

MANCHESTER TOWNSHIP ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, February 28, 2013

**Manchester Township Municipal Building
1 Colonial Drive, Manchester, NJ**

MINUTES OF MEETING

1. The meeting of the Manchester Township Zoning Board of Adjustment was called to order at 7:05 p.m. by Vice Chairman William Cook.
2. This meeting had been duly advertised, filed and posted in accordance with the Open Public Meetings Act.
3. A Pledge of Allegiance and Salute to the Flag.
4. Roll Call:
Members Present: T. Umlauf, W. Cook, K. Vaccaro, J. Hankins, M. Dwyer, H. Glen

Members Absent: P. Salvia, L. Fazio

Also Present: C. Reid, Attorney
R. Mullin, Engineer

Administrative Session:

Approval of Minutes: The minutes for the January 24, 2013 Regular & Re-organization meetings were **APPROVED** on motion by T. Umlauf and seconded by K. Vaccaro. All in favor.

Payment of Bills:

RFP #17452 for T & M Associates in the amount of \$841.50 for Case 1389

RFP #17155 for T & M Associates in the amount of \$344.25 for Case 1284

RFP #17437 for T & M Associates in the amount of \$689.82 for General Board Matters

RFP #17451 for T & M Associates in the amount of \$1182.00 for General Board Matters

RFP #17440 for T & M Associates in the amount of \$38.25 for Case 1278

RFP #17445 for T & M Associates in the amount of \$765.00 for Case 1280

RFP #17442 for T & M Associates in the amount of \$344.25 for Case 1287

RFP #17441 for T & M Associates in the amount of \$267.75 for Case 1284

Bills were **APPROVED** on motion by T. Umlauf and seconded by K. Vaccaro.

ROLL CALL VOTE: T. Umlauf, yes; K. Vaccaro, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; W. Cook, yes.

Professional Reports:

Mr. Reid has nothing at this time.

Mr. Mullin has nothing at this time.

Mr. Reid made a statement about the resolutions before the Board started. There are 4 memorializations on the agenda this evening. The first one is Case 1175, there was some issues with regard to voting, there was discussions amongst the Board. He is going to send a proposed resolution to the applicant so any further litigation can be avoided. He has spoken to the applicant and he is aware of that and has no problem with that. Mr. Cook asked if he waived time constraints. Mr. Reid said yes he did. Mr. Glen asked why he was sending it to the applicant before. Mr. Reid said it is not out of the ordinary, he gets requests all the time from applicant's attorneys to review the resolution prior to it being memorialized. The resolution for Case 1172 will be discussed in Executive Session later this evening because this was litigation; it was litigated before Assignment Judge Grasso. He has provided Judge Grasso's opinion to the Board Members and it will be discussed in Executive Session.

Memorialization of a resolution of a variance approval to allow the construction of a single family dwelling on a lot having a lot area of 7,500 square feet where 10,000 square feet is required; an improvable lot area of 2,600 square feet where 5,800 square feet is required; a lot width of 75 feet where 100 feet is required; and a lot frontage of 75 feet where 100 feet is required. Block 1.302 Lots 19-21, Wellington Avenue & Manchester Street Applicant: Todd Jerman. Approved at the October 25, 2012 meeting. Case 1175

This resolution was **CARRIED to the March 28, 2013 meeting** on motion by M. Dwyer and seconded by K. Vaccaro. All in favor.

Memorialization of a resolution of a variance approval for the construction of a single family dwelling on a lot having a lot area of 7,500 square feet where 10,000 square feet is required; an improvable lot area of 4,225 square feet where 5,800 square feet is required; a lot width of 75 feet where 100 feet is required; and a lot frontage of 75 feet where 100 feet is required. Block 1.203 Lot 15, Eleventh Avenue. Applicant: Lisa Duerkes. Case 1172

This resolution was **CARRIED to the March 28, 2013 meeting** on motion by K. Vaccaro and seconded by T. Umlauf. All in favor.

Memorialization of a resolution of approval to allow the construction of a single family dwelling on a lot having a lot width of 198.12 feet where 200 feet is required and a lot frontage of 198.12 feet where 200 feet is required. Block 99.84 Lot 4, New York Avenue. Applicant: Douglas & Noreen Diani. Approved at the January 24, 2013 meeting. Case 1287

This resolution was **APPROVED** on motion by T. Umlauf and seconded by K. Vaccaro.

ROLL CALL VOTE: T. Umlauf, yes; K. Vaccaro, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; W. Cook, yes.

A copy of the approved resolution is attached.

