

**Borough of Cresskill
Zoning Board of Adjustment
Public Meeting 8 pm
Minutes Oct. 24, 2019**

Ms. Furio said does anyone on the board have questions or comments regarding the application as stated ?
Does anyone in the audience have questions or comments regarding the application ?

Ms. Furio said it was just the extra stairs that caused the 1.8 ?

Ms. Humani said yes.

Ms. Furio said would someone on the board like to make a motion...

Mr. Kassis said I'll make a motion to approve the application as submitted.

Mr. McCord seconded.

Ms. Schultz-Rummel voted no.

Mr. Cleary , Ms. Furio, Mr. Kassis, Mr McCord, Ms. Westerfeld, voted yes.

The application was approved

1353 Kadri Mirzo 91 Hillside Ave. B 76 L 55

Description	Required	Exists	Proposed	Variance
Front Yard Set Back	25 ft		80.7'	
Side Yard Abutting/Lot	15 ft		11.07'	3.93'
Other Side Yard	20 ft			
Combined Side Yards	35 ft		37.32	
Rear Yard Set Back	30 ft		128.09'	
Max. Livable Fl. Area (FAR)	30%		48.96%	18.96%
Lot Frontage			100'	
Lot Depth	100'		293.5'	
Bldg. Coverage	20%		13.11 %	
Impervious Coverage	30%		70.41%	40.41%
Height of Bldg	28'		30.30'	2.30'
Lot Area	10,000 sq.ft		29,351.95sq.ft	
Min.Driveway side-yard	10'		2.76'	7.24'

The applicant proposes to construct a new single family home.

He requires approval for FAR and Height. He will apply for the other variances at the Planning Board.

This application was dismissed at the Aug. 22, 2019 ZBOA meeting because neither the applicant nor his representative were present.

Ms. Furio announced Application 1353 Kadri Mirzo 91 Hillside Ave.

Mr. Mark Madaio said thank-you Madam Chairwoman. He introduced himself as attorney for the applicant.

Mr. Madaio said this matter was intended at the Sept. 24th meeting. Due to some confusion. I have recently spent a long time in the hospital, so no problem matter was carried. My understanding is no additional notice was required. That I certainly would be obligated to demonstrate proper notice to the 24th .

Mr. Madaio submitted the notices (to property owners within 200') to the recording secretary.

Ms. Furio said I would like to state for everyone here. This application we are going to hear, here. The 2 pieces we are going to be listening to are the FAR and the height. All the other variances will be listened to in front of the Planning Board. For the audience, I just want to make you aware that we are listening to the Height variance that is being sought and the FAR variance being sought. Anything else will be at the Planning Board.

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Mr. Madaio said I understand that.

Ms Furio said to Mr. Madaio: you can describe everything which is fine...

Mr. Madaio said wonderful. So the board has some sense about bearings. This is 91 Hillside, Block 76, Lot 55. It's a 100' wide long narrow lot. It is constrained at least in part by the fact that the Borough measures FAR only based upon the 125'. Mr. Hubschman will testify, the architect will testify, and, forgive me for saying that, for my breathing. It's a little off, I apologize. This lot is not a 50' or 75' wide lot, where that 125' sort of originated- sort of very narrow lot. This lot is a full 100' wide lot. The structure proposed on the lot, is in fact the 125' line goes through it. This project, the home, is set well back from the road. That is our intention. In fact its set approximately the same distance back as the houses on both sides. You will hear testimony that the height is approximately the same as the houses on both sides. The FAR if you use the entire lot as your numerator or denominator in the FAR equation, we actually conform. It is only when 125' depth measurement is applied that we don't conform. I think that ordinance is under some consideration, as to how it might actually work with The interesting factor about that, is if this lot were laid on its side, it would be full conforming . In fact we could probably go two of these houses and be fully conforming, because the 125' depth would not impact us. So if you think about it: if this lot is configured this way you need an FAR; if its configured this way, you don't need an FAR. That is the trick of the ordinance or the reality of that ordinance. The house and the pool, again, are set-back behind even the 125' line. We can move the house up much further. We could eliminate Impervious Coverage which I understand you are not hearing. We could eliminate the turn-around, so that people do not have to back-out onto a county road. The County wants it. I don't think anyone wants people backing out into Hillside. Especially very near that curve that you come down from Holy Angels..... So a lot of the reality of the variance is its based on the configuration of the lot, and the need to come out front from the county road, and the fact that the property or the house is set fairly well back . I assume that is what people want. They want the house set pretty well back. Attractive looking, a little beyond the grander side. It happens that the houses on both sides are lovely and that's what should be required . Again, beyond the issue that you are dealing with this evening, is the FAR, which we can talk about a bit further, and the height which we do not need a 'D' variance for the height. The height is within 10% over the request. Our architect will testify as to the height and make clear that is potentially what's on both sides. We could always make a squat, flat ugly house. The reality of what we have constructed here is designed to show a height, but in a home of this size is difficult to keep at 28'. The height of this house cannot in reality without some deviation be the same height as the small cape that I grew up in Bergenfield and many of you probably grew up with even in town. It just doesn't work. But we did intentionally want to assure that we were less than 10% over, and so we delivered that plan at that point. So what I'd like to talk about or at least make sure you have in front of you, is the two things that you are handling is Impervious Coverage. We have 30% as permitted we are proposing 70%.

