

Ewing Township Zoning Board Meeting March 28th 2019

An Ewing Township Zoning Board Meeting was held in the Council room of the Municipal Building.

Mr. Greenberg opened the meeting and the following statement was read, "The notice requirements provided for in the open Public meeting act has been satisfied. Notice of this meeting was properly given in the resolution adopted by the Ewing Township Council on January 2nd, 2019, which was transmitted to the Times of Trenton and the Trentonian and filed with the Clerk of the Township of Ewing and posted in the Ewing Township Municipal Building all on the Second day of January 2019.

Present **Excused** **Absent**

Mary Corrigan

Howard Greenberg
Monica Harvey-Talbert.
Abelardo Consea
John Maloney
Channing Conway
George Byrd
Kim Owens
Vernon Clash

Minutes for February 21st were approved
Motion made by Mr. Conway
Seconded by Ms. Monica Harvey-Talbert .
Absent . Ms. Corrigan

Also, in Attendance

Anthony Todaro - Attorney
Martin Miller - Engineer
Chuck Latini -Planner & Zoning Officer

No Applicants for this meeting

Resolution 2019-ZB-01

Jay Walsh
29 Van Duyn Drive
Block 230, Lot 44
R-1 Zone

A motion was made to adopt the resolution of memorialization for the following
Applicant is requesting variance for six (6) foot high fence on a corner lot. Maximum fence height permitted in front yard is four (4) feet, therefore a two (2) foot variance is requested. Applicant is also requesting any other variances or waivers deemed necessary by the Board.

The applicant told the board he would like the fence to be higher for privacy reasons, he is by the Restaurant Salerno's he would like more privacy from people parking in front of the property he doesn't like people looking into his yard.

There are no sidewalks area,

Exhibit -A is the identification of the area, he has College Students living close to him he would like privacy from the noise and then waking on his property.

He has one driveway with two entrances, the property goes back 300 feet

Mr. Latini explained to the board the fence is for privacy, with all the parking that is along his street for the Restaurant business, it is causing problems with neighbors and people going to the Restaurant, this will make the applicant feel safe and stop people looking in to his property and walking on his lawn, he stated he just wanted the applicant to have it on record about the fence that is why he is at this meeting.

The board had a discussion on this application

Mr. Maloney made a motion to Grant a variance for six (6) foot high fence on a corner lot.

Seconded by Mr. Byrd

Roll

Mr. Maloney YES

Mr. Byrd YES

Mr. Conesa YES

Mr. Clash YES

Mr. Green Berg YES

Mr. Conway YES

Ms. Owens YES

Ms. Talbert YES

Motion made tonight by Mr. Maloney

Seconded by Mr. Clash

Absent Ms. Corrigan

There were no other discussions for this meeting

Submitted by Imelda Wollert

EWING TOWNSHIP ZONING BOARD
RESOLUTION No. 2019-ZB-01

Applicant: Jay Walsh

Application #: ZBA-19-001

Location of Premises: Block 230, Lot 44
29 Van Duyn Drive, Ewing Twp., Mercer County

Present Zoning: R-1 Residential

Approval Date: February 21, 2019

Date Resolution Memorialized: March 28, 2019

Relief Sought: C(2) bulk variance to permit a 6' high perimeter fence on a corner lot where only 4' is permitted, together with any other necessary variances or waivers.

WHEREAS, at a public hearing conducted during a regular meeting properly noticed and held on February 21, 2019, the Zoning Board of the Township of Ewing (hereinafter the "Board"), considered the following information and made the following findings of fact and conclusions with respect to the above application:

APPLICATION, PLANS AND REPORTS SUBMITTED BY APPLICANT

1. Land Development Application, ZBA-19-001, dated February 4, 2019, and supporting documentation, submitted by Jay Walsh (hereinafter "Applicant").

EXHIBITS RECEIVED DURING HEARING

1. N/A – all documents proffered by Applicant at the hearing were contained within the underlying application.

WITNESSES APPEARING BEFORE THE BOARD

1. Applicant, Jay Walsh, as the owner of certain real property located at 29 Van Duyn Drive, Block 230, Lot 44, in the R-1 residential zone (hereinafter the "subject property"); and
2. Charles Latini, P.P and Zoning Officer, on behalf of the Board.

FINDINGS OF FACT

1. The Board finds that all jurisdictional and notice requirements were met and the Board had jurisdiction to proceed, and it acted within the time required by law.

A. Applicant has certified that all real estate property taxes for the subject property have been paid, as well as all escrow fees required by ordinance for the Application. The escrow certification includes an agreement to pay all future monies due under the escrow ordinance for consultants and other professional review work related to the subject property.

B. Applicant filed an affidavit stating that public notice of the Application was given at least ten (10) days prior to the hearing date to all property owners within 200 feet of the subject property and to the public entities required to be notified. The Zoning Board Secretary confirms that newspaper publication was made in conformance with legal requirements and that proof of publication was filed with the administrative officer.