Memorialization of a resolution of approval to allow the construction of a single family dwelling on a lot having a lot width of 199.18 feet where 200 feet is required and a lot frontage of 199.18 feet where 200 feet is required. Block 99.88 Lot 8, Newark Avenue. Applicant: Eugene & Donna Lynch. Approved at the January 24, 2013 meeting. Case 1389

This resolution was **APPROVED** on motion by K. Vaccaro and seconded by T. Umlauf.

ROLL CALL VOTE: K. Vaccaro, yes; T. Umlauf, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; W. Cook, yes.

A copy of the approved resolution is attached.

Case 1288	Daniel Sarama 6 Shorin Way Manchester, NJ 08759	Block 21 Lot 1701.04 6 Shorin Way R-40 Zone
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Mr. Sarama needs a variance to allow the installation of an in-ground pool with a rear yard setback of 12 feet where 25 feet is required. Agnes Rybar, attorney for the applicant was present. Daniel Sarama was sworn in by Mr. Reid. He wants to put in a concrete in-ground pool with a 12' rear setback where 25' is required. There is a similar pool at 3 Shorin Way. Ms. Rybar stated that when the subdivision was originally created in 2002 the required setback was 15 feet, but because of the subsequent rezoning it was changed to 25 feet, had the subdivision not been rezoned, Mr. Sarama would only be encroaching by 3 feet as opposed to 13 feet. It is for that reason he is asking for the application to be granted. When he purchased the property in 2010 he had to get a variance to build the house for the same reason, the zoning was changed. Mr. Glen asked if there was any reason he couldn't move the pool any closer to the house. He could move it like 2 feet closer to the house. Mr. Umlauf asked if he could flip the pool and had the bump out closer to the house. He said that there is a sundeck on the one end so he couldn't do that. He is planning on putting up a 6' solid vinyl fence. Mr. Mullin asked if he could move the pool counterclockwise back to the left rear corner even with the house. No, he was looking to extend his driveway. Mr. Glen asked how far the house to the rear is away from the property line. It is about 75 feet. Mr. Glen asked if they have any other structure between the house & the property line. No, they don't. What about the neighbors if you are looking at your house to the right. They have a shed in the corner near his property. The property to the left is the property where the proposed nursing home was going to go. Mr. Cook asked about the fence. It will go all the way around the yard from the halfway part of the house down the sides & across the back. He can't move the pool because of the (2) drywells that had to be installed when he constructed the home. Mr. Dwyer asked if he considered a different type of pool. They didn't have anything else that included the sundeck and he wanted that for his kids, it has like 12 inches of water. The pool company told him this was the best location for the pool because of the drywells and there is no other place to put the pool. Mrs. Vaccaro asked if he had to drain the pool, where would he do it. Mr. Sarama stated there are 2 sewers in the front of the driveway, it would go there. There is a drainage easement on the left side of the driveway.

Mr. Cook opened this portion of the meeting to the public for questions of the applicant only. The following people were recognized:

William Foor – 3101 Wilbur Avenue – he asked about the dates on the drawings being the same, was the pool originally planned? No, he just gave the pool company the drawing & they used it to put the pool on there.

There being no further questions from the public, this portion of the meeting was closed.

With there being no further witnesses or testimony Mr. Cook opened this portion of the meeting to the public for comments. The following people were recognized and spoke:

William Foor – 3101 Wilbur Avenue – was sworn in by Mr. Reid. His deck is at elevation 105; the pool will be at about 99. When someone is standing on his deck that is going to have them at about 110 true elevation, if they have a 6' fence between them there would be no attenuation of the noise or line of sight between the pool & their deck. If this were to be granted they would request that a row of trees be planted inside the fence to a minimum height of 10 feet to provide some sort of attenuation of the sight & sound between them & the pool. Mr. Glen asked how far his house, what is the distance between his house & the pool? From the deck to the property line it is approximately 85-90 feet to the property line. Is your house directly behind this? No, it is not, the property is like a flag. They had a sound survey done on their backyard & the ambient noise is 39 decibels, they have a very quiet park like serene environment and feel very strongly having a pool that close. It is going to interfere with the tranquility that they bought the house for.

Rose Trafton – 3101 Wilbur Avenue – was sworn in by Mr. Reid. She

had the following items marked into evidence:

The photos were taken 2/17/13; they are depicting the property line & their deck & also showing the view from their deck to the applicant's property. They left their property in a natural state since they bought it in 2002.