Ms. Furio corrected Mr. Madaio- only height and FAR will be considered by Zoning Board.

Mr. Madaio said 28' is permitted we have 30.30'.

Mr. Madaio gestured and said the house is just about this much higher than permitted. Set-back a good distance which we will talk about. I would suggest to you that this differential height is almost imperceptible. Of course FAR, we are permitted a 30% FAR, we propose 48.96% FAR, that again is if you use the 125' limitation. The reality is if you actually use the lot, which I think what the statute says, we conform. We would not need to be here. So having said that- you all know Mr. Hubschman. I'd like to call him up . Have him verify what I said was true and accurate, and then offer some testimony about the site. I do want to make sure that even with what we are asking for, one would note that the site has an extraordinary amount of open and green space. There is just no way to look at it without absorbing the fact that the site is extraordinarily large and extraordinarily green. So we move forward if that pleases the

Mr. Van Horne asked what is the total depth.

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Mr. Madaio said 293.5',. and again 100' wide. I've been practicing in this town a long time. The 125' set-back was really there to control these really narrow lots. Our lot is 100' wide, it's a full width lot.....I think the value of that 125' limitation may not exist here as much as it does in other places. If that's acceptable Madam Chairwoman, may I call Mr. Hubschman.

Mr. Hubschman was sworn in.

Mr. Hubschman placed a colored site plan on the easel

Mr. Madaio said Mr. Hubschman is qualified in his field and has been here once or twice before.

Mr. Hubschman testified that the lot is 100' in width. Its on the north side of Hillside. Its 293' in depth. It's a fairly level lot, sloping from the rear out to Hillside'

Mr. Madaio said and the only things we are here to discuss this evening are the FAR and the height. But the site plan which will ultimately be handled by the Planning Board. Do we address all of the issues that I know this Board will still be concerned with: water, seepage, access to electricity, sewage etc. Just touch briefly upon the site plan.

Mr. Hubschman said this is a complete site plan.

Mr. Hubschman described the proposed layout on the site plan.

Mr. Madaio asked was it accurate when I indicated that the 2 adjoining houses were set a little further back but are roughly the same distance from the street.

Mr. Hubschman said right . You can see it we are 80.7' back and their houses are about 50' back'

Mr. Madaio said OK, and did we have a chance to talk a little bit about the FAR and the FAR characteristics of the property.

Mr. Hubschman said right. The FAR. The R-10 Zone has the caveat where you can only include the first 125' of the property in the calculation, which is the livable area divided by the lot area within 125'. So I drew the 125' line here....so actually our house is behind that. The ordinance doesn't really give you any way to calculate the condition. The calculation that we showed for that 48% is the entire house over the 125'.

So it's a little skewed. Its really not that bad. For 48% and again we are including half the house which is behind the line. The FAR is based on the entire lot is a little over 20.8%, and that's in keeping with the 100' width lots are allowed 30% max. In the R-15 zone , the FAR max is 25%.....

Mr. Madaio said if we were not limited by the 125' window, we would actually be only 2/3 above permitted by the FAR- 20% rather than 30%..

Mr. Hubschman said that's the density that the borough had anticipated in the R-15 zone which is 15,000 sq.ft So this shows that this is in fitting with that.....

Mr. Madaio said we actually comply with the R-15 zone.

Mr. Hubschman said yes.

Mr. Madaio said because that doesn't have that 125'.

Mr. Hubschman said right, that doesn't have the 125' restriction.

Mr. Madaio said limiting... and in this zone, if they use the entire lot our FAR is what ?

Mr. Hubschman said 20.8% .

Mr. Madaio said that would only be 2/3 of what actually is permitted.

Mr. Hubschman said it's a 29,000 sq.ft lot in a 10,000 sq.ft zone. Its basically triple the size.

Mr. Madaio said so even that our lot is triple the size of what's permitted, or required, we still are limited in an FAR to a house that would be approximately 3000 sq.ft. What approximate house could we- square footage of a home could be built ?

Mr. Hubschman said that would be.... about 3,500 sq.ft

Mr. Madaio said even though we have 3 times the required lot area, a house that could be built here would only be about 3,500 sq.ft.

Mr. Hubschman said right, that doesn't really address what if the house is more than 125' from the street.

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Mr. Madaio asked how far are we set back from the street ?

Mr. Hubschman said 80.7' from the street line. It's a busy road, county road, Hillside Ave. Good to set it back. It's a little behind the other houses. They were all set back on that same distance on that side of the street.

Mr. Madaio asked does Hillside curve or bear to the north slightly a couple of blocks away from us ?

Mr. Hubschman said yes there is going up Alpine to the left.

Mr. Madaio said and it's a county road. So we regard it as imperative and the county regards it as imperative. We don't back out onto Hillside.

Mr. Hubschman said right. Its hard to back out here, so that's why there is a turn-around on the driveway area.

Mr. Madaio said while we are not here tonight for our Impervious Coverage review, the fact that the house is 80' back- what is the permitted set-back in the zone, required.

Mr. Hubschman said the front yard is 25'.

Mr. Madaio said so we are over 3 times the required set-back, on three times the lot area. If you push the house back three times as far as you are allowed to, you get a longer driveway. Right?

Mr. Hubschman said right and that the Impervious Coverage is also calculated with 125'. But we are not here to spend a lot of time talking about that.

