

**Borough of Cresskill
Zoning Board of Adjustment
Minutes Sept. 22, 2016**

Present:, Mr. Corona, Ms. Westerfeld, Mr. Kassis, Mr McCord, Mr. Merzel
Mr. Van Horne (Board Attorney), Ms. Bauer (recording secretary),
Absent: Ms. Furio, Ms. Batistic

The meeting was called to order at 8:02 pm.

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

Minutes of the Aug 28, 2016 meeting were approved.

Applications

1288 Nicholas and Elefteria Stathatos 256 E. Madison Ave Block 92.08 Lot 1

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25'			
Side Yard Abutting/Lot	15'		9.75'	5.25'
Combined Side yards	35'		31.75'	3.25'
Rear Yard Set Back	30'			
Max. Livable Fl.Area FAR	Variable 34.32 %		40.21 %	5.89%
Lot Frontage	100'		75'	25'
Lot Depth	100'			
Bldg Coverage %	20%		21.85%	1.85%
Impervious Coverage	Variable 32.4%		48.11%	15.71%
Height	28'			
Lot Area.	10,000 sq.ft	9177.72 sq.ft		TECH
Driveway from Prop. line.	10'			

The applicant proposed to construct a new single family home at the above address
The application was carried from the Aug. 25, 2016 ZBOA meeting, as requested by the applicant..

Mr. Kassis announced that application #1288 256 E. Madison will be carried over to next month.
There is no need to re-publish

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1290 Louis Zimick

70 Park Ave

Block 167 Lot 19.02

Description	Required	Existing	Proposed July 28	Variance July 28	Proposed Aug. 25	Variance Aug.25
Front Yard Set Back	25ft				25'	
Side Yard Abutting/Lot	15 ft		8'	7'	9'	6'
Combined Side yards	35 ft		16'	19'	18'	17'
Rear Yard Set Back	30 ft				30	
Max. Livable Fl.Area FAR (variable)	39%		51.37%	12.37%	47.80%	8.80%
Lot Frontage	100 ft	50'		TECH		
Lot Depth	100 ft					
Bldg Coverage %	20%		30.7%	10.7%	28.90%	8.90%
Impervious Coverage (variable)	35%		44.70%	9.70%	42.90%	7.90%
Height	28 ft		27.5'		27.5	
Lot Area.	10,000 sq.ft	5000 sq.ft		TECH		
Driveway from Prop. line.	10'					

The applicant proposes to construct a new single family home at the above address
The application is carried from the Aug 25, 2016 ZBOA meeting, as agreed to by the applicant,
because only 5 members of ZBOA were present for an FAR variance.

Mr. Kassis announced that application #1290 70 Park Ave will be carried over to next month, upon request by the applicant
There is no need to re-publish.

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1292 Norberto Szwerdsarf & Lehavit Lapid 20 Evans Rd Block 202 Lot 5

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25'			
Side Yard Abutting/Lot	15'		10.2'	4.8' Approved 6/23/16
Combined Side yards	35'		27.2'	7.8' Approved 6/23/16
Rear Yard Set Back	30'			
Max. Livable Fl.Area FAR	Variable 31.62 %		33.62%	2%
Lot Frontage	100'	90.5'	90.5'	TECH
Lot Depth	100'			
Bldg Coverage %	20%		22.5%	2.5% 0.6% Approved 6/23/16
Impervious Coverage	Variable 30.9%		32.53%	1.63%
Height	28'			
Lot Area.	10,000 sq.ft	9432 sq.ft	9432 sq.ft	TECH
Driveway from Prop. line.	10'			

The applicants were granted approval on June 23, 2016 to construct an addition to their garage, and an add-a-level to the house.

They are before the ZBOA for additional variances for the project.

Proof of mailings to owners within 200', and proof of publication, must be presented on or before the ZBOA meeting of Sept. 22, 2016.

The applicant requested that they would like to carry the application.

Mr. Kassis agreed and stated that there was no need for noticing nor republishing.

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1293 Artie & Lynn Toufayan 336 Highland St. Block 114 Lot 34

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25'			
Side Yard Abutting/Lot	15'			
Combined Side yards	35'			
Rear Yard Set Back	30'			
Max. Livable Fl.Area FAR	Variable 39 %			
Lot Frontage	100'			
Lot Depth	100'			
Bldg Coverage %	20%			
Impervious Coverage	Variable 30%		37.3%	7.3%
Height	28'			
Lot Area.	10,000 sq.ft			
Driveway from Prop. line.	10'			
Pool Distance from House	15'		14.3'	0.7'
Pool Distance from Rear Lot line	5'		1'	4'

The applicants propose to build an in ground pool and patio in their backyard.

