

**MINUTES OF THE SADDLE RIVER ZONING BOARD OF ADJUSTMENT
HELD: WEDNESDAY SEPTEMBER 21, 2016 at 7:00P.M., MUNICIPAL BUILDING**

PRESENT: Chairman Montana, Board Members Dowden, Laurite, DeCrosta, Alt. #1, Nazzaro, Raia, Council Representative Gray, Attorney David Rutherford

ABSENT: Board Members Kakaty and Trobiano Alt. #2

SUNSHINE LAW: Chairman Montana stated: "I have been informed by the Clerk that adequate notice has been provided by mailing a notice to The Herald News and The Record on December 16, 2015 and posting a notice in the Office of the Borough Clerk and on the Borough website."

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

A motion was made to approve the July 20, 2016 minutes by Board Member Nazzaro. Seconded by Board Member DeCrosta.

Roll Call AYES: Chairman Montana, Members DeCrosta, Nazzaro and Raia.

Abstain: Members Dowden and Laurite

Absent: Members Kakaty and Trobiano

MEMORIALIZING RESOLUTION (S):

Attorney Rutherford gave an overview of this resolution at this time.

**ZBA-11-16 Blk. 1701 Lot 41.01 – Tonor, LLC/Kurtz
140 East Saddle River Road
Pool cabana as constructed exceeds the
maximum allowable area for an accessory
structure.
APPROVED**

A motion was made to approve the Tonor, LLC/Kurtz application by Board Member DeCrosta. Seconded by Board Member Nazzaro.

Roll Call AYES: Chairman Montana, Members DeCrosta, Nazzaro and Raia.

Abstain: Members Dowden and Laurite

Absent: Members Kakaty and Trobiano

**ZBA- 12-16 Blk. 1607 Lot 10 – Zion Evangelical Lutheran
Church
96 East Allendale Road
Proposed Wellness Center use is not an
Approved use within the zone.
APPROVED**

Attorney Rutherford gave an overview of this resolution at this time.

A motion was made to approve the Zion Evangelical Lutheran Church application by Board Member Raia. Seconded by Board Member Nazzaro.

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disturbance zone to create structures, walls or development it destroys the character. Ms. Gregory stated even though the adjacent neighbor has no objection to entering into the non-disturbance zone the town should not object either. A discussion ensued regarding same with an emphasis on the question of whether or not the train tracks could be moved and located outside of the non-disturbance zone since they are not a permanent structure.

Open to the Public: Mrs. Eva Gordon of 12 West Church Road, the west side neighbor, was sworn in by Attorney Rutherford. Mrs. Gordon stated she has several comments on previous testimony from this hearing. Trees were taken down to put the train tracks in place which is why there is more open space where the tracks were placed. Soil was moved to change to topography of the property as well. If the train tracks were moved closer to her house they would have to do the same. The retaining wall that existed prior was not representative of the wall that exists today. Mrs. Gordon stated her main concern is not the wall but the water issues. There have been drainage issues with water coming down from that property since the house was built. The house was built, the pool was built, the pool house and then the train set. The water issues have continued. Mrs. Gordon has asked the Hekemian's to do something about the water issues for years and called the Borough regarding same. There are drains running on to the side of their property that brings the water down towards her house. When the house was built the driveway was pitched which is made out of Belgian block and a pipe in the back where the water comes out which heads down the hill toward her property. It has been coming down for years and causing water issues. The deer did not knock the fence down the water did. There are huge portions of the fence that is missing which is an eyesore for the property. Mrs. Gordon has asked them numerous times to fix the fence. In addition, Mrs. Gordon went to the town and asked them to send them a letter about the fence because it is an eyesore on her property and it is not her fence. Mrs. Gordon requested that something be done about the drainage and the fence. Mrs. Gordon discussed the noise factor and that it could be an attractive nuisance for children to climb over the fence. Mrs. Gordon brought up the water draining down the street. The Hekemian's have a pipe that goes to the back of their property and about three or four times a year they drain their pool. Mrs. Gordon and several neighbors have called the Police as the drained water was freezing down the street. They testified that it was a sprinkler that was broken. Mrs. Gordon does not think this was the case. Mrs. Gordon would like the Hekemian's to take care of this.

Member Nazzaro asked Borough Engineer Spence if the retaining wall performs its function better at five feet than four feet. If the wall was changed would it make any difference in the run off or drainage? Mr. Spence replied that if the soil is graded for a five foot fence a four foot retaining wall would not work. There would need to be regrading behind the wall to drop the soil level. As part of the Engineering review it was asked if this would be feasible because if it is not the application would have to go to the Planning Board for approval. If there is any regrading to be done it should be addressed at this time as it would be done in the non-disturbance zone. If they decide to keep the 5' 10" wall they will need to go before the Planning Board to seek relief from the Soil Movement Ordinance.

