

**Borough of Cresskill
Zoning Board of Adjustment
Minutes June 25, 2015**

Present: Mr. McLaughlin, Ms. Batistic, Ms. Westerfeld, Mr. DePalo, Mr. Corona, Mr. Merzel, Mr. Van Horne (Board Attorney), Ms. Bauer (recording secretary)

Absent: Ms. Furio

The meeting was called to order at 8:07 pm.

Ms. McLaughlin presided as chair-person.

Ms. McLaughlin announced that the meeting had been published as required by the Sunshine Laws of the State of New Jersey.

Minutes of the May 28, 2015 meeting were approved

1263 NJR Investment Properties II 150 South Street Block 159 Lot 12

Mr. Saenz is applying for the following variances. NJR Properties were granted variances for this property on Dec. 5, 2013. See attached resolution for Docket # 1234.

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25ft			
Side Yard Abutting/Lot	15 ft	10.09		granted
Combined Side yards	35 ft			
Rear Yard Set Back	30 ft			
Max. Livable Fl.Area FAR (variable)				
Lot Frontage	100 ft	75 ‘		granted
Lot Depth	100 ft			
Bldg Coverage %	20%			
Impervious Coverage (variable)	31.9%		34.97%	3.07%
Height	28 ft		28’7”	7”
Lot Area.	10,000 sq.ft	8,156 sq.ft		granted
Driveway from Prop. line.	10’			

The application was carried from the 5/28/2015 meeting in order to obtain the opinion of the Borough Engineer regarding the height calculation.

Mr. Fernando Saenz , property manager, was sworn in.

Mr. Marc Weissman , attorney representing NJR Investment Properties II, the former owner of the property, the company who did the renovation at 150 South St.,

The property has changed hands and the ultimate owner is now living there with a temporary Certificate of Occupancy.

Mr. McLaughlin said that the applicant was to produce a validation from the Borough Engineer.

Mr. Saenz said we gave the new as-built survey to Mr. Azzolina. Mr. Azzolina did a site visit to the property this morning and told us that he had made the decision that it was OK and to proceed to the meeting (Zoning) to settle the other and not the height. He said that he would let the board know about it.

Mr. Weissman said there are 2 issues, one is the height and the other is the impervious coverage. He (Azzolina) signed off on the height today.

Mr. McLaughlin said so the Impervious is still in question.

Mr. Weissman said yes. We are 3.07% over.

Mr. Weissman presented a photo of the property.

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Mr. Weissman said to accommodate the home owner, we expanded the driveway out a little on each side. The path is aesthetically appealing. To satisfy the Impervious requirement we would have to take it out and substitute crushed stone. Which would not have the aesthetic appeal we have now.

Mr. McLaughlin asked about the driveway.

Mr. Weissman said the driveway is asphalt. We had to widen it to accommodate an SUV.

Mr. McLaughlin asked the arcs on each side of the driveway and the walkway put you over the 3.07% ?

Mr. Saenz agreed.

Ms. Batistic said the portion of the driveway that is rounded is on the street and is not really your property. So the widening on the street does not count as coverage.

Mr. Saenz said you are right. A couple of things were done to the driveway when we were in the process of selling the house. The pavers were not in the initial floor plan. The landscaper made it wider than it was supposed to be. Another thing that happened when we were building the house to accommodate the owner. He got a contract and requested several things to be done. Especially here it was so narrow and for him to put those 2 big trucks that when we were doing the driveway, we, and I am assuming it was done, the driveway got a little wider than it was supposed to be. Other than that, a couple of things were done in the back- bluestone was put on the back of the house, we couldn't put any pavers, we put a bluestone slate in the back of the house. All those little things were added to the excess of Impervious Coverage. When we look at the As Built Survey it is the addition of many little things that were done in addition to what we had in the beginning. So in our last meeting we were saying the only way for us to correct the Impervious was to modify the whole paver walkway from the driveway to the house. That was a recommendation of Paul Azzolina when we spoke to him, but doing that will change the aesthetics of the house.

Mr. Van Horne said will you tell us again how you did the computation for the height.

