



**CITY OF ABSECON
Municipal Complex
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Absecon, New Jersey 08201**

PLANNING & ZONING
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**MAY 16, 2023
ZONING BOARD
MEETING MINUTES**

The meeting was called to order by Chairman, Pat Malia at 7:00 p.m.

Flag Salute

Notification of Meeting

ROLL CALL

PRESENT: Baltera, Cottrell, Famularo, Lawler, Reilly, Sellers, Seher, Malia

ABSENT: Koussoulis

ALSO PRESENT: Jim Grimley, board attorney; Eddie Dennis, board engineer

OLD BUSINESS:

VOTE: Minutes of April 18, 2023 meeting

Motion to approve: Chris Cottrell – second – Arianne Sellers

All were in favor

NEW BUSINESS:

Appl. #3-2023 for William and Marissa Shulski – 1105 Marlborough Avenue – Block 117 – Lot 1 for “c” variance for setback relief and relief for the expansion of non-conforming setback in order to construct an addition to the home

Brad Barker, applicant’s architect, William and Marissa Shulski were all sworn in.

Brad Barker – listed his credentials and was accepted as an expert witness. The applicants have a 1 ½ story home and would like to do a second story addition. They want to rebuild the screened in porch with a foundation and enclose it on the second floor on top of it. They will keep the existing footprint of the screened in porch area and add entry stairs closer to the street. Based on the angle of Ritz Drive, it tapers back and goes along the property line and makes it hard to meet the setbacks. The existing second floor has a deck, but that will be removed. He then went over the plans and

explained the addition that were submitted which included Exhibit A1 – architectural site plan - Exhibit A1.0 – floor plans - Exhibit A2 – colored rendering. The garage is small and it will be made bigger and all other setbacks will be met. The porch setback required is 17 ft. and they have 16 ft. and the building setback requires 25 ft. and they have 20.71. The current conditions are existing non-conforming.

Marissa – we moved in 6 years ago and this is our first home. We would like to start a family and are looking to build this and have our forever place.

William – we looked at many homes and we loved Absecon. His family lives here and close friends now. We want to raise our kids here as well. We love the house and want to create the space that we need. Unfortunately, we found out that we needed variances and they want to stay here.

Brad – the house is pretty similar to other houses in the area. The footprint is not going to be much bigger, since we are going up.

Matt – on the front porch, the stairs come off the concrete driveway. Was there a way to have stairs on the other side and move the porch over so there would be less of an encroachment of the front line of Ritz Drive? Maybe shift it around a little?

Brad – the stairs are better to be off the driveway to have access to the room off the driveway.

Pat – so there is an existing stoop and stair coming out now?

Marissa – yes, but it blocks access to the garage and no car can get in either. It is unusable the way it is now.

Brad – marked exhibit A 4 as the demolition plan and showed how the garage is now

Eddie – the application is straight forward and noted the uniqueness is the angular line of the property along Ritz Drive and having two front yards. His thought on the front porch since they only encroach about a foot, but if you were to shorten the porch and have a service walk leading up to the steps and slide the steps towards Marlborough, you may be able to sneak it in within the setback, but we are not here to redesign the property, if this is what you want to propose and request relief for, then it is certainly your choice.

Pat – we would need two c variances – one for the structure and one for the porch.

Eddie – the structure is the expansion of an existing non-conforming setback and the porch would be a new encroachment.

Pat asked if anyone from the public wanted to speak on this matter, but there was no public portion.

Steve agrees with everything and Pat looked at the neighborhood and there is a property that encroaches more than they do. Greg said being a corner property, we do see these types of applications a lot and the angle of the property gives them a disadvantage and something to consider. Arianne feels it is straightforward and she went by and none of the designs concern her.

Jim – the first motion would be to approve front yard setback of 16 ft. along Ritz Drive where a minimum of 17 ft. is required. The second would be approval for a front yard setback of 15.71 along Ritz Drive where a minimum of 17ft. is required.

Motion #1 was made by Matt Lawler – second – Chris Cottrell

ROLL CALL: Baltera, yes; Cottrell, yes; Famularo, yes; Lawler, yes; Reilly, yes; Seher, yes; Malia, yes

Motion #2 was made by Chris Cottrell – second – Mike Reilly

ROLL CALL: Baltera, yes; Cottrell, yes; Famularo, yes; Lawler, yes; Reilly, yes; Seher, yes; Malia, yes

Time is 7:30 p.m.

Appl. #4-2023 for Mason and Alison Meltzer – 900 Highland Blvd. – Block 38 – Lot 2 for “c” variance relief for a front yard setback on a partially constructed inground swimming pool

Jim – spoke to the applicant’s attorney and he is finishing up in a meeting and hopes to be here soon. He has no objection for the application to begin without him.

The applicants indicated that they wanted to proceed.

Jon Barnhart, applicant’s engineer; Mason and Alison Meltzer were sworn in. The attorney was not present yet.