Member Laurite discussed the swing set being referred to as recreational equipment as correct however the train track is not. It is really a hobby that requires these structures to satisfy the needs of the hobby which exists in a non-disturbance zone. It does not make a difference that other residents may have their non-disturbance zone disturbed. By its nature the non-disturbance zone should not be disturbed.

Member DeCrosta stated that the non-disturbance zone has done a lot of good for Saddle River and kept properties private.

Member Raia discussed the retaining wall having been built without compliance to the

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Ordinance. He stated he did not agree with the swing set being so close to the property line as it affects two neighbors, one on West Church and the other on Old Woods. It can be a noise factor at times. Something should be done about the swing set.

Chairman Montana agreed with Mr. Raia that something needs to be done with the swing set.

Attorney Inglima, Jr. asked for a moment to speak with his clients. Attorney Inglima stated that recently the Hekemian's engaged a contractor to pump out their pool in the direction of Old Woods Road which is away from the Gordons property.

The retaining wall height and whether or not a waiver would be issued by the Zoning Board to permit the existing wall of 5' 10" or a reduction to 4' with the soil behind it being regraded in concert with Borough Engineer Spence was discussed in detail. It was noted that neither neighbor, Mr. Mostafa or the Gordons have any issues with the existing wall and arborvitae may be planted for further screening at either wall height.

Attorney Inglima, Jr. stated his clients would be willing to move the swing set if the Board feels it necessary to do so.

Chairman Montana stated he has no issue with the existing wall.

Member DeCrosta feels that changing the wall would cause more damage to the area and the swing set's location sets an undesirable precedent.

Member Dowden agreed and added there would be damage to the existing planting if the wall was changed.

Member Nazzaro stated the location of the fence is not a problem and making the applicant replace the fence piecemeal did not seem to make sense as it is in such poor condition. If the fence was replaced with 50% open space in the same location with a conforming height and material it would meet the ordinances requirements.

Attorney Rutherford summarized that the Board would be granting waiver relief to permit the replacement of the non-conforming fence with a conforming fence all at one time in the location. In addition the Board would be granting a waiver from the soil movement ordinance allowing the existing wall of 5' 10" to remain. As a general, rule landscaping would be augmented around the rear of the property to screen the trees, retaining walls and such from the view of the adjoining properties. This would be done in conjunction with Mr. Levy. Lastly, the applicants would in conjunction with Mr. Spence and Mr. Gordon will address the drainage issues that Mr. and Mrs. Gordon experience.

Mr. Spence stated it would be a structured site meeting with the Gordons and the landscaper as a requirement of the waiver.

Attorney Rutherford stated he would share a draft of the resolution with Attorney Inglima.

Attorney Inglima asked that there be some communication with Mr. Scialla's office concerning the granting of the waiver so that permits could be obtained as soon as possible without having to wait for the memorializing of the resolution.

Mr. Spence agreed.

Attorney Rutherford stated he would communicate the action the Board took with Mr. Scialla.

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He also stated the improved lot coverage due to the mulch under the train tracks would be covered as well.

Attorney Rutherford outlined the language for the resolution to approve the application to permit the train tracks, the retaining walls that are in the side rear yard setback, the 25 foot non-disturbance zone to remain, the swing set would be removed or relocated to a conforming location. In addition the Board would be granting a waiver for the height of the retaining wall and an augmentation of the plantings along the perimeter of the property and the replacement of the non-conforming fence in the same location with a conforming fence of earth tone or beige color. Consultation between the applicants, Gordons and Mr. Spence to address drainage concerns especially those that include improvements in grading and encourage more sheet flow as opposed to a concentrated flow off the property. Also the improved lot coverage variance.

Member Nazzaro suggested the wording of train track platform versus train tracks should be included in the language of the resolution. All agreed.

Member Nazzaro made a motion to approve the application with the conditions outlined above. Seconded by Member Raia.

Roll Call AYES: Chairman Montana, Members DeCrosta, Nazzaro and Raia.
Abstain: Members Dowden and Laurite
Absent: Members Kakaty and Trobiano

OLD BUSINESS:

NEW BUSINESS:

ADJOURNMENT:

Open to the Public: No one from the public wished to be heard.

A motion was made by Member Nazzaro to adjourn and was seconded by Member DeCrosta.

Respectfully submitted,

Joy C. Convertini
Municipal Clerk