Mr. Louis Longo, owner of Acqua Pools, Inc, was sworn in.

Mr. Longo reviewed the variances :

Pool Distance from House	15'		14.3'	0.7'
Pool Distance from Rear Lot line	5'		1'	4'
Impervious Coverage	Variable 30%		37.3%	7.3%

Mr. Longo said that they are proposing a pool patio of 808 sq.ft. A 4' walk going around the pool which brings us a foot from the back line. The pool will be 5' from the back line. The pool is 14.3' from the back of the house.

Mr. Corona asked is there a specific design or style that the owner was looking for and that's why the shape is that way ?

Mr. Longo said yes, they were looking for a free-form design called Mountain Lake Design.

Mr. Kassis said you have a seepage pit that will handle the run-off. Calculations have been done and performed by an engineer.

Mr. Longo said he took all the run-off. Took all the drains around the patio. The patio is slightly pitched. When it rains, the water goes into the drains and into the seepage pit (500 gallons)

Mr. Kassis asked is there little to no chance that you will have run-off from the property ?.

Mr. Longo said not a chance at all.

Mr. Kassis said the property slops down from the house behind

Mr. Longo said slightly, not a lot.

Mr. Kassis asked is there a continuing downward slop ?

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Mr. Longo said not really. Very little topography change.

Mr. Kassis said it appears that its pretty flat. There is no calculation for the lot behind

Ms. Westerfeld asked are you able to construct the walk that the 5' from the back of the property could be 2' further ?

Mr. Longo said usually 3' is the narrowest you want to make a walkway.

Ms. Westerfeld asked could you reduce it a little bit ?

Mr. Longo said yes

Mr. Kassis said the proposed fence is shown at property wide. There is a requirement that the fence be set in from the property line. Which may possibly cause a problem for that one foot clearance. The fence needs to be 12" off the property line.

Mr. Longo said that I never heard anyone say that. We do a lot of fences. I've never heard anyone say that it had to be 12" in. Usually 6" is what we do for a fence. We could cut that walkway if that is a problem.

Mr. Kassis said that will come up through the building dept- what their requirements are for fence installation. So long as the clearance allows for the fence, and the property line should be conforming to whatever the municipal regulations are.

Mr. Longo said OK.

Mr. Corona asked do you know what the property owner wants to do for the privacy in the back ? You have this nice layer of pines in the back. You will be taking out 4 of the trees.

Mr. Arthur Toufayan, owner of the property, was sworn in.

Mr. Toufayan said we want to do something natural, some sort of evergreen. If we don't have the room to do it, we'll just put up a fence so that it will be completely private.

Mr. Corona said a conforming fence is 6'.

Mr. Merzel said you have 2 dimensions from the house to the pool. One of them is 13.6' and one is 14.3'. The variance is based on 14.3', but the closest spot is 13.6''.

Mr. Longo said it was the Construction Official that set the 14.3'. I could shift the pool over a bit so we can make it the same.

Mr. Merzel asked what is the purpose of the 15' requirement between the house and the pool ?

Mr. Longo said that it was the Construction Official that told me. Most towns are 10'

Mr. Kassis said there was a need in the event that the Fire Dept. has to get in to fight the fire, they could erect ladders. The 10' was to prevent spread from one structure to another but to go up and down the ladder 15' are needed.

Mr. Merzel said so this is a safety issue and that's the reason the town wants 15'. What's the hardship that should let us give you a variance, when it may not be safe to do it with less than 15'.

There was an argument between Mr. Longo and the members of the board whether the requirement of 15' was justified.

Mr. Merzel said that he does not want to be responsible for a safety hazard- if 15' has to do with the size of the fire truck. I need more clarity on that..

Mr. Van Horne said that the 15' was needed for the ladder in case there was a fire in the rear of the house.

Mr. Merzel said if that was the reason for the zoning I would not feel there was no justified reason to over-look...

Mr. Kassis said we are compelled to approve the Zoning requirements in the town and to evaluate applications and make adjustments to them as it becomes necessary due to hardships- typically associated with the layout of the terrain or something that could prohibit a typical installation.