C. Applicant has also submitted a Township Contribution Disclosure Statement in accordance with Ewing Township Ordinance No. 06-19.

2. The following bulk variance pursuant to N.J.S.A. 40:55D-70(c)(2) is required for the proposed fence project: relief from Sec. 215-15(B)(6) and Sec. 215-63 of the Township's Land Use Ordinance ("LUO") which prohibits fencing greater than four (4) feet in height in a front yard area (the subject property is a corner lot; thus, thus frontage exists on two streets), together with any other variances or waivers deemed necessary by the Board.

3. The subject property is located on the corner of Van Duyn Drive and Hillside Avenue, and is owned by the Applicant. The subject property is located in the R-1 Residential Zone, and is improved with a 1,657± square foot, 1.5-story residential dwelling, built in 1950. It also has an existing chain-link fence that is located along Applicant's side and rear-side yard property line adjacent to Hillside Avenue.

4. Applicant provided the following testimony at the February 21, 2019 hearing:

A. Applicant seeks bulk variance approval to replace the existing chain-link fence with a six (6)-foot-high wooden stockade perimeter fence along the 300± foot property line

adjacent to Hillside Avenue. Applicant explained during the hearing that he does not plan to increase the area of fencing on the subject property.

(i) The area of the existing fence is shown on the property survey entitled "Plan of Survey of Property to be conveyed to Jay E. & Eileen F. Walsh," prepared by Robert J. Buda, P.E., P.P., of Robert Buda Associates, dated July 1, 1986, consisting of one (1) sheet, and submitted with the underlying application. For the new fence, Applicant intends to use a wooden stockade-style fence for added privacy. He continued by testifying that the subject property abuts a restaurant establishment, which is frequented by younger customers from a nearby college. Moreover, Mr. Walsh explained during the hearing that the proposed fence separated the subject property from the parking lot of the restaurant. The additional height is necessary to shield the subject property from the sight of the parking lot and the restaurant's patrons, and to facilitate efforts towards blocking the resulting nuisances and disturbances. Applicant contends that this will provide him with the full use and enjoyment of the subject property. In addition, the proposed fence is in desperate need of repair, and Applicant would like to enhance the aesthetics of the subject property and surrounding area by replacing the existing chain-linked fence with a more visually appealing wooden stockade fence constructed with more attractive materials. The new fence will not encroach any setbacks or the property line.

B. In response to questioning by the Board with respect to the need to avoid potential sight issues for pedestrians, drivers, bikers, etc., approaching the intersection of Van Duyn Drive and Hillside Avenue due to the proposed height of the fence, Applicant explained that the new fence will follow the footprint of the existing fence, which is located far enough back so as to prevent any visual impediments. The Township Planner agreed that because of its proposed location on the subject property, the additional height of the fence would not cause a sight triangle issue at the corner.

C. It was noted that the proposed six (6)-foot height of the fence did not exceed the Township's LUO requirements for fencing in a rear or side yard and that the variance was only needed on part of the subject property.

BOARD'S FINDINGS WITH RESPECT TO PROOFS

1. After hearing and considering the testimony provided above and after review of the materials submitted in connection with the Application, the Board finds that Applicant has met the criteria for granting the requested bulk variance relief in accordance with N.J.S.A. 40: 55D-70(c)(2), which requires a demonstration that the purposes of the zoning act would be advanced by a deviation from the zoning requirements and that the benefits would outweigh the detriments, for the following reasons:

A. The Board agrees that permitting the additional height to the fence as proposed by Applicant for the stated purpose of preventing disturbances, reducing the noise from the restaurant and enhancing the aesthetics of the subject property, meets the public health, safety and welfare reasons for zoning articulated in N.J.S.A. 40:55D-2(a). Further, allowing the new fence to be constructed with the materials described by Applicant, along with the installation of any shrubbery deemed necessary by the Board's professional(s), will improve the subject property and neighborhood aesthetically; thus, promoting the purposes underlying the applicable zoning requirements, as set forth in N.J.S.A. 40:55D-2(a), (g), and (i).

2. With respect to the Board's obligation to consider the Application in terms of the negative criteria of N.J.S.A. 40:55D-70, which provides that "no variance may be granted without a showing that the relief can be granted without substantially impairing the intent and purpose of the zone plan," the Board finds that this threshold has been met because, due to the proposed location of the existing fence, there will be no negative impact on the sight triangle at the corner caused by the increased height of the replacement fence. In addition, Applicant is willing to work with the Board Planner to install adequate landscaping/shrubbery along the portion of fencing adjacent to Hillside Avenue which will also work to offset any negative impacts.

3. There were no engineering or other staff reports.

4. There were no comments by the public, nor did any neighbor or interested party appear at the February 21, 2019 hearing to voice concerns or support of the proposed project.

