P.C., 89 Headquarters Plaza North, Suite 1442, Morristown, NJ 07960,** representing the Applicant, stated that he had received a letter from Mr. Weiner from Beattie Padovano stating that there were issues regarding the meeting notice on the Township Website. It was noted that Mr. Weiner recently became involved with this Application and had not heard previous testimony or cross examination. Following a lengthy discussion it was determined that the notice is adequate; a compromise was made that the Applicant would re-notice and witnesses would return at a future meeting for Mr. Weiner to have an opportunity to cross examine and to present his witness.

Mr. Purcell commented that members of the corporation, Residential, Inc., have standing as an interested party. A discussion took place regarding parties with standing being within 200 feet of the property.

Mr. Purcell stated that the Applicant was licensed in 2018 and operates strictly pursuant to New Jersey State Regulations. The Fair Housing Act is a Federal Law that outlaws discrimination against disabled individuals. Drug and alcohol problems are considered a disability and are protected by the Act.

Mr. Purcell called his first witness; **Mr. Jay Jonas, Head of Operations, Palisades Properties**, still under Oath, gave his experience and operations, stating that the purpose is to provide a safe place for men struggling with drug and/or alcohol dependency. 316 Forest Road is owned by Forest Mahwah, LLC, previously under the name of Lee Empire, LLC. The survey presented as Exhibit A1 was referenced as proof of Mr. Lee's ownership. Making reference to several exhibits, Mr. Jonas stated that the Nevada address was for Tax purposes, House Rules were provided to the Board, three licenses were submitted to the Board, and Bill Ennis is Mr. Jonas' Business Partner. Mr. Jonas commented that the property was inspected by the Department of Community Affairs (DCA) in the last month. Palisades Properties does not turn a profit.

Mr. Rabolli opened the questioning to Members of the Board for Mr. Jonas.

Questions from Members of the Board included: since not turning a profit and paying out of your own pocket due to COVID, has an application for Government relief been submitted or any loans applied for; what is the tax benefit of being registered in Nevada; have the spelling of Mahwah corrected on Mr. Jonas' license; are physical inspections done by Mahwah officials; number of State inspections done annually; is the home a business.

Mr. Jonas responded that no Government relief or loans have been applied for. Mr. Purcell stated that being registered in Nevada was for tax records, not for a tax benefit. Mr. Jonas commented that fire inspections were done by Mahwah's Fire Inspectors, one State inspection is done annually, licensing is Regulatory, the home operates as a business and maintains the characteristics of a Co-Operative Sober Living Residence.

Mr. Purcell added that regulations, when adopted, put Co-Operative Sober Living resident regulations with Boarding House regulations, but only applicable if specifically stated. Co-Operative Sober Living Residences are regulated separately by the New Jersey Department of Community Affairs

There were no further questions from Members of the Board for Mr. Jonas.

Mr. Rabolli opened the questioning to members of the Public for Mr. Jonas.

**Mr. Dan Edwards, 15 Penna Court** inquired if background checks were specifically related to Megan's Law. Mr. Jonas responded that no one with a criminal or sexual offense record is accepted into the program.

**Mrs. Jessica Edwards, 15 Penna Court** requested clarification of the Zoning request; is it from the owner or the tenant? Will Zoning become permanent? Mr. Purcell responded that the request is from the tenant, Palisades Properties, LLC; the owner is Forest Mahwah, LLC. Mr. Cascio stated that if the Application is approved it would run with the land and remain until the use is changed for another use or back to its original use as a single family residence.

There were no further questions from members of the Public for Mr. Jonas.

Mr. Rabolli announced a five minute break at 9:23 p.m. The meeting resumed at 9:28 p.m.

Mr. Purcell called his next witness; **Mr. Paul Grygiel, Planner, 33-41 Newark Street, Hoboken, NJ** provided his credentials, background and affiliations, and was sworn in by Mr. Rabolli as a Professional Planner.