Mr. Saenz said that he was the manager and did not do the measurement himself. There are 2 points in the front of the house and there is an equation to calculate the height. He does not know the specifics on how this was done. We spoke to Paul Azzolina who interpreted this to us and that's how we made the correction. We installed 2 planters on the corners of the house. Before doing this we asked Paul Azzolina if there was something that could be done, and he said that was something that you can do. One planter is higher than the other but in the average it is 7".

Mr. Van Horne asked the secretary to get a hard copy of the ordinances that he could read to the board before making a decision.

Mr. McLaughlin said that outside of the 2 planters the rest of the house is still 26' 6".

Mr. Saenz said we went by the definition and how it measured and based on that we came out with the best solution possible.

Mr. Corona said that in the notes it says that Mr. Rossi was OK with the solution proposed, which was the planters.

Mr. Van Horne read the ordinance:

Height:

The vertical distance measured from the lower of either the average existing or the average proposed contour lines at the base of the front of the building to the highest point of the building, excluding only chimneys. For this purpose, the contour lines shall be determined by reference to the site development plan data required pursuant to Code § [218-1](#) et seq., and the average contour line shall be determined by taking the two front corner elevations, adding them and dividing them by two.

[Amended 2-21-1984 by Ord. No. 84-2-868]

Mr. Van Horne said that's what's confusing. Because that part makes it sound like its permissible to take 2 front corner elevations.

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Mr. Merzel said we are talking about the 2 front corners as an indication of the contour. If you have a contour there is one side here and one side here. There you have the 2 things but that is not a contour. *There was discussion among the ZBOA members on the interpretation of the ordinance.*

Mr. Van Horne said you guys (members of ZBOA) have to determine whether this is in compliance with this definition or not.

Mr. Corona said that he had gone to the house again today, and looking at this house and looking at the house next door, to the left, that house looks considerably taller than their house. If it's the color scheme, if it's the roof pitch, whatever it is. If I am looking at 2 houses, yours and the one to the left, the one on the left looks way taller than yours. They have been here so many times and according to the notes, Mr. Rossi was OK with the solution. Assuming that its OK with the law, it seems that what's best for the neighborhood and everything else in my opinion..

Ms. Batistic said the definition says it's the average contour line in front of the building. To get to that average you take the 2 corners and divide by 2.

Mr. Van Horne said the question is: is this a contour line ?

Ms. Batistic said a contour line is a line representing an elevation. Now what I think is the contour line is 10, 11, 12. A contour line can be 10 points or 10.15. That's still a contour. It does not have to be the whole number. Contour line is the line of the same elevation. The definition says the height is measured from the average contour line at the base of the front of the build.

Mr. Van Horne said the first part of the definition says: the lower of either the average existing or the average proposed contour lines at the base of the front of the building

Ms. Batistic said at the front of the building we have to determine what the average contour line is. How do we determine that ? In fact, you take the 2 quarters and you average them. Which contradicts what the average contour line in front of the building. Because if the building is , lets say, 200' wide and then we have mound in the middle or you can have a dip in the middle. So the average contour line along the base of the building. So our definition has 2 different interpretations, it is inconsistent.

Mr. Van Horne said perhaps it should have said 'may be determined', it does say 'shall be'; but I think you have to decide whether or not this is a contour. If you could take a measurement every foot and then come up with a true average.

Mr. Merzel said 2 measurement set-points to produce an average contour. They were picturing some kind of normal topography. This is a unique situation. If they had come to us with this plan from the beginning- we are going to put 2 planters at the corners so we can calculate a contour to contain another 6" or 7". If that was the plan from the beginning would anyone consider it ? Does it matter now ? To me it matters because what happens tomorrow, somebody else comes to us and suggests that to offset a height variance putting planters at the corners.

Ms. Batistic said and not just 7", I'll put 3' planters.

Mr. Merzel said how would the board have answered if asked beforehand.

Mr. McLaughlin said when you came before the board about this we had said rather than take off 6" from the roof you should re-grade the property- have 6" disappear not just have 2 bumps at the ends of the house.

Mr. Saenz said we could not do it because at the front of the house there are 2 windows.

Mr. Saenz showed the location of the windows on the photo.

When we looked at the whole situation: the grass was there, the pavers were there. Re-grading all this area would create an issue. So we looked at different options, but when looking at the problems with the windows and the pavers, grass, we searched for help.