Mr. Madaio said but I do want to have the board to have a full picture of the fact that our lot is three times required. Everything, our Front Yard Set-Back is three times required. Everything far exceeds what's required. The limiting factor, that we have, is the 125' for measuring.

Mr. Hubschman said right. I've been coming here and to the Planning Board for 25 and 30 years almost. My recollection was that there were some lots on Monroe Ave that were 50' by 200' and people were coming in to try to build a house that would be 30' by 80'. That's my recollection as to why they limited it to 125' for a 50' lot.

Mr. Madaio asked Michael are you a licensed professional planner in the state of New Jersey ?

Mr. Hubschman said yes I am.

Mr. Madaio said Board members, I know, Mike always testifies as an engineer. He's also permitted to testify as a planner. To the extent that his testimony strays into planning, I certainly would like you to consider it in that light. In a 100' wide lot is there any essential purpose of the ordinance to be remitted to the 125' set-back for the purpose of measuring your FAR ?

Mr. Hubschman said no there isn't. Again, the R-15 zone would allow this house. Its really an anomaly. Again the line goes thru the house too. Do we just measure the part that is in the 125' ? We took the whole area.

Mr. Madaio said again we testified that the lot is reasonably level. As a planner, is the proposed height which we seek, which is about 30' , is not a 'D' variance, simply a fault variance, is that pretty much consistent with the houses on both sides ?

Mr. Hubschman said the house to the left is higher and the one to the right is about 28', an older On the right side was set back way back- 80' plus another 10' or so from the road actually – your about 90' from the

Mr. Madaio said its a 2' variance 90' back from the road.

Mr. Hubschman said right. Where the height is also is probably in the center of the house so its another 30' back.

Mr. Madaio said the statute recognizes two different kinds of height variances. The first being less than 10% , which requires the basic proofs of not detrimental, not adverse to the zone plan etc. Then there is the heinous 'D' variance for height. We are here for the simple variance.

Mr. Hubschman said right. We are less than 10%.

Mr. Madaio said in fact we are 2' on the 28'.

Mr. Hubschman said we are 30' and change. 30.3'

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Mr. Madaio said 2.3' on the 28' height, only for the peak. Over 120' back...

Mr. Hubschman said the roof yes, its only a little piece of the roof that you wouldn't even see from the road in any case. Right ?

Mr. Madaio said from a planning perspective, does it make sense that the height limitation on a 2,000 sq.ft cape is the same as the height limitation on a larger home of a 30,000 sq.ft lot ?

Mr. Hubschman said no. It plays into the

Mr. Madaio said Madam Chairwoman, I have no further questions with regard to the FAR or height from the engineer. I will have a project architect talk a little bit about the design and why the height is warranted, unless the Board or public, of course, has any questions.

Ms. Furio said I have a quick question. So you have the house and the line of the 125' going thru it about 2/3 of the way back .

Mr. Madaio said yes.

Ms. Furio asked if you were to – you were discussing the calculation based on the 125' or the whole.

Mr. Madaio said correct.

Ms. Furio said if you were to draw a line behind the house in between the house and the pool, just for arguments sake. I'm assuming- that, that looks like there's plenty of space in between the corner of the house and the pool, which needs to be- but if you were to draw the line behind the house what would that distance be ? 125' to . How far back is the house set ?

Mr. Hubschman said the rear by the chimney and the rear is 167'.

Ms. Furio said so, if you were to round to 170', and use that, just for arguments sake, what would the FAR then come in at ? If you drew the line at that point.

Mr. Hubschman said or maybe hold about 30' back from the rear yard ?

Ms. Furio said because it was either a this or a that- lets see if there is something in between, because the house is set so far back . Lets see what that number would be ifrounded to 170'.

Mr. Madaio said what would our FAR be if you measured 170' instead of 125'.

Mr. Hubschman said 36%.

Ms. Furio said 36% instead of 48%.

Mr. Hubschman said that would be right at the rear of the house.

Ms. Furio said the house is set 80' back. Granted you are running right into that 125' line. So the rest of the house is behind it, granted. So, if we were to use that behind the house line, so you are now down to 36% from 48%, that changes the number.

Ms. Furio asked anyone else have questions for Mr. Hubschman ?

Mr. Kassis said yes the height. I don't recall, did you testify to the height of the house on each side.

Mr. Hubschman said the architect is here and he will testify.

Mr. Madaio said we also have some photos....

Mr. Hubschman said.....

Mr. Hubschman said just visually we could measure that. But the house on the left- I have some photos to we can show you.

Mr. Madaio said why don't we mark the photos....

Mr. Hubschman said they seem to be approximately 30'. The house on the left, pretty cool house, and the one on the right 28' ish.

Mr. Kassis said you didn't measure them.

Mr. Hubschman said we did not measure them.

Mr. Kassis said you are just guessing.

Mr. Hubschman said well, estimating.

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Mr. Madaio said we will be happy to mark in the photographs . So A-1 is the colorized Site Plan, A-2 is the photographs (*the photographs were passed to the Board*) You will both houses on the side; and we'll let you estimate.

Mr. Kassis said in fairness our job is not to estimate it, but to review factual information and specifics, not to estimate things.

Mr. Madaio said we'll let you see what's there and if you believe they're under 28', maybe you do. I would suggest its very obvious that they're not.

Mr. Hubschman said they're tall houses.