Jon – the Meltzer’s hired a contractor and our firm to do a site plan for them to construct a new pool in their yard. The plan was compliant with the ordinance and they pulled a permit and hired the pool contractor to construct it. For the record, they got through a series of inspections on rebar and pool drains. On February 9, the inspector noticed the position of the pool and that it was not in compliance with the application that was submitted for the permit. He issued a stop work order and at that point we were contacted to come out and do an as-built as to the pool’s location. We discovered that the position of the pool was slid forward toward NY Avenue and what was supposed to be a 25 ft. setback, was a 15.3 ft. setback. The request this evening is to legalize this condition. Thankfully, all the other elements associated with the application can be met, so only a variance for a front yard setback is required. What we think what happened is that the contractor pulled 25 ft. off the curb and started building. We believe the variance is warranted because we can redesign everything else to comply and keep it to a minimum of one variance. The fence will comply as well and if you were a pedestrian walking by the site, the perceived improvement is the same, other than the fact, inside the fence, the pool is closer to the fence. He believes the variance is justified under two criteria, both the C1 and C2. With the C1 a hardship reason, the full definition includes having a uniquely or exceptional situation that effects the property. C2 is where the benefits of the deviation outweigh any potential detriments and there is also no negative impact. A purpose of zoning that would be advanced with this application is that with the size of the lot and position of the fencing and landscaping, there is still very adequate air, light and open space provided on the property. Also, it also provides a desirable requirement. They are providing landscaping around the site and improving their property and so for those reasons, they believe the purpose of zoning is advanced. We know that having an “after the fact” type of situation puts the board in a hard position, but when you look at this project and what is being requested, he thinks it is about the negative impact. It’s important that we are narrowed down to the one variance and when you look at the position of the pool on the lot, the impact to the neighbors is identical. We can still develop an enclosure around the pool that complies and it really is a matter of where the water sits inside that enclosure.

Pat – what type of fence are you proposing?

Jon – a 6 ft. fence up to the front yard setback and then drops to 5 ft. and it would be a solid vinyl. He feels there is no detriment to the zoning plan and there is no substantial detriment to the public good and feels the variance could be granted. The pool equipment will not be in a shed and the side yard setback is compliant.

Mike – with the 10 ft. difference, if it were moved back, wouldn't it be close to the house?

Jon – yes, it was going to be close.

Pat – is the pool the same shape now?

Jon – it is slightly different because it got pulled away from the house. The patio was reduced in size around the pool to comply with the lot coverage.

Pat – so we have contract error that moved the pool 10 ft. closer to the street and since there was more room, they made it a little bigger?

Jon – it is a different shape, but the water surface is not much more.

William – we hired this national company with the anticipation that we would not run into any of these kinds of mistakes and we did all our homework with the city to make sure we would be compliant. This is an upsetting experience.

Chris – would love to speak with the contractor

Greg – in going back and forth with the contractor, what does it entail? It is contractor error and it is on them.

Alison – we had been waiting for them to file the variance, which they did not do after two months and that is when we hired an attorney to move forward. We have not heard from the pool company in a while.

William – they have made one monthly contact where someone comes and takes pictures of the pool and then I receive an email saying “we made a visit,” but no other contact. They have 95% of our money too.

Jon – even the attorney is not having any luck.

Eddie – Mr. Barnhart addressed by question regarding the second shed and he said there is not. He wanted them to know there was a requirement in our ordinance that specifies a setback of a minimum of 10 ft. for swimming pools on all setbacks. It needs to be put on the record as part of the deliberations.

Alison – we were waiting to see what happened tonight and then contact the pool company and let them know and go on from there. We really do not know.

Matt – he has done many surveys along with pool contractors and explained how they usually use chalk line along all sides as to where the pool should go and cannot see how they made a mistake like that. If it was not made clear on the plan, then he could not say anything, but it shows correctly where it should go. He cannot see the Sylvan company going as far as being litigated and sued for the mess that they made. This usually does not happen because they know they will be sued if it is not put in the right place. He is missing something here and you do not have the answer either probably, but ten feet is a lot.

Greg – it would be helpful if your legal representative was here to shed some light as to what has been requested of the pool contractor, but it is the contractor's mistake to fix. Was it asked of them to fix it? Was there legal documentation sent to them?

William – since we hired an attorney, they stopped contacting us. Kris was able to have some emails back and forth with the pool company.

Pat opened the meeting to the public.

Richard Young – 902 Highland Blvd. – we have resided in Absecon for 30 years and he wanted to say these are the best neighbors you could ask for. They keep their property immaculate and have made several improvements on their property since they moved in and we feel they are 100% victims in this situation and we would hope that the city issues a variance because it was not their fault and we feel this is a high-end pool and it would be an asset to the neighborhood.

Pat closed the meeting to the public.

A 5- minute recess was held.

8:00 p.m. Kris Facenda, applicant's attorney was present.

Greg – asked Kris what has been done to communicate with the pool contractor

Kris – said they have not had any help from them. The first ten days they were going back and forth and then everything stopped. He said they are a Philadelphia branch. He did not want to reiterate what Jon Barnhart testified to, but the positive and negative criteria are met and the C1 and C2 criteria as well. They had inspections 2/2 for rebar; 2/7 for the drain, 2/8 the gunnite was shot and on 2/9 the stop work order was issued.

Pat – this is a gross miscalculation by the contractor and it is 12.5 ft. off and not 10 ft.

Jim – stated the motion needed would be to approve bulk variance relief for a 15.3 front yard setback where 25 is required.

Motion was made by Mike Famularo – second – Chris Cottrell

ROLL CALL: Baltera, no; Cottrell, no; Famularo, yes; Lawler, yes; Reilly, no; Seher, no; Malia, no

Motion was defeated 5 to 2

ADJOURNMENT

Motion to adjourn – Steve Baltera – second – Chris Cottrell

All were in favor.

Respectfully submitted,



Tina Lawler, Secretary

Approved: 6-20-23