Mr. Merzel asked about window wells.

Mr. Saenz said there are window wells already. We took this to the engineer and architect. The windows would now be below grade.

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Mr. Merzel asked what is the problem with windows below grade.

Mr. Saenz said I am not an engineer or architect so when I asked for different options for re-grading I searched for that help and they tell me that the best way to preserve what you have there is to do the planters.

Mr. Merzel said I agree that's a way to preserve but its also a way to ask for a variance. I agree that the easiest solution would be the planters. My question is to the board. What would this mean in the future for other people. Is this a precedent ? I know that on the Zoning board we look at each situation individually. That is one concern I have, that other people may want to use this solution, and other properties will come up with this idea.

Mr. McLaughlin said my concern is that 28' is pretty much of a strict limit. I don't see why the board has to accommodate a 6" building error, and perhaps opening the door to further applicants coming in and wanting to do the same thing.

Mr. Merzel said it's a huge expense to change the roof, I know that.

Mr. Weissman said a huge expense for 6". We relied on our previous meetings. We were given the indication that this was a satisfactory solution, that's why we did it. We had a new survey done and everything else. So we thought that basically once Mr. Azzolina approved it, that was pretty much the end of that issue. That it would be approved.

Mr. Van Horne said I am not sure that that is totally accurate. We said that we wanted to hear from Mr. Azzolina. We wanted to see how he was interpreting the statute. First was suggested that you re-grade the property. Which would mean changing the landscaping, but that's less expensive than lowering the roof.

Mr. Saenz said the re-grading would also cause problems with the water flows, the dirt hitting the siding and then termite problems. Looking at all that was why we searched for the best option possible. And it was not the cheapest one either.

Mr. Corona asked which was cheaper ?

Mr. Saenz said the re-grading was easier to do, but the re-grading would cause other problems.

Mr. Van Horne said lets mark the 5 pictures collectively as A-1.

Mr. Corona asked is this the final as built survey ?

Mr. Saenz said that it was.

Mr. Corona asked where does it show the final height of 27.95' ? In the notes from last meeting, you said that 'we planned to have the final as-built survey with us but the surveyor was on vacation So the figure of 27.9 will be provided in the final printing which we will have next week. That will be the final confirmation that the measurements are correct.'

Mr. Saenz said this is the final as-built survey.

Mr. Corona asked so where is the data on the survey ?

Mr. Corona said to Mr Weissman in the notes from the last meeting it says 'we planned to have the final as-built survey with us but the surveyor was on vacation. So the figure of 27.9 will be provided in the final printing which we will have next week. That will be the final confirmation that the measurements are correct.' But if this is the final as-built there is no height notes that I can see.

The applicants looked for a revised survey.

Mr. McLaughlin asked considered re-grading across the entire front and between those 2 planters.

Mr. Saenz said we considered all different options for re-grading the property. Our engineer said that instead of disturbing what is there and create other issues this could be an option to deduct. Before even doing those planters we came to the town and presented the idea and they agreed with it. That's why we went ahead and put the planters on. The initial idea was to re-grade as we discussed in December. When we presented the idea to the engineers, they said not to disturb what is there. An engineer came up with the idea of doing the planters. This would be the best way to do it without

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disturbing what is currently there. Present this to the town engineer to see if it is something that is feasible to do.

Mr. Corona said that in the notes it says that your architect recommended the solution.

Mr. Saenz said the architect and engineer. The architect recommended the solution, the engineer looked at it, and then we went to the town to do that.

Mr. Corona said it seems like a temporary solution.

Mr. Saenz said those are dirt stone planters. We could not put in pavers because we would have affected the Impervious Coverage.

Ms. Westerfeld asked are those really planters or is there just a big hole with rock around it ?

Mr. Corona said the rock planters are included in the Coverage. 33' +/- sq.ft in total.

Mr. McLaughlin said grading across the front is something that I would be more comfortable with- it would represent an average contour grade coming down to 28' height.

Mr. Saenz said it took us several months to come to the decision to do this. We discussed the possibilities, and this was presented by the engineer and architect, to maintain what was there. There is an owner living in the house- so we were looking to accommodate him as well.

Mr. Merzel asked about the Impervious Coverage Variance.