Mr. Madaio said they are lovely homes. The one on the left is a beautiful newer home, and the one on the right is a very classic steep pitched roof older colonial. Its what you'd expect on Hillside Ave.

The Fire Alarm went off for about 5 minutes. It was a false alarm caused by a mal-function. The hearing was disrupted for about 8 minutes.

Ms. Furio said have pictures marked A-2. The Site Plan is A-1.

Mr. Madaio said right.

The photographs were passed around and examined by the board.

Mr. Hubschman said those are the 2 houses. P-10 is the house on the left of our house and P-9 is the house on the right.

Ms Furio said Okay, you're 80' back, you're staying 2.3' over the 28' height of the building, Any other questions for Mr. Hubschman at this time ?

Mr. McCord said I just want to clarify one thing. Did you calculated the FAR by using higher square footage of the house, not just up to the line.

Mr. Hubschman said right, yes that was the 6120 the entire house divided by the 12,500. I could calculate it the other way.

Mr. McCord said That's alright, I just wanted to make sure that all of it was part of the calculation.

Mr. Madeio said the irony is that we use the entire house, but because the line goes thru the middle of the house, you can't even use the land that the house is on, in your ordinance calculation. Because you can't use any land behind the 125'. Mike accommodated that use- he did it the way the ordinance said.

Mr. McCord said to be fair, you can always move the house up so it is 125' anyway.

Mr. Madeio said we could do that, again we like the turn-around ...

Mr. McCord said I'm just saying its not like, the reason this exists is because you have the house 80' in depth or 100' that way.

Mr. Madeio said the reason we have to consider that the 125' line goes thru the house is because we have the house 80' back. The fact is though, you derive all the benefits from that, and the purpose, I think the Chair woman crafted kind of a fair remedy which is at least do the calculation on the purple line at least where you include the house in front of the line. I don't think there is anybody else on the long skinny lots whose house is actually partially behind the line.

Mr. McCord said is that right. You said 170', if you use 200' and you have a 30' rear yard you are at 30.6%.

Mr. Madeio said we very much appreciate the idea that this lot requires a certain adjustment. You are the Board of Adjustments cause you make adjustments. We seek adjustments and we hope that you understand or appreciate or agree with our arguments. If not we all would be watching a baseball game tonight. There is a certain amount of accommodation here. No matter how we peg that, the Chairwomen suggesting that at least make the line the back of the house- and if you do that our FAR is 36 instead of 30, which, we believe, is within the boundaries of what you granted, and seems fair for large long lots. Of course if you calculate the entire lot, your council will speak to that at some point, we conform fully, there's not even a question about it. But nobody

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is interested in making that argument . We are interested in equity and accommodation and reaching a sensible conclusion.

Ms Furio said can we hear the architect...

Mr. Madaio said sure

Mr. McCord asked do we know how far back the adjacent houses are from the street ? Roughly, it looks on this Site plan that the current house is at least- perhaps the house on the right may be further back than the end of the actual house.

Mr. Hubschman said the one on the right is...48' and the one on the left is 55'.

Mr. McCord asked and this one, how far again ?

Mr. Hubschman said 80.7'

Ms. Furio said any other questions for Mr. Hubschman . We can always call him back.

May we hear the architect for a moment.

Raymond Virgona (Architect, 125 River Rd. Edgewater) was sworn in.

Mr. Virgona gave his credentials.

Mr. Madaio asked were you called upon to prepare the plans for the house, which we are talking about, at 91 at Hillside ?

Mr Virgona said yes.

Mr. Madaio said with regard to that house, the issues we are addressing this evening is FAR and height. What I'd like you to first talk about is height. Mr. Hubschman indicated that the height differential was approximately 2.3'. That would be on the house set back- Mike gave the numbers- whatever distance from the road, whatever set-back. Would that 2' distance in height be even perceptible ?

Mr. Virgona said no, I don't believe it would be. We are back over 80' . The house also has some varying roof lines. The piece closest to the street, the garage wing, is lower, as is the right portion of the house, which is lower from the main ridge, which is where the calculation is taken from, of about 16" to 18". So on average we are actually lower than the 30.3'. I think the 80' set-back mitigates as well because being back that far... we have no wall pieces that extend up. Technically, by ordinance, if we were to have gabled roofs, we could have a wall that is 28' high. Whereas here, the roof portion of our elevation is about 9'. So, the walls are lower. So the actual height of the wall is how much ? Roughly.

Mr. Madaio said about 9' lower. It seems at most 21' high.

Mr. Virgona said so again by the fact that this not a gable end, but the roof actually slopes away. Instead of having a face wall of approximately 28' which would be completely permitted in a gabled ended home, we are actually about 21'.

Mr. Madaio said you testified that the area of the roof that we are talking about principally is the one on the left side of the front elevation ?

Mr. Virgona said yes, The main part of the house, which is the symmetrical part to the left, that's where the high point was measured, but the other portions of the roof are lower.

Mr. Madaio said and the roof, of course, slopes away from the street to reach that ridge. I am assuming that is the mid-point of the house.

Mr. Virgano said yes it is.

Mr. Madaio said its not just the 80' from our front yard plus the 10' for the right of way width but also because how many feet because the roof has to slope back and away before it reaches that height.

Mr. Virgona said well actually the highest point would be at 2 gables on each of the wings in the front. So those are probably back 7' or 8' more. Because the hip roof is equal on both sides.

