

Harrington Park
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
Wednesday, November 28, 2018 @ 7:00PM

Chairman McLaughlin called the meeting to order at 7:03PM.

Open Public Meeting Act Announcement: In compliance with Chapter 231, Public Law 1975, adequate notice of this meeting was made. It has been posted on the Bulletin Board in the Municipal Center. Copies have been mailed to THE RECORD, NORTHERN VALLEY PRESS, and the NORTH JERSEY SUBURBANITE. A copy has been filed with the Borough Clerk and copies have been mailed to individuals requesting the same.

ROLL CALL

Roll Call	PRESENT	ABSENT
Chairman Richard McLAUGHLIN	X	
Vice Chair Michael ROTH	X	
John POWERS	X	
Jin CHO	X	
Steve LOTT	X	
Stephen MARTINEZ		X
Todd CANNAO		X
Robert BUDINICH (alternate a)	X	
Gail ZACCARO (alternate b)	X	

Also present: John Schettino, Board Attorney
Carolyn Lee, Land Use Secretary

MINUTES FOR APPROVAL

October 24, 2018 minutes

Approval of October 24, 2018 Minutes	Motion	Second	Yes	No	Abstain	Absent
Chairman Richard McLAUGHLIN			X			
Vice Chair Michael ROTH	X		X			
John POWERS			X			
Jin CHO					X	
Steve LOTT			X			
Stephen MARTINEZ						X
Todd CANNAO						X
Robert BUDINICH (alternate a)		X	X			
Gail ZACCARO (alternate b)			X			

INVOICES FOR APPROVAL

Law Office of John L. Schettino – Escrow	159 Martha Road	\$ 250.00
Law Office of John L. Schettino	Ordinance Review and Meeting Attendance	\$ 375.00
TOTAL		\$ 625.00

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Approval of invoices listed	Motion	Second	Yes	No	Abstain	Absent
Chairman Richard McLAUGHLIN			X			
Vice Chair Michael ROTH			X			
John POWERS	X		X			
Jin CHO			X			
Steve LOTT		X	X			
Stephen MARTINEZ						X
Todd CANNAO						X
Robert BUDINICH (alternate a)			X			
Gail ZACCARO (alternate b)			X			

HEARINGS

1) 159 Martha Road (Block 1306, Lot 1) – Fence, Stephen Janson

Mr. Janson was reminded that he was still under oath. Mr. McLaughlin asked if he had anything to add to his testimony and he did not. The board members did not have any questions. Mr. McLaughlin asked if any member of the public had any questions. They did not have any questions or comments. The public portion of the hearing was closed.

Approve the fence application for a height variance	Motion	Second	Yes	No	Abstain	Absent
Chairman Richard McLAUGHLIN			X			
Vice Chair Michael ROTH					X	
John POWERS	X		X			
Jin CHO					X	
Steve LOTT			X			
Stephen MARTINEZ						X
Todd CANNAO						X
Robert BUDINICH (alternate a)		X	X			
Gail ZACCARO (alternate b)			X			

Mr. McLaughlin said that the application is approved and the fence is in place.

2) 131 Martha Road (Block 1306, Lot 13) – Half-pipe structure – Jaime Affoumado

Mr. Affoumado was reminded that he was still under oath. Mr. McLaughlin asked if he had anything to add to his presentation or testimony. Mr. Affoumado said that he is expecting to move next year. He is looking for a single-family occupancy house. He doesn't want to take the ramp down now. He has skated 8 items during the month and his daughter has skated 2 times. One of the members asked him to skate on it to see what happens. He didn't feel that he was disturbing anybody. There are no lights, or parties. It is a space to do his thing. The weather doesn't permit using it now. He is passionate about the sport and does not want to disrespect anyone.

Ms. Zaccaro asked if the half-pipe was used for himself and his daughter and if there would be any advertising for it. Mr. Affoumado said that it would be used 99% for himself, his daughter and the people who helped build the structure. It is a private structure and he doesn't want to promote a crowd. He would be happy to share if asked.

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Mr. Lott asked if this was a variance or an interpretation. Mr. Schettino said that the board would decide if it is an interpretation to see if it requires a variance. If it requires a variance, it would be a use variance.

Mr. Budinich asked that it is a 2-family residence that it is an existing nonconforming R-1 zone and would this force it into a variance? It is a pre-existing 2-family dwelling. Mr. Schettino said that any expansion of a non-conforming use would require a use variance.

There was a question about lot coverage. According to the zoning officer, it didn't require any variance for bulk coverage. A member noted that between the driveway, the structure and the house there is a lot property that is covered. There was discussion about the dimensions of the structure. The ramp is 11ft with a 3ft safety railing for a total height of 14ft. The letter of denial from the Zoning office does not identify coverage.