Mr. Saenz said we had another contractor that was working on the house. Many of the things were done by our previous contractor..

Mr. Corona asked is part of the 3% Impervious Variance the driveway issue that you had because the garage was in the back. You had to widen this which is not what shows on this ? This is not a finalized plan, this is not shown.

Mr. Saenz said this should be shown.

Mr. Corona compared the survey to the photo and remarked that the driveway looks much larger on the photo.

Ms. Batistic said that it could be the way the photo was taken.

Ms. Batistic said I don't personally like when the developer comes the maximum allowable coverage and everything. There is always room for an error. It can be less but it can be more. The height, the coverage, the yards. When they come with the max they can get and then they build it and then it turns out to be more than it really should. Then they come back and the board is stuck with something that is already built.

Mr. Merzel said the original plan asked for a 3% variance in the Impervious Coverage. We would have considered it with everything else if presented then. At this point it's a done deal that happened by mistake.

Mr. Weissman said the way it was built was a surprise to us because of the contractors. But the way it is now is very aesthetically pleasing. We would never consider to go over consciously, it was a mistake by the contractor. It is only 3% and we could take it out – the alternative would be crushed stone which the owner nor the surrounding community would really favor. It just doesn't look as nice. But the 3% was not done intentionally.

Ms. Batistic said that's approximately 250 sq.ft. or 5' by 50' additional area..

Mr. Merzel said if someone measured incorrectly and it was a mistake and not on purpose in measurement. In this case, complete sections were added that were not in the plan. In the original plan the driveway was straight....

Mr. Saenz said the driveway is in the original plans

Mr. Saenz showed the driveway on the original plan

Mr. Saenz said right here the walkway is a straight line. When we finished the house, we came for the CO, then we were asked for the actual survey. That's when I found out that we did not get the C.O because the actual survey showed that we were higher and we had an excess in Impervious Coverage.

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At that point, we found out about this problem. We got a temporary C.O, so the owner could move in. Then we started to look for a solution.

Mr. McLaughlin said grading a contour across the front of the house and having deeper window wells seems to be much less of a hardship then making the roof lower. In Cresskill we have never allowed exceeding 28'.

Mr. Saenz said I understand. I am trying to look for the best solution.

Mr. Corona said 27.9 is the height. Because if you add the 2 corners and divide by 2 and subtract that from the roof peak you end up with 27.9 . If Mr. Azzolina was OK with what they built with the planters, we left last meeting being OK with it.

Mr. Merzel said if that's the case they don't need a variance. Its Mr. Azzolina's responsibility to say that theses planters can be used for the measurement. Technically by using those planters they could add another 7".

Mr. McLaughlin asked do you want to re-consider changing what you have here, or do you want the board to consider your application ?.

Mr. Saenz asked the Impervious or the roof ?

Mr. McLaughlin said both.

Mr. Weissman said for the roof we are not asking for a variance but for an interpretation.

Mr. Van Horne said that would be for the board members to decide. If they are comfortable with you reciting Mr. Azzolina said to you, and they have to decide whether or not they feel what he'd done and, what you say Mr. Azzolina approved, is consistent with the language of the statute and also the intent of the statute which refers to contour lines. So its your choice.

Mr. Weissman conferred with Mr. Saenz.

Mr. Weissman asked are we taking a vote on both issues ?.

Mr. Van Horne said yes, as per the application.

Mr. Weissman said this is our 3rd time here, and hopefully the board will look favorably on it. At this point, given the history, we'll present it for a vote.

Mr. Merzel asked what are we being asked to vote on ?

Mr. McLaughlin said we are being asked to vote on whether to grant the 7" height variance

Mr. Weissman said we are not looking for a height variance. The height is in compliance at 27.9'.

Mr. McLaughlin said that he does not consider that a contour line.

Mr. Weissman asked would it be possible for Mr. Azzolina to discuss this with the members of the board at the next meeting ? Is there a procedure for that?

Mr. Van Horne said he could be asked to come to testify, or give his opinion. It would have to be at another meeting.

Mr. Merzel asked if it turns out that you have to re-grade, will you have to take everything apart? Will the walkway stay ?

Mr. Saenz said no.

Mr. Corona asked how the re-grading would be accomplished.