You have 14.3'. You are sensing from the board a concern with the 15' more than the one foot in the back. Since it is somewhat conforming, you could just slightly tilt that one side back and get the 15'.

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I, myself, have concern, if indeed we put anyone at risk in the event of a fire. I believe that you can eliminate the need for that variance.

Mr. Longo agreed he could eliminate the variance for the distance of the pool to the house.

Mr. Kassis said that the only issue at this point is the Impervious Coverage variance

Ms. Westerfeld asked if they reduce the sidewalk in the back, will that reduce the Impervious. ?

Mr. Longo said any reduction will reduce it, but having a small perimeter around the pool makes it useless.

Mr. Longo said I can design it where we can meet the 15'. So we can eliminate that.

Mr. Van Horne said is it also possible to eliminate the issue in the rear yard if you move it slightly to the south ?

Mr. Longo said that there is a Seepage pit back there- *he located it on the plan by the number '30'*. We can move it.

Mr. Kassis said that pool seems to be the issue not the spa. The process does not require us to evaluate the spa

Mr. Van Horne said I am not sure that the spa is not an issue.

Mr. Kassis asked is it above or below grade.

Mr. Longo said its only in the ground about 2'. It's a spillover into the pool

Mr. Van Horne read the Pool definition from the Cresskill Ordinances:

"Any outdoor swimming or bathing pool either sunk into the ground or supported by a fixed structure, whether or not it has a fixed intake or discharge system, and portable pools having fixed intake and discharge systems regardless of size or capacity, but excluding fish ponds and ornamental garden ponds not intended for bathing or swimming."

Mr. Kassis said with the clarification that our attorney has just provided, is it that the spa can be relocated to the left side and set back well beyond the 15'.

There was a discussion among the Board members and Mr.Longo to where the spa could be relocated.

Mr. Kassis asked is there a way that we can tuck that (spa) in differently ?

Mr. Longo said we could move the pool further down.

Mr. Kassis said the final design should be 15'...

Mr. Longo said with the spa too

Mr. Kassis said right.

Ms. Westerfeld asked how big is the pool?

Mr. Longo said 554 sq.ft. its not real big.

Mr. Kassis invited members of the public to be heard.

Mr Rosales was sworn in.

Mr. Rosales testified that he is representing his mother who lives at 339 Concord directly behind the applicant.

Mr. Rosales said that you were talking about the bushes (in the back) being taken out. Are those bushes on that (applicant's) property.

Mr. Kassis said that according to the survey which is provided and sealed by an engineer, the bushes are located on the property that belongs to the applicant.

Mr. Rosales said so he will be removing only the ones that are on his property. Correct ?

Mr. Kassis said he will not be allowed to go on somebody else's property. Anyone can trim branches that are on their own property, as long as they do not go onto somebody else's property. The zoning does not extend to trees and bushes, so that is something that the applicant is free to remove.

Mr. Rosales said the concern is where the pool is built – how far is it back- we haven't been able to see the plans. If the variance is given, how far is that from the back side of our house ?

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Mr. Kassis asked how far is the back of your house to the property line ? In most cases its approximately 30', that's the Zoning requirement. Without that information I cannot give you an answer.

Ms. Westerfeld said they are going to the edge of their property. The question is: how big is your property from your house to the end of your property ?

Mr. Kassis asked does the applicant know ?

Mr. Toufayan said that he did not know.

Mr. Kassis asked is there a fence between the two ?

Mr. Toufayan said no.

Mr. Kassis asked is there a Bar BQ there?

Mr. Toufayan said yes, it is brick and belongs to the neighbors .

Mr. Kassis, referring to the plan, asked is your lot 15 or 19 ?

Mr. Toufayan said 14 or 15.

Mr. Kassis said between your property and their property there are some fence posts which appear to be right on the property line.

Mr. Rosales said the question of the run-off. We want to make sure that there is no detriment to my Mom's house, in the case, whether there is an accident, or when the pool is covered in the winter and there is a run-off from there.

Mr. Kassis said that the Building Dept will evaluate the application that it conforms to municipal regulations, building codes. The agent for the applicant testified that there is a perimeter drain, the full distance around the perimeter of the sidewalk that is on the edge of the pool. So any runoff would be satisfied by that drainage system which will be inspected by the building inspector. The design seems satisfactory, but the capacity will be judged by the inspector.