Mr. Madaio said lets very talk briefly. One of the functions that we tried to accomplish here is to have the garage be a side loaded garage.

Mr. Virgano said that's correct.

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Mr. Madaio said that again requires driveway area and places the garages where they are not visible from the street where people are looking into your garage or seeing your garages.

Mr. Virgano said yes that's true. We have a 3 car garage which is appropriate, I think with this house and location. The gaage is back 60' which adds to the Impervious Coverage. We have a number of factors that contribute to the Impervious Coverage.

Mr. Madaio said the FAR. Again we're really here FAR and Height. The FAR, once you briefly described the floor plan, and again, is this house consistent with a 30,000 sq.ft lot ?

Mr. Virgano said I think it is. We're over 2/3 of an acre. We have a floor area on the first floor that's almost 3,000 sq.ft of living space. The rooms are quite generous in size. The 2nd floor is almost 2,900 sq.ft. We have 5 bedrooms and 5 baths up there. It's a substantial home but the lot size can certainly take a house of this dimension. I think its an appropriate fit, and because its set out so far, its going to fit in even better. If it were up near the street, it would have more of an imposing presence , but I think setting it back, kind of down plays that.

Mr. Madaio said certainly the FAR, again as calculated by the town, is what it is, but the lot still being 30,000 sq.ft., does it still preserve light, air and open space ?

Mr. Virgano said yes it does, and as the site plan has shown, the colorized version, you can see there is an abundance of green space on this property.

Mr. Madaio said regardless how you came up with the calculated number, those benefits to the purposes of zoning, those mitigating factors, you still have a 30,000 sq.ft lot, you still have all that green space, you still have all the light, air and open space that's created by having a very generous front and still having an enormously generous back yard. Correct ?

Mr. Virgano said that's correct.

Mr. Madaio said I have no further questions for this witness, although I may have a couple of more questions of Mr. Hubschman.

Mr. Virgano said I have one more question regarding the height. If you look at the photos of the homes on that side, you see that the roofs are steeply pitched. We have a steep pitch- a 12 on 12 pitch- which is in keeping with those 2 homes. They are older homes. I think the one on the left looks like it has been added to. The home on the left, for instance, you go up 6 or 7 steps to the 1st floor. Our 1st floor is only a couple of steps above grade. That 1st floor is up maybe a 3 ½ feet above grade. They are older, so the 1st floor heights are probably in the 9' range . 2nd floor probably 8' high, but you can see both have attics. Attics with windows, attics that are walk-up, with steep pitched roofs. My estimate was that the home on the left is probably over 30'. The one on the right should be pretty close to it- its probably somewhere between 28' and 30'. So the fact that we are keeping a steep roof pitch, I think blends well with those two homes. And I think we are in character overall, so far as the height and overall appearance goes.

Ms Furio asked you have, as you say, plenty of room. The house is quite large, and you say the rooms are generous, I understand that. Is there a basement level that's finished, or is it just basement ?

Mr. Virgano said its just a cellar.

Ms Furio said right now its just a cellar- okay. Having all this space and the generous lot, could you not comply with the side-yard ? Its 11' , if it were 15' , you'd cut off several feet, which would help in the FAR. We're moving the line back and trying to accommodate you. In all the other space that's available.....

Mr. Virgano said what's impacting that mode is the side loading garage.

Ms. Furio said on the other side you have 11' off the line instead of 15' .

Mr. Virgano said the overall width of the house is basically a center foyer, 2 rooms and a garage. The garage is side loading so it forces our house is to the left. In order to accommodate the minimum driveway width on the right...

Ms. Furio said I understand that but what I mean is there a leeway to make it 15'.

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Mr. Vergano said if we look at each of the rooms on the right and left of the entry, they are 14' wide, and the entry itself is about 9' wide. So, the main body of the house is not extremely wide. The garage takes up a good portion of the width, and the driveway width on the right pushed the house towards the neighbor on the left. So those are the factors that creates that side-yard.

Ms Furio said I understand that but....

Mr. Vergano said could we reduce the room sizes. That's a possibility – yes.

Ms. Furio said if you were to take off 4' the side for both stories, how many sq.ft would that reduce the overall bulk of the house ?

Mr. Vergano said that would leave us with 12' wide rooms. I don't like 12' wide rooms especially in a home of this size. I don't think that would be viable. We would have to do something else, perhaps a front facing garage.

Mr. Madaio asked could we take off 2' ?

Mr. Vergano said we can take off 2'. Our garage is about 21' in depth, so its not overly generous either. We are very mindful of the dimensions left and right but yes.

Mr. Madaio said I believe that we could accept a home that's just 2' narrower, and of course.... times two would reduce the FAR. Its also hopefully a reduction from that perceived 36, if again you placed the line here.

Ms. Furio said does anyone else on the Board have a question for the architect ?

Ms Westerfeld asked how much would you save if you made the garage front facing instead of side ?

Mr. Vergano said good question. We wouldn't because what would happen then is that- the total of our 2 side-yards complies with the requirements- we would slide the house over, and we would probably make the house wider, but we would only then have a 2 car garage and it would face the front.