O-1 – Orange flags are the property line – any trees are on their side of the property line

O-2 – Orange flags are the property line – another view

O-3 – 3101 Wilbur 4' chain link fence

O-4 – 3101 Wilbur deck from rear of their property

O-5 – 3101 Wilbur deck looking at Mr. Sarama's property

They are outside people and love spending time on their deck. They have 2 sets of French doors and always have them open. Cook on the grill all the time. Mr. Reid stated that with a 6' fence you wouldn't be able to see where the orange flags are in O-1 & O-2, would you? He also stated the photos were taken in February so there is no foliage on the trees. Ms. Trafton stated they are oak trees so the foliage is up high. He asked how far the deck was? It is about 80-90 feet. Mr. Mullin asked how high their fence is? It is a 4' high cyclone fence to keep her dogs in. Mr. Glen asked if the noise is their complaint. She stated not just the noise, but their privacy. When they sit on their deck they will be looking right into their pool. She keeps her windows open all the time. Mr. Reid asked how moving the pool back 13 feet or sliding it to the left, that wouldn't solve any of the issues that you are bringing up right now. It would be within the setback then, the issues whether it be your view the noise, they would still be existing. So it's not necessarily the 13 feet that they need a variance for that are causing the issues you are talking about, they would exist whether or not they were within the setback, is that a fair statement? No, she doesn't think so. They would still have some of the issues, the further away from their house they were the quieter it would be. This house was a non-conforming lot when they bought it. Their house is within the 50' setback with the stairs coming off it. It is just very crowded; the area is too small without impinging on their privacy. Mrs. Vaccaro asked if she was aware of the noise ordinance. Yes, she is aware of it. It is very quiet back there and she doesn't want to be the neighbor who is calling the authorities all the time. Mr. Glen asked if they would be happier with a different type of fence? She said it wouldn't make a difference, when they stand on their deck they would still be looking over a 6' fence.

There being no further public participation, this portion of the meeting was closed.

Mr. Sarama agreed to the following conditions: he will install a 6' high solid vinyl fence and he will plant trees along the rear property line for privacy between 10' – 12' high.

Mr. Hankins thinks the pool is too big, feels that it can be moved into the legal setback and is against approving it. Mr. Umlauf would like to see it moved closer, if it was moved closer it would be higher which would cause more of a visual impact. Mr. Dwyer thinks the trees for privacy would be positive for both parties involved. The fence & trees would have to be done prior to use of the pool. Will comply with the 2009 International Code section AG105 which talks about barriers.

This application was **APPROVED with conditions** on motion K. Vaccaro and seconded M. Dwyer.

ROLL CALL VOTE: K. Vaccaro, yes; M. Dwyer, yes; H. Glen, yes; T. Umlauf, yes; J. Hankins, no; W. Cook, yes.

Correspondence: The Secretary stated she received a letter from Ms. Duerkes with regard to Case 1172.

She received a letter from Mr. Todd Jerman with regard to the resolution for Case 1175.

She received 2 letters from Mr. Jeff Jerman with regard to Case 1170.

She received a memo from the Business Administrator regarding the new undersized lot ordinance.

She received paperwork for minor changes for Case 1278 the Dunkin' Donuts.

Mr. Mullin stated he received a copy of the letter from Mr. Thill, he is with the Dunkin Donuts construction management office, they are requesting some changes to their brand image, they changed to something called the fresh brew image along with that there have been some changes to some of their signage. He has looked at what they proposed and in general the signs they are proposing are smaller, less intense & actually 1 less sign than what the Board approved. So based on his review he has no objection to allowing the applicant to make those changes. However, after looking at the package that the Secretary got there are some additional drawings that were not included in his package that showed outside seating. The Secretary said Mr. Thill only mentioned signage, nothing about outside seating. The only other issue that Mrs. Vaccaro brought up & he agrees with is now take the opportunity to have them install bollards around the building. Mr. Cook thought there were bollards. Mr. Mullin said just by the drive-thru. The intent would be to put them around the building wherever there is parking to prevent some catastrophe. Mr. Mullin will prepare a letter back to Mr. Thill that the Board has reviewed & considered the signage changes, but along with that require the applicant to install bollards properly spaced around the building.

The changes have been **APPROVED administratively** on motion by K. Vaccaro and seconded by T. Umlauf.

ROLL CALL VOTE: K. Vaccaro, yes; T. Umlauf, yes; H. Glen, yes; J. Hankins, yes; M. Dwyer, yes; W. Cook, yes.

On motion by M. Dwyer and seconded by K. Vaccaro the Board went into Executive Session to discuss litigation issues at 7:55 p.m. All in favor.

On motion by J. Hankins and seconded by T. Umlauf the Board came out of Executive Session at 8:10 p.m. All in favor.

PROPOSED UNDERSIZED LOT ORDINANCE DISCUSSION

Mr. Cook asked if the Board had any comments on the proposed ordinance.

Mr. Dwyer had no comment.

Mr. Hankins had no comment.

Mrs. Vaccaro had no comment.