Mr. Corona said if you are looking at their house from the front and you are back here, there are 3 trees in a row that are on their property, and the only thing that would be in your view would be the one in the center where they are proposing to put the pool. If they are alter the shape or location of the pool, if anything its going in the opposite direction of your Mom's lot, so it shouldn't affect the trees almost at all, except the one in the center.

Mr. Rosales asked is that guaranteed that there will be a fence ?

Mr. Kassis said the fence is part of the regulation.

Mr. Rosales asked if the shrubbery for privacy is a gentleman's agreement or is it something that they have to build ?

Mr. Kassis said the applicant has proposed something that requires some modifications to the drawing, and in fairness to the applicant, they are welcoming the suggestions and recommendations of the board, which will require that the pool be shifted to one direction or another. As long as that 15' setback is not encroached upon. At this point it would be difficult to say whether one, two or none of the trees would be affected by the shift. If it is going to be shifted, they are respectful of their town and the way it looks, I'm sure they want their property to look nice. We can't regulate trees but it seems that the neighbors looking to beautify their property and, at the same time, create a nice welcoming back yard.

Mr. Van Horne asked would you be willing to make representation that you won't remove that tree closest to the center in that grouping of 3 if you move the pool to the south ?

Mr. Toufayan said he was not sure which tree was referenced. *Mr. Van Horne located the 3 trees on the drawing.*

Mr. Toufayan said that he would represent that the trees were staying.

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Mr. Van Horne asked Mr. Rosales if he had heard that Mr. Toufayan had represented that he would not remove any of the 3 trees.

Mr. Van Horne said the location of the 3 trees to the left of their property, to the right of the back of your property.

Mr. Toufayan showed Mr. Rosales the location of the 3 trees on the plan.

Mr. Corona asked if these are tall trees.

Mr. Toufayan said that they were 7' or 8'.

Mr. Corona said once you put up the fence you will only be able to see the tops of the trees.

Mr. Rosales asked about reassurance about privacy.

Mr. Kassis said the privacy is created by the fence. If you want additional privacy you will have to provide something on your side.

Mr. Toufayan said that the fence would be 6' of solid vinyl.

Mr. Van Horne said you will amend the application so that you do not need the variance with regard to the 15' buffer. What about the rear yard buffer ?

Mr. Longo asked can we get it to 2' ?

Mr. Kassis asked the audience if there was anyone else that wished to be heard ?

Mrs Eileen Tamburro was sworn in.

Mrs Tamburro testified that she lives at 347 Concord St. and described the location of her house relative to the applicant's.

Mrs Tamburro said that she had lived there for 49 years. Many of her questions were resolved by those of Mr. Rosales; however I am concerned that we are working with a huge amount of flexibility, 'if and what if'. Because there is an incline, Highland St. is higher than Concord St by a bit. Not a steep incline but an incline. Is the drainage system provided by the Pool company ?

Mr. Longo said yes.

Mrs. Tamburro asked where are you draining, ? Are you draining out to Highland ?

Mr. Longo said we are draining it to a seepage pit, like a cesspool.

Mrs. Tamburro asked and that will take care of the winter run-off from that impervious pool cover ?

Mr. Longo said the cover is a mesh cover. When we winterize the swimming pool, we lower the water in the pool. The rain water from the winter goes through the cover and refills the pool none of it goes over the cover.

Mr. Corona said there is a drain system.

Mrs. Tamburro said the rectangle that is the back-yard. Do we know how big that rectangle is ?

Mr. Longo said its 100' across the back. The depth of the property is 104'. The house is 38.5' from the back of the house to the property line. So its 100' by 38.5'.

Mrs. Tamburro said you are occupying most of that...

Mr. Longo said there are 3800 sq.ft and we are going to occupy maybe 1350 sq.ft.

Mrs. Tamburro asked does that include the 6' fence needed for privacy ? Will that be exterior to your sidewalk which is now varying between 3' and 4'.

Mr. Longo said its got to be beyond the sidewalk.

Mrs. Tamburro said I am confused by so many variables. The pool is made so it clears the house by 15'. It's a free form pool...

Mr. Longo said we will shrink the pool a little bit and bring it south a little bit more.

Mrs. Tamburro said a free form pool is much more difficult to imagine. The people who get notification get minimal information. Since this is a luxury item- not like grand-parents moving in and needing another room- truly a luxury item not typical of our neighborhood at all. I'm concerned it will lower our house values. It's a concern that there will be a fence.

Mrs. Tamburro showed Mr. Longo where her property was on the plan.