Mr. Madaio said Mr. Hubschman just made the calculations. If you took 2' off the side- again you are not here for the yards but I do understand that taking 2 feet off the sides affects the FAR. We would be at 34.7% instead of 36%. Again, I think that 34.7% for 36%, which is an equitable remedy, that at least is a reasonably fair resolution of the issues involved. Again because of the concerns I have about the other.

Mr. Kassis said you testified about having 12' wide bedrooms. You've got the master bedroom 24' by 20'. The other rooms 15' by 13'. I'm not sure where that 12' would suddenly come out of.

Mr. Vergano said what I was referring to really was the front rooms. The front facing rooms on the left part of the house. On the 1st floor we have a library, entry and dining room. The library and dining room are 14' wide. Above those are bedrooms that are also 14' wide, and that's where I was referring to. We do think though the 12' would be very detrimental to the house.

Mr. Kassis said right. First is reducing the bedrooms. The master bedroom which is 24' by 20'.

Mr. Verdano said that wouldn't have an impact. Our main issue is the width of the house where the garage is... The garage is somewhat fixed in dimension. We have the rest to work with and with dividing the areas up among those 2 rooms and the entry.

Mr. Kassis said the other question I have. You talked about a 12 pitched roof. What would be changed in the height if you made it a 10 pitched roof ?

Mr. Verdano said I'm not sure. The wings aren't that wide. We could potentially save- well lets see. What happens when you reduce the pitch you only get half the benefit. If that room was 13, with a 6 ½ ' difference. Probably a foot or 16", something like that, reduction in the height. The main portion above the entry that's only a 4 on 12 pitch because it's the greater distance front to back. I'm trying to avoid doing a flat roof

Mr. Kassis said the.....is 12 to 16 inches.

Mr. Verdano said yes.

Mr. Kassis said a significant amount.

Ms. Furio said I know there are a lot of members in the audience who have been here several times. I would like to ask if there was any body here for or against like to make questions or comments ? One at a time – anybody ?

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And also of course if there is a straw vote, I'd like to continue working with you. I can tell you if the sense is, we need strictly to apply the FAR in a way that is not what the state law is, and the governing body, or at least the public record, that there is some thought that, interestingly enough, is something that has gone on for a long time. But may not be completely in accordance with the state law. But that is probably not the basis for coming to an equitable conclusion between us. Finally, the young lady said something that was interesting, but it only points out the deficiency in the ordinance. If the lot was laid out this way (*Mr. Madaio, indicated the lot with the 294' side facing Hillside*) we could sub-divide it into two and meet the FAR, and not need any variances at all. Because the lot is configured this way (*Mr. Madaio, indicated the lot with the 100' side facing Hillside*) we are limited to less than can be built in the next two higher zones. That's not an equitable solution to this, and I do think that you are allowed to turn your attention to some issues of equity and fairness on what makes sense here. Now the Planning Board is going to handle everything else. They are going to handle the yards, they are going to handle the green space, the tree, all of those things. All we're talking about is frankly, again, the height and, I'm candidly a little- the height is the Bulk variance. I don't know why, among all the other Bulk variances, that one is necessarily here. I think maybe someone thought it was a D variance, but its not. And of course, my concern about the FAR. That's really all we have for you this evening. I would like to get some sense of how the board feels about it.

Ms. Furio said I do want to mention, which you did, but I want the audience know that their concerns of privacy and back-yard and turn-around and all of that other stuff. That will be handled at the Planning Board. Any of your concerns which you brought here, bring there, and they will address them in terms of all of that other stuff.

Mr. Madaio said and I will publically notice for that.

Ms. Furio said I don't know when it will be on, but you will be notified. Thank-you for coming.

Ms. Furio said anyone on the Board have questions or comments.

M. Kassis said I have a question. Getting back to the height there. From reading the plans correctly. You have a 10' first floor, and a 9' ceiling on the second floor, and in addition to the steep roof, those really dramatically create the need for a Height variance, is that a fair assessment ?

Mr. Madaio said yes.

Mr. Kassis said is there any absolute need for a 9' ceilings in the bedrooms ?

Mr. Vergano said they are large rooms as I said, but what happens to the pitch and the over-hang begin to cover the wall with your eave lines. Its usually very desirable to have the higher interior dimensions, so that the exterior, when the roof sweeps down, you still have wall space around the opening, rather than have the eaves come right down against the top of the windows. Certainly could be less, somewhat less, could trim a little bit there, but this is really the ideal way to do it, if you are talking about the architectural aspect of it.

Ms. Florio asked any other questions or comments from the Board ?

Ms. Schultz-Rummel said in keeping with the height, can you elaborate on the cellar.

Mr. Madaio said I think your ordinance defines basement and cellar as different. You mean basement, or is it a true cellar.

Mr. Vergano said cellar is basically an area of the house below grade that is more than 50% buried. In this case, that is true. That is within the definition of the ordinance. To be considered a basement it would have to be more out of the ground.

Mr. Modiao said Thank-you.

Ms. Schultz-Rummel said so what's going to be down there and what's the height ?

Mr. Vergano said we haven't designed that yet but we will probably do 8'. Right now it would be an unfinished area. It would have mechanical equipment- sump pump and what have you.

Ms. Schultz-Rummel asked would it run the whole length of the house or just a portion of it ?

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Mr. Vergano said it would probably be the whole house but not this back area, which is kind of an in-door out-door room in the rear.

Ms. Schultz-Rummel asked any thought to considering lowering the ceiling height on the first floor to 9' ?