[REMAINDER INTENTIONALLY LEFT BLANK]

CONCLUSIONS AS TO FINDINGS OF FACT AND PROOFS

Upon recommendation of the Board's Planner, the Board agrees that the requested variance to exceed the Township's land use ordinance requirements pertaining to the four (4)-foot height maximum for fencing in a front yard may be granted, provided that Applicant adhere to and comply with the conditions recommended by the Board and its professionals. Specifically, that Applicant will consult with the Board's Planner regarding the landscaping/shrubbery to be installed on the subject property, if any is deemed necessary by said professional(s) or official(s), to help enhance the subject property and surrounding area.

DECISION OF THE BOARD

NOW, THEREFORE BE IT RESOLVED that, based upon all the aforesaid findings, determinations and conclusions which are all specifically made a part hereof, by a vote of seven (7) in favor and none opposed, that the Zoning Board of the Township of Ewing hereby grants the requested bulk variance to exceed the four (4)-foot maximum fence height requirement pertinent to the subject property and to permit a six (6)-foot high replacement perimeter fence in the locations shown on Applicant's survey for the subject property located at 29 Van Duyn Drive, also known as in Block 230, Lot 44 on the official tax map of Ewing Township, as requested by Applicant at the hearing on February 21, 2019, and as stated in Application No. ZBA-19-001. This approval is subject to Applicant's adherence to the following conditions, as may be applicable, which must be satisfied prior to the signing of any plans, construction or the issuance of a Certificate of Occupancy for the project:

- A. The following shall be accomplished prior to the issuance of any building permits and the start of construction:
1. Applicant shall consult with the Board's Planner/Zoning Official regarding appropriate landscaping/shrubbery to be planted along the portion of replacement fence adjacent to Hillside Avenue, the exact location thereof and the number of plants to be installed.
 2. One (1) copy of the revised, final site plan shall be submitted to the Board office, the Board Planner and the Board Engineer for resolution compliance review. If the plans are found to be in order, then eight (8) sets of the drawings will be required for signature.

3. Payment of all professional escrow, inspection and engineering review fees associated with this Application are to be furnished by Applicant within thirty (30) days of receipt. It shall be Applicant's responsibility to contact the Board office to settle any outstanding review escrow accounts.

4. Evidence of the attainment of the outstanding conditions set forth in this resolution shall be in writing by the professional or entity having jurisdiction over same and placed in the Applicant's file with the Township.

5. Applicant will provide a copy of all final plans, reports and estimates in electronic format on a CD after all revisions are made to the site plans and after said plans have been signed by the Township. The plans shall be in PDF and in Auto-Cad version not later than 2013, correspondence in Word format and estimates in Excel version no later than 2003.

B. The following shall be accomplished prior to the issuance of a Certificate of Approval and use of the subject property:

1. All approved landscaping/shrubbery shall be provided, along with a maintenance plan.

C. The approval granted by this resolution and development pursuant to this approval, is subject to compliance at all times with all applicable federal, state, county and municipal law(s) and regulation(s) including, without limitation, all environmental, building and property maintenance codes. The project effectuated pursuant to these approvals, including landscaping and buffering if deemed necessary by the Board's Planner/Zoning Official, shall be maintained in good condition and kept in compliance with this approval in perpetuity, except as may be permitted by Ewing Township.

D. The date of the decision shall be February 21, 2019, except that the date of the adoption of this memorializing resolution, March 28, 2019, is the date of the decision for the purposes of (1) mailing a copy of the decision to Applicant within ten (10) days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice shall be the date for the commencement of lawful vesting protection.

ROLL CALL VOTE ON THE MOTION TO
APPROVE THE APPLICATION - February 21, 2019

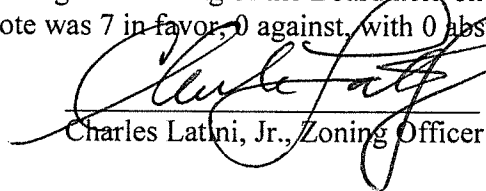
Moved by: Mr. Maloney
Seconded by: Byrd
Those in Favor: 7
Those Opposed: 0
Those Abstaining: 0
Those Not Voting: 0
Those Absent: 0

ROLL CALL VOTE ON THE RESOLUTION
OF MEMORIALIZATION – March 28, 2019

Moved by: Mr. Maloney
Seconded by: Mr. Clash
Those in Favor: 7
Those Opposed: 0
Those Abstaining: 0
Those Absent: 0

CERTIFICATION

I hereby CERTIFY that the foregoing is a true copy of a Resolution adopted by the Ewing Township Zoning Board at a duly advertised and regular meeting of the Board held on March 28, 2019, at which a quorum was present and the vote was 7 in favor, 0 against, with 0 abstention.


Charles Latini, Jr., Zoning Officer