



MINUTES
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
OCTOBER 16, 2003

Chairman Tucci opened the meeting at 8 P.M. by reading the Open Public Meetings Law statement; This is a Regular Meeting of the Zoning Board of Adjustment; in compliance with the Open Public Meetings Law, notification of this meeting has been sent to all officially appointed Township newspapers and notice is posted at River Vale Municipal Offices.

ROLL CALL:

Ronald Tucci	Chairman	Present
Lorraine de Stefan		Present
Robert Fortsch		Absent
Kevin Martin		Present
Nicholas Michelmore	Vice Chairman	Absent
Chuck Waldes		Absent
Thomas Wall		Present
David Rice	Alternate #1	Present
Gregory Wilson	Alternate #2	Absent
Michael Daniel	Board Attorney	Present
Richard Burns	Board Engineer	Absent

MINUTES:

There were no Minutes for approval tonight.

PUBLIC HEARING:

1. Application #03-19 Aprea, Ann - 796 Loretta Drive, Block 301, Lot 29

To construct a front porch which is in violation of Ordinance 175-242E1: 45' front yard setback is required, applicant proposed 38.31' front yard setback, a variance is required.

Ann Aprea was sworn by the Board Attorney. The applicant stated that she is proposing a front porch, which will run the entire length of the house (36'8"), almost to the garage. This results in a 38.31' setback which is in violation of township ordinances. The house also needs new railings and gutters. Ms. Aprea state that the porch will not be enclosed.

Mr. Tucci commented that the plan is aesthetically pleasing and there is no major increase in the volume of water run off.

Mr. Tucci opened the meeting to the public. There were no comments and Mr. Tucci closed the meeting to the public.

Chairman Tucci made a motion to approve the application with the condition that the porch will never be enclosed. Mr. Martin seconded the motion.

Roll Call Vote

AYES: Ronald Tucci, Lorraine de Stefan, Kevin Martin, Thomas Wall, David Rice,
Gregory Wilson

NAYS: None

2. Application #03-17 Canavan, Lissa - 562 Faletti Way, Block 513, Lot 2

To construct a new dwelling. Violates front yard setback, deed restriction.

Mr. Tucci stated that he and Mr. Wilson would be stepping down from this hearing. Kevin Martin would be chairing this portion of the meeting.

John Lamb, attorney, of Beattie Padavano in Montvale, stated that his is representing the applicant. Mr. Daniel asked Mr. Lamb for details on the issue of a deed restriction. Mr. Lamb explained that after the applicant had purchased the property and a title search had been completed indicating a 45' setback. It was later discovered that there was a previous subdivision approval in 1972 which referred to a setback line of 105'. They have investigated the town records including Minutes of the Planning Board Meeting from 1972, the Resolution, and the final subdivision map. There is a reference in the prior approvals to a 105' setback, however, no deed restriction. There is a previous condition, which was imposed by the Planning Board, for the 105' setback. The Resolution for final approval had a number of conditions, as well as deed restrictions, but none of them relate to a front yard setback or building setback of 105', however, there is also a 45' building setback line. He pointed out that if the 105' setback were to be complied with, there would be no backyards for any of these properties.

Mr. Lamb stated that the engineer on the project, Robert Costa, will testify that the average front yard setback on that side of the street today is 88.17'. The applicant believes a house could be constructed with a front setback of 76.35', which is approximately 12' under the 88' average.

Mr. Daniel asked which Board had jurisdiction over this application. Mr. Lamb stated that the Planning Board could only give variance relief if this is connected with a subdivision or site plan approval. He added that an application for a variance for a neighboring property in 1975 went before the Zoning Board.

Mr. Lamb referred to the plan by Robert Costa, specifically noting that the footprint of the dwelling is shows the building setback at 76.35'. Mr. Lamb stated that they want a setback that makes sense in relation to the other homes on the street. A setback of 105' ultimately pushes the house closer to the property owners in the rear. Lot 1 would have this house in their backyard and Lot 3 has substantially more depth than the property in question and is not really impacted. Mr. Lamb stated that they have tried to balance the location of this house in the middle of the lot in order to have it fit in. Mr. Lamb stated

that the location of this house complies with the 20' side yard setback on each side.

The Costa Engineering setback analysis plan dated 10/16/03 was marked as A-1.

Lissa Canavan, 526 Alosio Drive, River Vale was sworn by Mr. Daniel. She testified that she was not aware of the 105' setback at the time she purchased the property. Mr. Lamb referred to the title commitment, which notes a 45' setback line and did not include any reference to a 105' setback line. Ms. Canavan agreed that this was her knowledge of the property at the time of the purchase.

Residential Commitment for the Title Insurance noting the 45' setback was marked as A-2.

Ms. Canavan state that after doing some research into the subdivision, and her lot in particular, she discovered that existence of the 105' setback. She brought the condition to the attention of the Zoning Officer and he then denied her building application.

Minutes from December 18, 1972 Planning Board Meeting marked as A-3 acknowledge that some lots do not have the minimum frontage of 105'.

Planning Board resolution dated August 7, 1973 was marked as A-4a and Resolution dated January 21, 1974 marked as A-4b make no reference to the minimum setback of 105'.

Zoning Board Resolution granting an approval for the adjacent property owner (Go) of Lot 3 to move the house forward marked as A-5.

1974 original subdivision map (Final Map #7294) that shows two setback lines, one at 45' and the other at 105' marked as A-6.

Ms. Canavan stated that she is seeking approval to place the house in a sensible and reasonable spot. She does not want a 30' backyard because is not consistent with the neighborhood. She stated that the proposed setback of 76.35' setback makes the most sense and is consistent with the neighborhood.