Mr. Vergano said I think 9' for a house this size is a little bit low. If you look especially at the rooms at the rear, kitchen and family room, the dimensions in the rooms 20' by 24' , 20' by 27', 9' is not a generous ceiling height for those rooms in my opinion.

Ms. Schultz-Rummel said so its more preference than it is ...

Mr. Vergano said physically we could have 8' ceiling but that isn't good as well aesthetically. We could probably trim 6" from there and still get the same sense of height.

Ms. Schultz-Rummel said it wouldn't really affect the total height of the building.

Mr. Vergano said yes it would, any change in the ceiling height...

Ms. Schultz-Rummel said right, I understand, but if you take 6" from 2.3'.

Mr. Vergano said I'm saying, perhaps 6" from the second and 6" from the first is lower by a foot.

Mr. Madaio said again trying to reach some conclusion,..... can this house be brought in at a conforming height or much closer. I mean when we are talking about shaving 6"- I get it, but is that an imperative component ?

Mr. Kassis said I know we're here to judge and make decisions based on 'hardship'. I'm not sure I heard 'hardship' being discussed. The topography is flat. Unlike properties that, we heard testimony in the past where you had no choice because of the layout of the land. Here we got basically a flat property. We have a brand new construction with 10' first floor and 9' second floor. We have a steep roof. And for those 3 things we are asking for a height variance. Where is the 'hardship' ?

Mr. Madaio said you, of course, your council can tell you that's a C-1 variance. A C-2 variance is where the purpose is of Zoning out-weigh the detriments to the Zone plan or Zoning ordinance. And I would submit to you that there's no detriments to the Zone plan or Zoning ordinance. And that there is no substantial detriment to the Zone plan or Zoning ordinance. That's a flexible 'C' it's a C-2. You don't have to demonstrate hardship at all. In that scenario, I would submit certainly that there is no substantial detriment to you Zoning ordinance or your Zoning plan, especially if you preserve Light, Air, and Open-Space. Which is one of the purposes of Zoning, of course, pursuing to 4055, 'D', 7-D , 2 which is the purposes of zoning. The statute says not detrimental to the purposes of Zoning. Section 1 says of the Municipal Land Use Law says this is called Municipal Land Use Law. Section 2 says ' hey, you know when we talk about the purposes of Zoning here they are. Here's all 16 of them. One of them is the continuing preservation of Light, Air and Open Space. And you absolutely do not need to show 'hardship' in order to obtain a variance. And, of course, we believe, and I don't think, I'm likely to understand better, unless some one helps me to see it, that the 2.3' Height variance, on this house set-back at this distance on this great a lot which preserves this much Light, Air and Open-Space is a substantial detriment, not just a detriment, a substantial detriment to the purposes of the Zoning. And of course if I miss-quoted any of that I defer to council to correct me.

Mr. Van Horne said if this is not a 'D' variance, and it's not, because it's less than 10% of the request. We don't have exclusive jurisdiction over that issue. We could defer that to the Planning Board. They will be dealing with the entire package.

Mr. Madaio said correct.

Ms. Furio said we are really only here now for the FAR.

Mr. Van Horne asked do you agree with me ?

Mr. Madaio said yes. I believe Cresskill again, whether its completely in accordance with the statute or not, likes to do site plans of single family and my experience in being here for 30 years or so, is that we get a better product at the end.

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Ms. Furio said the height, but that's now being heard by them anyway, at least we know that's what you are going to do.

Mr. Madaio said correct. Again, we have 6 votes this evening ?

Ms. Furio said yes.

Mr. Madaio said could I have this one minute break with my client just have this discussion for a moment.

Ms. Furio said yes.

Mr. Madaio said I just spoke to my client who does represent that we would be at the Planning Board. Seeking only a 9' first floor that would certainly lower the height by at least a foot.....and again, this is our effort to reach equity. As some of you may know, I represent more than a few towns, and there is ordinances that people put in and nobody ever realizes that they contradict the 45 year old or 40 year old statute. It happens. And sometimes people pick that up. We are, I just confirmed with my our clients, that the FAR of 34.7% instead of 30%, which would actually then be well under-sized if you actually used the whole lot, as the statute says, is a very approvable variance, and, again, avoids very much discussion about the rest of this question and effectively the other stuff winds up at the Planning Board. Okay, that's all we have. I'm sure Mr. Van Horne and I could swap more stories about that.

Ms. Furio said again we are just here for the FAR.

Mr. Van Horne said take the vote first, and then I have something to discuss with Mr. Madaio.

Ms. Furio asked would someone on the Board like to make a motion ?

Mr. Kassis asked what would be the FAR now ?

Mr. Van Horne said suppose, for a second, that its passed, I can't write a resolution that says 34.7% using 170' from the street. I made a calculation based on the current ordinance.

Mr. Madaio said Correct. You would be granting a variance from

Mr. Van Horne said but its not 48.96%, its going to be like 46% or 47%.

Mr. Madaio said I understand. Mike go to work.

Yes, you are absolutely correct .

Mr. Hubschman said based on 34.7%

Ms. Furio said 125' minus 2' works yes

Mr. Madaio said the house is getting 2' narrower, so that saves some. The placing of the line at 170' is a rational and a method of reaching equity.....

Mr. Kassis said just confusing everything .

Mr. Madaio said we'll get you real numbers.