Mr. Merzel said if the engineer decides that they need to re-grade, at that point they may not need Impervious Coverage. Right now they have Impervious Coverage, but that might change. Why should we grant Impervious Coverage if they have to re-grade everything.

Ms. Batistic said the coverage is 250 sq.ft over. This walkway is about 230. So they will have to make a foot wide walkway in order to comply, unless they do the walkway in the ground. So I do not see them re-doing the walkway to comply. And if they do, then they don't need the board, if they eliminate the height and the walkway.

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Mr. Weissman said we should adjourn until the next session and get Mr. Azzolina in here to re-visit the issue of the height and talk about his interpretation of the law- that would solve the height issue. Then Impervious Coverage would become less of an issue.

Mr. Van Horne agreed that was a wise decision. No further notice is required.

Mr. Weissman thanked the Board and said ‘ see you in a month from now’.

Mr. Van Horne asked is there an escrow posted with the town ?

Mr. Saenz said I believe so.

Mr. Van Horne said can you check with that, with the town.

Mr. Saenz said that he would.

There was discussion among the board members regarding the decision process of the board for this application.

The application was carried.

1265 Adam & Jennie Overell 162 8th St. Block 45 Lot 792-793

The applicants are seeking the following variances to construct a 220 sq.ft deck.

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25 ‘		27.1’	
Side Yard Abutting/Lot	15 ‘	8.0’	8.0’	7.0’
Combined Side yards	35 ‘	17.5’	17.5’	17.5’
Rear Yard Set Back	30’		31’	
Max. Livable Fl.Area FAR (variable)	39%		20%	
Lot Frontage	100 ‘	50’		50’
Lot Depth	100 ‘	100’		
Bldg Coverage %	20%		24.52%	4.52%
Impervious Coverage (Variable)	35%		35%	
Height	28’			
Lot Area.	10,000 sq.ft	5,000 sq.ft		5,000sq.ft
Driveway from Prop. line.	10’			

The application was carried from the June 25 meeting. The applicants were asked to submit an accurate survey.

Mr. McLaughlin recused himself, he is a neighbor.

Ms. Batistic chaired the meeting.

Mr. Overell said that the architect revised the plan.

Ms. Batistic said you were here last month and we asked you to submit a plan that would show the dimensions of the back, and the set-backs. The revised plan shows that you are seeking a Building Coverage variance. The other variances are existing.

Mr. Overell said that there had been an error on the cover letter that Mr. Rossi corrected.

Mr. Corona asked did you take out the steps in the back.

Mr. Overell said no, but he had some tree stumps pulled out.

Ms. Batistic asked is anyone in the audience for or against this application ?

Mr. Corona made the motion to approve the application.

Mr. DePalo seconded..

The application was granted.

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Memorialization

1264 Dong Woo Lee & Jung Hyun Park 124 13th St. Block 143 Lot 201-207

The applicants were granted the following variances to construct a deck, a foyer, and master bedroom addition over an existing garage.

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25 ‘			
Side Yard Abutting/Lot	15 ‘	10.5’		4.5’
Combined Side yards	35 ‘			
Rear Yard Set Back	30’			
Max. Livable Fl.Area FAR (variable)	30%			
Lot Frontage	100 ‘	100’		
Lot Depth	100 ‘	133’		
Bldg Coverage %	20%			
Impervious Coverage (Variable)	30%			
Height	28’			
Lot Area.	10,000 sq.ft	13,300 sq.ft		
Driveway from Prop. line.	10’			

1266 John & Brenda Jamieson 210 Elm St. Block 30 Lot 125

The applicant were granted the following variances to construct a 2 story addition.

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25 ‘	24.60’		0.4’
Side Yard Abutting/Lot	15 ‘	9.6’		5.4’
Combined Side yards	35 ‘			
Rear Yard Set Back	30’	44.93’	24.93’	5.07’
Max. Livable Fl.Area FAR (variable)	35.76%	19.11%	34.77%	
Lot Frontage	100’	67.15’		32.85’
Lot Depth	100 ‘			
Bldg Coverage %	20%			
Impervious Coverage (Variable)	35%			
Height	28’			
Lot Area.	10,000 sq.ft	6713 sq.ft		3287
Driveway from Prop. line.	10’			

Meeting adjourned at 9:02 PM