

**TOWNSHIP OF RIVER VALE
ZONING BOARD OF ADJUSTMENT
August 21, 2008
REGULAR MEETING
MINUTES**

ADEQUATE NOTICE STATEMENT:

A Regular Meeting of the River Vale Planning Board was called to order at 8:05 p.m. The following statement was read: "This is a Regular Meeting of the Planning Board of the Township of River Vale. I am informed by the Clerk that adequate public notice has been provided by mailing notice to the Pascack Valley News/Post Review and The Record, by posting notice on the bulletin board in the Municipal Building, and by filing a copy of the notice to all persons who requested the same and prepaid the cost fixed by the Board".

The Planning Board saluted the flag.

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ROLL CALL:

Members Present:

Kevin Martin	Chairman
Robert Adamo	
Melvina Fakazis	
Thomas Pospisil	Vice-Chairman
John Donovan	
Robert Fortsch	Alt. #1
Joseph Massin	Alt. #2

Also Present:

Louis M. Flora, Esq. appeared on behalf of
Brian Giblin, Esq., Board Attorney
Damian Gil, Land Use Administrator

Absent:

Lorraine de Stefan
David Rice
Elliot Sachs Board Engineer (not required)

MINUTES: July 17, 2008 - The Minutes of July 17, 2008 were approved as amended on motion of Melvina Fakazis, seconded by John Donovan and carried.

RESOLUTIONS:

1. **Demeo, 701 Westwood Avenue, Block 2101, Lot 4 -**

The Board discussed the Resolution. Mr. Donovan commented the language does not seem to match what was approved. There was a concern about the language, and the Board directed that the Resolution not be approved, and that it be reviewed by Mr. Giblin. Mr. Gil would contact Mr. Giblin and also provide the audio and any further documentation necessary. A motion to table the Resolution until clarification of the language was received was made by Mr. Martin, seconded by Ms. Fakazis and carried. The Minutes were fine as stated.

APPLICATIONS:

1. **Haller, 506 Oakland Avenue, Block 1606, Lot 1 - fence** - *Violation of 142-248 - A. No fences are allowed to be constructed in the front yard, except for a fence not exceeding 3' in height and being 50% unobstructed. The proposed fence while having 90% visual clearance is proposed to be 4' in height A 1' variance is required.*

Paul Haller, the applicant, of 506 Oakland Avenue, was sworn in and testified he wanted to construct a fence 4' instead of 3' because of his young children and dog to navigate over, for ball playing, etc. It will extend to directly to the side of the garage. Applicant is constructing a new dwelling on his property. Mr. Martin inquired if the Notice was correct, and Damian Gil responded it was correct. Applicant submitted an updated drawing, which Mr. Martin referred to, and the Board reviewed. There had been different versions of the plan circulated previously. It appeared that applicant wanted to extend the fence to the corner of the garage. It is a B Zone property, and the required setback is 25%. Mr. Haller stated it is where the existing fence is now. Mr. Martin stated that fence may have not come before the Board. It appeared applicant also requires a 6" variance for distance. Mr. Adamo clarified it appears the applicant is requesting a 1' height variance in the Cedar Lane right-of-way, 25% of which is in Oak Avenue. The Board discussed that it did not include curbing, deferring to the Township Engineer on that issue.

The matter was opened to the Board for questions. Mr. Pospisil asked why he requested this fence, and the applicant stated because of the children, ages four and two. Mr. Martin expressed concern with a solid fence. Applicant explained it would not be solid. The fence would

be chain link on Cedar, using the existing wood in the back, and the front would be the wrought iron. Mr. Massin commented the additional foot would not be an impediment for anyone to climb over. Mr. Haller responded the extra foot would save a few minutes and maybe keep the soccer ball from going over. Mr. Martin indicated fence variances are a sensitive issue in the Township. The concern is also that he is building a new house, but he could also sell it, and this could change. Mr. Adamo asked if he would put playground equipment on the Cedar side, and the response was no. The Board was not in favor of a chain link fence. The wrought iron fence looked much nicer aesthetically. Future aesthetics and maintenance were concerns. Mr. Massin asked the applicant about removing any trees. Rather than remove a tree out, he would pull the fence back. He had no intention to take out any trees.

The meeting was opened to the public, on motion made, seconded and carried. There were no questions or comments, and the matter was closed to the public.

Mr. Fortsch commented it would be more aesthetically pleasing if brought in 1' on the Cedar Lane side. It is a busy road. Mr. Massin expressed concern about an urban appearance and 4' being a long, high fence in the neighborhood. Mr. Donovan stated given the fact that applicant is seeking a fence as open as it is, he did not see a problem with 4' vs. 3'. The bigger concern is maintenance. He would be willing to make a motion to approve it as presented. Mr. Martin asked if he would be open to conditions. Ms. Fakazis commented it is a busy road, and each applicant has to be looked at individually. If not maintained, they would be reported. She does not like chain link fences, but it is not a great impact and saw no problem with it being on a highly trafficked road and due to the characteristics of the property.