Mr. Van Horne said the line chosen by Cheryl and to come to a rationalization for doing something, and a justification for a 'yes' vote, but I can't write a resolution that says 34.7% by using 170' from the street line. It has to be whatever the percentage is using 125' from the street line. It still looks like a very large variance, but you will understand the rational based on the discussions that we had...

Mr. Madaio said the thought experiment is well if we put the line at the back of the house then this, but Mr. Van Horne is absolutely right

Ms. Schultz-Rummel said we can agree on a FAR number, but that does not bind the Planning Board. They can say sorry, you have to be 15' , or whatever the feet,the FAR is no guarantee

Mr. Van Horne said they are bound by our determination of FAR.

Mr. Hubschman said there will be a 5,900 sq.ft. floor area, - that would be minus 2' – and I get 47.2% .

Ms. Furio said so that's the number based on the 125'. But the rational is what we discussed previously. So the number is 47.2% FAR.

Mr. Madaio said yes.

Mr. Kassis said so that's 17% variance ?

Ms. Furio agreed.

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Mr. Kassis said could we get an exact number.

Mr. Van Horne said 17.2% variance.

Ms. Furio said would someone like to make a motion to approve or deny the application with the FAR at 47.2% proposed, 17.2% variance ?

There was no response from the Board.

Ms. Furio asked do I hear a motion ?

There was no response from the Board.

Ms. Furio said I make a motion to approve. Do I hear a 'second' ?.

There was no response from the Board.

Mr. McCord said can I just ask one question ? How would you address the Lady's question, or the comments in the back, regarding the fact that basically her entire backyard is now a 'MacMansion' as opposed to an empty lot, which is what she's been living at, for the next 20 years.

Mr. Madaio said Sure. I would love living next to an empty lot. I, in fact have lived next to empty lots. Its wonderful. Unfortunately at some point, someone seeks to build a home and that home on a 300' deep lot - You don't make it a minimum, it would have to be no greater than 25' to the street. But I could be further back that 25' to the street and that is of course what happens. I would also be pleased that the person had a 300' lot- yes, if I could tell you the amount of Arboretums I plant, so that the neighbors don't look over my property. But no one enjoys the privilege of living next to an empty lot forever. So that is how I would address that.

Mr. Madaio said In as much as there has been a motion to approve with no 'second' , I withdraw the application.

Mr. Van Horne said I was going to suggest that you might want to carry it to find out the status of

Mr. Madaio said my intention certainly will be, if that's what it is, then I will, of course, come back. Either after the FAR ordinance is changed, and I hope then, we then can reach some sort of an accord. But we simply can't continue to enforce an ordinance that is not consistent with the state statute. But if that's the option, then that's the option.

Ms. Furio said so you are withdrawing ?

Mr. Madaio said my application is withdrawn. There is no vote one way or another, and I reserve, of course, all rights that I have with regards to the ultra vires ordinance, and I'm sure figure it out one form or another. I represent a bunch of towns. There was a large garden center in one of them, you might be aware of it.

Mr. McCord asked are you off the record ?

Mr. Madaio said yes, this has nothing to do with this application. But 20 years ago, some attorney said you know what: just so that we are sure that nobody tries to build anything on that large garden center,....., we are going to zone this person's large 6 acre garden center as public park. So that anybody who wants to build anything has to come before the Board of Adjustments, and we have control. Except that's completely unlawful. You can't zone private property, public park. Okay, but at the time it seemed like a really, really good idea. Maybe it got by for a couple of years, until somebody read it carefully. And the whip-saw FAR may have gotten by for a really long time until someone read it carefully. But, we'll go from there. Okay, I do appreciate your time and effort, and thank-you for your patience, and I'll see myself out.

Ms. Furio said we have 2 memorializations tonight .

Mr. Van Horne read the memorializations.

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Memorialization

1351 Marwan Abbasi 201 West Morningside Ave B 70.01 L 51

Description	Required	Exists	Proposed	Variance
Fence Height	4 ft	6 ft	6 ft	2 ft
Fence Transparency	75 % open		Solid	Solid

The applicant was granted the above variances to construct a non-compliant fence in the second front yard of his corner property.

1352 John Finetto 159 Magnolia Ave B 32 L 363 - 364

Description	Required	Existing	Proposed	Variance
Front Yard Set Back	25 ft	17.36'@8 th St 17.62'@Magnolia	17'@8 th St 20'@Magnolia	8'@8 th St 5'@Magnolia
Side Yard Abutting/Lot	15 ft	10.19'	7'	8'
Other Side Yard	20 ft			
Combined Side Yards	35 ft			
Rear Yard Set Back	30 ft	37.4'	28'	2'
Max. Livable Fl. Area (FAR)	39%	25%	45.4%	6.4%
Lot Frontage 8 th St	100'	100	100'	
Lot Depth Magnolia	100'	50'	50'	ENC
Bldg. Coverage	20%	18.1%	25.7%	5.7%
Impervious Coverage	35%	29.2%	35.3%	0.3%
Height of Bldg	28'	28'	28'	
Lot Area	10,000 sq.ft	5000 sq.ft	5000 sq.ft	ENC
Wall	4 ft	4.6 ft	5.7'	1.7'

The applicant proposes to construct a new single family home.

Ms Furio adjourned the meeting at 9:50 pm.

Ms. Schultz-Rummel seconded.