A close up of Exhibit A-1, which highlights the proposed location of the dwelling, was marked as A-7.

Ms. Canavan stated that she complies with the side yard setback of 40' and she is only seeking relief form the front yard setback requirements. She stated that id she complies with the average setback it would not be as beneficial for her neighbors because the 76.35' would make the house flow and follow the curve of the setbacks and the road.

Robert Costa, engineer for the project, was sworn. Mr. Wall stated that Mr. Costa is the Borough Engineer fir the Borough of River Edge where he is the prosecutor. Board Members and the Board Attorney agreed that there was no conflict existing in this situation.

Mr. Costa testified that as you move deeper into the lot, the sidelines decrease and a variance would be required for the side yard setback. If a variance for side yard was not granted, the result would be a smaller house which is not in keeping with the neighborhood. Mr. Costa added that all the garages in this area are side loaded which is consistent with today's architecture. Mr. Costa stated that the placement of the house as proposed will blend in and have no impact on the neighborhood. Mr. Costa stated that they will comply with the stormwater management requirements.

Mr. Martin opened the meeting to the public. Mr. Siok Go, owner of Lot 3, stated that if the dwelling were built at the proposed setback line they would have a problem with the obstruction of their view. Mr. Go stated they would like to have the house built at the average setback which does not block the view from their balcony.

Paul Fakler, Lot 1 which is the corner house stated that a 4000 sq. ft. home concerns him because a home this large could have huge consequences. He stated that the fact that there is a question of whether or not there is a deed restriction in effect in this case is troubling. He stated that the Zoning Board would not have jurisdiction over the issue of a restrictive covenant. He requested time to consult with an attorney regarding what is legal and that the application is proceeding in front of the correct body.

Mr. Martin asked Mr. Daniel if the Board of Adjustment should be hearing this case. Mr. Daniel stated that Mr. Lamb showed the Board a Zoning Board Resolution concerning Lot 3. Mr. Daniel stated that his is a substitute for the regular Zoning Board attorney and he would feel more comfortable if Mr. Giblin were to advise the Board. He also noted that there are many questions regarding the size of the house and whether it is one or two stories. He suggested that an accurate footprint and buffering should be shown on the plan in order for the Board to make an accurate decision. Mr. Daniel advised that the Board carry the application to the November 20th meeting to get more information.

Mr. Lamb stated that as long as the applicant complies with the zoning and building codes, she could build whatever she wants. Mr. Daniel stated that the parties involved must be reasonable which Ms. Canavan seems to be. He noted that she has taken the aesthetic impact of the construction in the neighborhood into consideration.

Mr. Fakler stated that the placement of this home will effect his property, no matter where it is placed. He stated that he recognizes that the applicant has a right to build on the property, however, he reiterate his concern with the restrictive covenant.

Dana Rubin, 595 Colonial Road stated that his home is located behind the lot in question. He is concerned with the house being pushed back towards Colonial Road and he would like to see the house moved closer to Faletti Way. This would increase the buffer between the two properties. He stated he has a definite concern with a 4000 sq ft home 30' away from his property line. He hoped that a compromise could be reached because a 30' backyard for the applicant's property and his property would be disastrous. He was also concerned with the impact of run-off on his property. He also asked that a condition of approve be adequate buffering along the property line. He stated he would prefer to be behind a property which will have a larger backyard so that there is a greater distance from his house and the proposed construction.

Mr. Lamb explained that a restriction in a deed creates additional hurdles for an applicant to undo the restriction, however, in this case there is no deed restriction. Mention of the 105' setback is only a reference in the minutes, and is not noted on the file map. Mr. Lamb stated that applicant is seeking a variance to modify a condition of a previous approval not a deed restriction. Mr. Wall stated that this issue needs to be clarified by the Board Attorney.

Mr. Costa state the lot is irregularly shaped and the proposed setback is consistent with the other homes on the street, which would be preferable form a zoning and planning aspect. He stated that pushing the house back would create a hardship for the property because the backyard would not be consistent with other properties on the street. He stressed that the proposed home would probably have a 2000 sq ft footprint resulting in 4000 sq ft house. Mr. Costa noted that a variance was granted for the adjacent property and may place that house in legal limbo. He stated that because the Gos came before the Zoning Board and were granted a variance would indicate that this Board has jurisdiction to grant this variance. He stated that Mr. and Mrs. Go will probably see the house from the front of the balcony but he stated that from a planning standpoint this would not be objectionable.

Ms. Canavan addressed the Board and stated that the proposed dwelling will be consistent with other homes in the neighborhood. She asked that the Board vote tonight. Mr. Daniel stated that the Board cannot vote because he will not make a decision that could be the subject of an appeal. He said that this application merits further determination by the Board and the Zoning Board Attorney.

Mr. Martin asked for the following to be done for the next meeting: footprint of the house shown on the site plan; lot design which could include a compromise of 5' forward or back; plan showing seepage pit details and where the water will be going; an to show buffering on the plan. Mr. Giblin needs to provide the Board with an explanation of the deed restriction in advance of the meeting the attendance of the Board Engineer at the next meeting is required.

Mr. Martin announced that this application will be continued at the meting of November 20, 2003.

ADJOURNMENT:

Upon motion of Mr. Thomas Wall, seconded by Lorraine de Stefan, on a voice vote, all in favor, non opposed, the meeting was adjourned at 9:55 P.M.

Respectfully submitted,

Melinda Dorl, Recording Secretary