Mr. Donovan commented, assuming applicant would keep the fence at a 20' setback from the house, and more than 50% open, he would make a motion to approve the application for the 1' fence height variance. Mr. Adamo clarified it should be stated as 5' from the property line. Also, it should be subject to removal of the driveway, and curbing subject to the Township Engineer. Mr. Haller inquired about changing it to wrought iron also. Mr. Donovan responded, provided there were no points on top and it be open. Mr. Donovan moved for approval as amended. The

motion was seconded by Ms. Fakazis. On roll call vote, Ms. Fakazis, Mr. Pospisil, Mr. Adamo, Mr. Donovan, Mr. Fortsch, and Mr. Martin voted yes. Mr. Massin voted no. The Resolution would have to be approved before a building permit is issued.

2. Rasekhi, 607 Orangeburgh Road, Block 601, Lot 8

Violation of 142-248 - A. No fences are allowed to be constructed in the front yard, except for a fence not exceeding 3' in height and being 50% unobstructed. Applicant proposes a 6' high solid fence. A 3' variance is required, as well as a 50% obstruction variance.

Kianoush and Brenda Rasekhi, of 607 Orangeburgh Road, the applicants, were sworn in. Mr. Rasekhi explained why he wants a 6' fence. The original fence he purchased the house with 19 years ago now has to be replaced, and he proposed a new fence in the same location and with the same height as the original existing fence. They installed the new fenced without a permit. The only difference is that went from wood to a synthetic, plastic type fence. They had a fence approved previously and understand that the Township laws have changed. Putting the fence that they received the C/O on is a grey area, and he feels it should be grandfathered. Since the rules and regulations have changed, they have to come before the Board. They have had damage to their house and driveway due to falling trees, and there has been garbage dumped in the lot next door. He does not want it open because of the view of the garbage. He would want the fence as a barricade. The tree shown in the drawing is on both his property and the property next door.

Mr. Martin asked how many sections back the fence goes from the front, and applicant responded eight. They replaced the piece in question two years ago. Mr. Martin said the original property owner had not come before the Board for the original fence. It should have been about 6' over from the house, 50% open and 3' high. It is up to the homeowner to check these things, but the Zoning Board is here to give relief from laws that are there. Mr. Gil was asked if there was an approved plan, but there was none. Normally, if a condition is grandfathered, an owner can come in within a year to get approved. Mr. Martin reiterated the ordinance says 50% open. Applicant did this without a permit. It looks like a gigantic wall in the middle of town, like a fort, and is not aesthetically

pleasing. This is not what the rules allow. Mr. Massin suggested an alternative, possibly partially open. Mr. Martin stated they could put a 3' fence 50% open.

Brenda Rasekhi was sworn in and asked why there was a concern, when the other fence was there 19 years. Mr. Martin responded they are complaining about it because you put it up without a permit against the rules and regulations that are there. There is a dilemma here. The Board can work with them, but the reality is he would not vote for a fence in a front yard that is completely blocked off.

Board Attorney Flora read the ordinance and advised once a fence comes down because it no longer can be repaired, they have to comply with the ordinance in place, and they would have to replace the fence according to what it says now, 3' high, 50% open. Mr. Rasekhi commented they showed photos of many properties with 6' high fences. Mr. Martin responded they are illegal, and there is an enforcement department for this purpose. Eventually they will be caught and have to come in and apply for variances. The applicants will have to come in with a 3' high, 50% fence, or something much more reasonable.

Mr. Flora referred to the fence in Exhibit S photos, which Mr. Martin noted was illegal. Mr. Massin suggested a reasonable compromise is a square cut, but if we could permit the property owner to have one section 4' with a step down to 3' with 50% open all the way out. That might provide an aesthetically pleasing view and not block views as referred to in the ordinance. Mr. Fortsch commented to the applicant they could come back with a modification or proceed now, but if he loses, the fence would have to come down. Mr. Martin advised they don't have to make a decision tonight, but they could take the comments into consideration and come back next month.

Applicant requested the Board table the matter until the next meeting. He feels like there is also undue hardship. Mr. Martin stated the Board's job is to enforce the rules and provide some relief, but this is more than relief. Mr. Flora advised he could come back with amended drawings. The restriction the Board is relying on is *Section 142-248(F)* of the River Vale Code. The Board would give him a copy of that section. He further advised, regarding a Certificate of Non-Conformity, even if you did

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have it you would be subject to Section (F) because you took the entire fence down.