Mr. Grygiel described the property and permitted uses in detail. A discussion took place regarding the D1 Use Analysis and Federal Regulations. Mr. Grygiel stated that in his opinion, this Application is an inherently beneficial use, and made reference to Exhibits A-18 CDC, A-19 CDC, A-20 NJ State Health Assessment and A-21 Mahwah – all referring to deaths due to alcohol and/or drug abuse. As an example, Mr. Grygiel provided key points from the Giercyk vs. Estell Manor case, stating that it was also an inherently beneficial use.

The four-part balancing Test from the SICA Analysis was described.

The Positive and Negative Criteria were discussed.

The Municipal Land Use Law (MLUL) allows for uses such as day care in a single family dwelling. The use as a Sober Living Home is very unique but can fit within a residential neighborhood. The Applicant has shown adequate proof. The Board would be required to approve this Application under Federal Housing Authority (FHA) Accommodations.

Mr. Rabolli opened the questioning to the Board Professionals for Mr. Grygiel.

Mr. Kelly requested that Mr. Grygiel's screen be shared with the Board to discuss the recently installed fence. Exhibits A-11 thru A-13 were shown as photos of the fence from Forest Hill Road looking South. Also displayed were Exhibits A-4 through A-9 showing the existing picket fence and the yard prior to installation of the new fence. Mr. Kelly also commented on the landscape buffering along the North and East property lines and activities on the site.

Ms. Lawlor inquired about parking; would it operate the same as a home, there are two driveways from both streets, how many cars would be parked. Mr. Grygiel stated that the front on Forest Hill Road would not be utilized, parking would be in the rear, seven cars – two in the garage, 5 in the driveway. Reasonable conditions – parking mitigated.

There were no further questions from the Board Professionals for Mr. Grygiel.

Mr. Rabolli opened the questioning to members of the Public for Mr. Grygiel.

**Mr. Steve Orenchuk, 11 Forest Hill Road** stated that he believes the fence is higher than 4 feet. Mr. Purcell commented that a Zoning Application was submitted. Mr. Rabolli stated that the maximum height of a fence in a front yard is 4 feet without a Variance. Mr. Kelly added that a fence higher than 4 feet is not permitted in a front yard – this home has two front yards – the portion on Forest Road cannot be higher and needs to be looked into.

Mr. Rabolli announced that the hearing for this Application would be carried to July 21, 2021. Witnesses Jay Jonas and Paul Grygiel will both be recalled to testify. Mr. Purcell stated that an extension of Notice to July 21, 2021 would be provided.

## **VI. WORK SESSION**

### **1. DOCKET #1489-21 – NICOLE REUTER 102 SOUTH MAHWAH ROAD, BLOCK 93, LOT 1.02**

Application for a "C" Variance for exceeding maximum lot coverage to install an in-ground pool.

Mr. Rabolli summarized the application, stating that the pool puts them over lot coverage, creating a hardship. No detriment to the Public Good would be caused.

Prior to the vote, Mr. Cascio stated that only Primary Board Members were to vote. Alternates are to vote only if a Member or Members are absent, abstain or recuse themselves.

Township of Mahwah  
Board of Adjustment Meeting Minutes  
May 19, 2021

A motion to approve the Application was made by Mr. DeSilva, seconded by Mr. Whiteman. A roll call vote revealed 7 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Rabolli and Mr. Whiteman.

Mr. Rabolli confirmed that the Application was approved and outlined the process of the Resolution; 45 days from date of publication for objectors and that Mrs. Reuter may proceed at her own peril. Mr. Rabolli stated that a Building Permit was required. Mr. Kelly added that a Soil Movement Permit Application is required as well.

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

A motion to adjourn was made by Mr. Whiteman, seconded by Mr. Cannava. All voted in favor. The meeting adjourned at 10:00 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on July 16, 2021 for approval at the Regular Meeting to be held on July 21, 2021.