Mr. Glen asked how the new ordinance is going to benefit us (the Board), what is it going to reduce, it seems like it is increasing the height of the houses when it should be reducing it. You can build a 2-story house now with the new ordinance you can build a 2-1/2 story house. The people who come in here are complaining about the size of the houses. During the original discussions we talked about limiting it to 1-1/2 stories now it's at 2-1/2 stories. The maximum height should be reduced from 35 feet. Mr. Cook asked why it was changed. Mr. Mullin said the definition of story has been changed. He thinks what is going to be the controlling factor is the residential floor area ratio, that is going to limit the floor area; any floor area, first, second & the half story the portion of the attic is included in the floor area which you divide into the lot area. Mr. Glen asked if that excludes the garage. Yes, it excludes the garage. Mr. Cook said that's only if the attic is finished. It says the finished area of an attic. Mr. Umlauf thinks it is just making things more difficult. He thinks it should be if there are ranches in the area you have to build a ranch, if there are 2-story homes you could build a 2-story home. He knows it can't be like that, it's just making things more confusing now. Mr. Cook asked if the attic has to be finished before it is considered, if it's not then it's not counted in the FAR? Mr. Mullin stated that it's not something that's habitable, but it meets the criteria to be defined as half a story. Mr. Mullin pointed out Mr. Thomas' response to Mr. Glen's comment about limiting the height to 1-1/2 stories.

Mr. Cook asked why did they remove the minimum floor area. The entire note #3 has been removed, what was the issue with that? What was the rationale behind that? What did that have to do with undersized lots? The Board did have a case a while ago where there was an issue with minimum floor area issues.

Maximum lot coverage is changing from 25% to 30% & 35%, why? What is the rationale behind it? Mr. Mullin said the ordinance never had maximum lot coverage it only ever had maximum building coverage. The intent there was you don't want someone paving their whole yard.

The title insurance report should apply to the adjoining properties also, not just the subject property.

Mr. Cook wants to know what the rationale behind removing the minimum first floor area? Mr. Mullin doesn't know, he wasn't expecting to see that. That was there for a reason, not sure why it was taken out.

Mr. Glen wanted to know about the number of copies being submitted, is that going to prevent the Board from getting copies? The Secretary said the Planning Board Secretary already contacted Mr. Thomas and requested that it be changed to 20 copies for everything, this way there are enough for distribution to the Board, professionals & the distribution list for comment.

On the last page #2 what does that have to do with the drywells on the undersized lots?

Mr. Mullin said that all it is saying is that if there is an inlet within 400 feet you can run a roof runoff right out to the curb. So if there are a bunch of undersized lots together, they can all pipe their drainage out into the street instead of drywells? Mr. Mullin & Mr. Umlauf stated there aren't too many places in Pine Lake Park that have drains. This is more of the exception than the rule.

Mr. Hankins said when he went to a Planning Board meeting a while ago; Mr. Liston said that these applicants under this proposal would have to get a "D" variance? Mr. Cook stated no, they wouldn't have to. Mr. Reid asked what the reason was that Mr. Liston said it would be a "D" variance? He couldn't remember. He wants to make it harder for the applicant's and this doesn't seem like it is making it harder.

Mrs. Vaccaro stated the revised date should be 1/23/13 not 1/23/12.

Mr. Mullin said that with the volume of paperwork increasing that the applicant has to submit and that he has to review he thinks the escrow should be increased to a minimum of at least \$3500 or higher. The Township right now collects \$1500 escrow for undersized lots and a lot of times have to request additional money. Mr. Cook thinks that is a good recommendation.

Mr. Hankins would like the Township Planner involved in the undersized lot cases. Mr. Reid stated if that were to happen then the escrow amount should definitely be increased. Mr. Cook asked what the Board thought about the Planner being involved in these cases. The Board was favorable to this idea, whether it's just to have him review the applications and make comments & give his opinion, or attend the meetings.

Mr. Glen & Mr. Cook want to know why the maximum lot coverage is higher for smaller lots? The R-10 zone has 35%, but in the R-40 has only 25%. The maximum lot coverage should be lower for the smaller lots. Would like this explained.

Mr. Cook stated right now with the new proposal there is no minimum and he is concerned about that because you don't want a little shed looking house in the middle of a lot. That was the basis for note #3. The Board wants note #3 put back in with the minimum first floor and minimum floor areas. Would like to know why it was taken out?

Mr. Umlauf asked how this is going to affect existing homeowners? Will they be grandfathered in? No, it is a zoning change; they will have to adhere to the new regulations. Mr. Cook asked if someone comes in that has an undersized lot that was already approved for the construction of their house, how will they be affected?

A permit will now be required for patios/walkways/driveways, etc. (concrete, pavers, asphalt, etc.) because of the improvable lot coverage.

Adjournment: The meeting was adjourned at 9:00 p.m. on motion by J. Hankins and seconded by T. Umlauf. All in favor.

Respectfully submitted,

Darlene E. Garcia
Secretary

March 23, 2013