The applicant requested to be tabled to the next meeting and waived the statutory time period within which the Board has to act. Mr. Massin moved to accept the applicant's request to table the matter to the next meeting with time limitations waived, with second by Mr. Fortsch. On roll call vote, Ms. Fakazis, Mr. Pospisil, Mr. Adamo, Mr. Donovan, Mr. Fortsch, Mr. Massin, and Mr. Martin voted yes. The matter was carried to the 9/18/08 with no new notice required.

The Board took a recess from 9:25 p.m. to 9:35 p.m.

3. Scoli, 315 Alpine Circle, Block 410, Lot 4

Violation of 142-263 - E.(1)(a) Mandatory open space for front yard requires a minimum front yard setback of 45', where the applicant proposes 35'. A variance of 10' is required for the proposed addition.

Tony and Lisa Scoli, the applicants, of 315 Alpine Circle, were sworn in, and presented their application. They are constructing an addition and submitted a drawing. Alpine Circle curves around, and the addition is proposed on the side of the house, but is actually the front. They have two front yards. The addition is the middle part of the house going back. They can't build back because of restrictions in the rear, and they already have a built-in pool. Architecturally, this plan works the best, and they also have a lot of land between their house and the house on Lot 5, as shown in the photos.

Mr. Martin clarified they would be replacing part of the fence with the addition, and they will tie in the siding. Applicants agreed. Mr. Donovan requested proposed elevations, which applicants produced. Mr. Adamo inquired, with the applicant being sympathetic as to any encroachment, about wording the motion to provide for a 10' setback. He would want to safeguard any future owner from going into that 10' setback. Mr. Martin stated Mr. Giblin, the Board Attorney had crafted certain language in the Resolution in the past. Mr. Adamo suggested it be referred to in square footage, and possibly tabling it for one month. Mr. Martin asked if they had an architectural drawing, but applicants did not. Mr. Donovan suggested either an area defined by square footage or a specified

number of feet back. Attorney Flora drafted and read proposed language to be inserted in a Resolution.

Mr. Martin stated in order to do this correctly, the applicants need an official site plan or foundation plan. Mr. Adamo reviewed the elevations and commented there is only one dimension that shows the actual setback. This plan could satisfy the calculations needed to identify the setback for these purposes and purposes of a site plan. Mr. Massin asked if these plans should be incorporated into the record. Mr. Flora advised it would have to be and asked if Mr. Adamo was comfortable with these numbers. Mr. Adamo indicated yes. There would be a foundation as built submitted prior to framing. Applicants would have to get a survey to submit to Damian Gil.

The meeting was opened to the public, on motion made, seconded and carried. There were no questions or comments, and the matter was closed to the public.

Mr. Adamo summarized the conditions in the form of a motion for approval of the addition. Applicants would replace the fence to be in the rear yard. The addition would be 16' 4" from the corner of the house, a 1' 4" addition per the architectural drawings. Applicants to replace the siding to match the addition and existing home. The motion was seconded by Mr. Donovan. On roll call vote, Ms. Fakazis, Mr. Pospisil, Mr. Adamo, Mr. Donovan, Mr. Fortsch, Mr. Massin, and Mr. Martin voted yes.

Going forward, the Board agreed all fence applications would be listed last on the agenda.

DISCUSSIONS:

1. Fred Forcellati, 823 Loretta Drive - Extension of Variance - The Board discussed that this variance was approved over approximately eighteen months ago and has already expired. Further, applicant should appear. Mr. Gil had a letter from the applicant which was read, claiming the delay was due to financial difficulties, and indicated he would inform the applicant if and when to appear after tonight. Mr. Adamo commented it would be setting a bad precedence granting this after so much time elapsed. Mr. Martin and Mr. Adamo felt the applicant should return to the Board with a new application.

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Mr. Martin wanted to propose a motion. Mr. Flora advised the Board does not really know what it is voting on, and there should be a presentation by the applicant. Ms. Fakazis inquired if he would have to renotice. Mr. Adamo said in other towns, that is the procedure. Mr. Martin commented the applicant should come in and discuss this.

Mr. Adamo moved to deny the extension based on the letter and time elapsed and require the applicant to make a new application. The motion was seconded by Mr. Fortsch. Mr. Massin asked if he has the right to make application for the same variance, and Mr. Flora responded yes, because the vote to deny is on the request for an extension. The applicant is free to make a new application.

2. League of Municipalities - Mr. Fortsch stated he went before the Council to request money for attendance at the League in November, but they were not receptive. He requested they get back to Mr. Martin. Mr. Martin commented there should be a representative from the Township participating, but the Township should pay for it. Mr. Fortsch said this is not for the Board Member Certification, so they have discretion here.

PAYMENT OF INVOICES: None

NEXT MEETING: September 18, 2008

ADJOURNMENT: On motion made, seconded and carried, the meeting was adjourned at approximately 10:25 p.m.

Respectfully submitted,

**Mary R. Verducci, Paralegal
Recording Secretary**