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Mr. Van Horne told Mrs. Tamburro and Mr. Longo to speak louder, and the audience to stop speaking so that the witnesses could be recorded on the tape.

Mrs. Tamburro said the walkway is considered as part of the patio.

Mr. Longo said that's correct.

Mrs. Tamburro said so that if you reduce the walkway to 3', you are reducing the size of the patio. Is that going to increase the pervious area ?

Mr. Longo said yes, that's correct.

Mrs. Tamburro said the nearest point of anything you construct- fence, sidewalk, whatever- is going to be a foot away from the property line.

Mr. Longo said now we're talking of maybe making it 2 feet.

Mr. Kassis said the variance that will be determined will be no less than that amount of space. Whatever the free-form pool will be- based on the plan, based on the site conditions- the applicant cannot encroach into the 15' from the house or the 2' from the property line in the back.

Mrs. Tamburro asked about lights.

Mr. Kassis said that lights were not relevant to the application. That is a building dept. matter.

Mrs. Tamburro said you will determine what shape will best meet the needs of....

Mr. Kassis said they will determine the shape, we are giving them the area in which they can put the pool.

Mrs. Tamburro said and how close to the property line and their home.

Mrs. Tamburro said that is pretty much it. ecause none of us were shown any kind of a sketch. It's a vinyl fence not a see through.

Mr. Kassis asked is there anyone else here to be heard on this application ?

Mr. Kassis said it seems we are staying 2' off the property line in the back and no closer than 15' to the house.

Ms Westerfeld asked can they recalculate the Impervious ?

Mr. Longo said that the impervious coverage will go down. Between 35% and 36% will be not to exceed.

Mr. Merzel asked about the 2'.

Mr. Longo said 2' from the edge of the property to the edge of the patio

Mr. Merzel asked if the fence has to move in- what is the decision on that ?

Mr. Kassis said the fence cannot be on the property line so you would still be a foot away. So depending on what the Building Dept tells him- if my memory is correct, it was one foot.

Mr. Merzel said two feet . One foot away from the property line and one foot away from the fence.

Mr. Merzel asked and what would Impervious Coverage be ?

Mr. Kassis said there have been so many changes to the application, you can stick with your Impervious application and it will be no greater than that.

Ms. Westerfeld asked we are going to reduce the Impervious ?

Mr. Van Horne said we are going to have a representation that the application will be amended to reflect a 3' wide patio around the pool and that the 15' buffer will be maintained- no need for variance there.

Mr. Longo agreed.

Mr. Merzel said he could make the pool longer and still keep that 7% Impervious.

Or, to shrink the size of the pool, then the Impervious Coverage will be less than 7.3%.

In that case I need to know how much it is before we vote because we are not going to approve more than necessary.

Mr. Longo said OK lets say 36%.

Mr. Longo described how he might shrink the pool.

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Mr. Kassis said we can say not to exceed and that deals with all variances, not to exceed 15' and not closer than 2' and the same with Impervious Coverage.

Mr. Merzel said that Impervious Coverage is an issue of run-off. Why should we give them more than necessary. He has proposed to shrink the pool.

Mr. Longo said the drainage and the seepage pit is for 37.3%. So this is going to be more than enough to take care of the drainage and the run-off. When we do a drainage calculation for the town engineer, and he goes over all to make sure we have a big enough pit.

Mr. Merzel said are you proposing to shrink the requirements of the variance on the Impervious Coverage. Right now its 7.3%.

Mr. Longo said he is proposing 36% Impervious Coverage and is requesting a variance of 6%.

Mr. McCord made a motion to approve the application with all of the exceptions and amendments that we have placed and put on the record: 6% Variance for Impervious, 2' distance from back property line, the 3 northern trees are staying.

Ms. Westerfeld seconded.

The application was granted

Mr. Kassis explained to the applicants the procedure for obtaining the Building permit.

Memorializations

1291 John Castillo 84 Churchill Rd. Block 75 Lot 53

The applicants were granted the following variances to construct a deck.

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25'			
Side Yard Abutting/Lot	15'			
Combined Side yards	35'			
Rear Yard Set Back	30'	21.4'	15'	15'
Max. Livable Fl.Area FAR	Variable 39 %			
Lot Frontage	100'			
Lot Depth	100'			
Bldg Coverage %	20%			
Impervious Coverage	Variable 35%			
Height	28'			
Lot Area.	10,000 sq.ft	12,375 sq.ft *		
Driveway from Prop. line.	10'			

* estimate