Mr. Affoumado noted again that he plans to move and the structure will be gone. A member said that people plans change. He wanted to know if the landlord is willing to put something in the lease where he won't lease the unit with a half-pipe still in the backyard? Mr. Affoumado would be happy to add it in if necessary. Mr. Lott asked why the landlord was not present. Mr. Affoumado said that the landlord is out of country or out of town often. Mr. Affoumado said his family would like their own house and they are running out of space. There are many reasons for Mr. Affoumado to move into house. The lease is up at the end of June 2019. Mr. Affoumado noted that at his age, he can't ride it 5 hours a day. He could put the hours in writing or do to make it right to make it respectful. He is not here to disrespect anyone and said he had asked everyone before he built it.

Mr. McLaughlin asked if the public wanted to add comments.

Public Comments:

Matthew Thomas, 226 Harriot Avenue, Harrington Park. Mr. Thomas is not in favor of the half-pipe. He lives about 50-70ft away and heard the noise during construction for 2 months as it was being built. He is retired and wants peacefulness. It is unknown how long and the number of months the structure will be used. He asked who will restrict it? He has lived in Harrington Park for 10 years.

Mr. Affoumado has the specifications plans. Sean Shouldis was reminded that he is still under oath. He stated statistics from the Chief Noise Officer for Portland Sheriff's Department about noise. Skateboarding at 50ft, the noise should be negligible. Sharp sounds from some tricks could reach 65-71 decibels, which is comparable to a ball hitting a bat. Other tricks are about 54-65 decibels. Conversational speech is 60 decibels. Skateboarding is 65 decibels. Additional examples were listed. There is no high hitting noise. It will be 65 decibels at 50ft, which is negligible according to the statistics. The noises are will within backyard sounds. Mr. Affoumado noted that there is a high tech surface to cut the noise down and was purchased with respect to the neighbors. The blowers and leaf blowers are loud all day and decibels are higher. It is difficult to sleep with the blowers and understands Mr. Thomas' concern. Mr. Affoumado attempted to notice Mr. Thomas 10 times about the last meeting, but sent a certified letter.

Mr. Powers asked how is the half-piped moved. Mr. Shouldis said that there are 14 pieces and put together by screws. Mr. Affoumado said that it would take about 9-10 days to take down. Mr. Shouldis said that it is a temporary structure.

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Carmin Giacomini, 54 Elliot Road, Harrington Park, said that the noise in the NYC skateboard park with a half-pipe is loud. The leaf blowers are used because they want to make the property and neighborhood nice.

Mr. McLaughlin asked if the structure would be removed beginning mid-June. Mr. Affoumado replied yes or sooner. He is looking at places now is trying to close a deal. This half-pipe is fun and a hobby, but it isn't what he is basing he life on. He said that he has to move out of the 2-family home. Ms. Zaccaro asked if he was looking in town. Mr. Affoumado said that he is looking at places with more land.

Mr. Schettino said that Mr. Affoumado would have the same issue if he moves in Harrington Park. If Mr. Affoumado bought a house and put up the half-pipe, he would be in the same situation. Mr. Affoumado would need get approval from the board from any town. Mr. Affoumado asked if there were no complaints, would we be here. Mr. Schettino said yes, unless no one knew about it. Mr. Schettino gave an example gave an example of speeding and if he was not caught; if someone had a put an illegal apartment in the house no one would know unless someone complained. Before the apartment was in they should've gotten the approval. The Zoning officer was triggered his notification by the complaint. Mr. Schettino said he would not like to see Mr. Affoumado in the same situation where he spent money, put it in and recreated the situation he is in now. Mr. Schettino said if variance is deemed to be required, it would be more than likely would be required for any home in this community.

Mr. Affoumado asked what would happen if the people around him were in support of the half-pipe. A member said that people have complained about things on the other side of town because they want something or do not want something in the town. A member said that residents are permanent. He would approve if it were a benefit to the community.

Mr. Affoumado asked where does this sit compared to a swing set or a swimming pool. What would the variance entail?

Mr. Schettino said if he required a variance, it would be a use variance. It is for something that the town does not permit. It has high standards and recommends hiring an attorney. There needs to be background knowledge of zoning laws.

Mr. McLaughlin asked the intended hours or times of use and would there be a limit. Mr. Affoumado said about 45 minutes. Mr. Affoumado said that his daughter does other activities and has a lot of energy. He is trying to give his daughter what he can as a parent. If the hours need to be in writing, he is willing to document it with the neighbors or the board. It would be used late morning for about 1 hour and 1 hour after school with his daughter. Not on weekends if neighbors ask for it. Saturdays would be nice, but it can be worked out. The structure is not being sold to anyone.

Mr. McLaughlin said that this application is whether this structure is permitted or not. Based on Mr. Affoumado's representations as to no Sundays; 1 hour in the morning; 1 hour in the afternoon before 5pm; commitment that it wouldn't be used after May 31, 2019; dismantled, removed and completed in June 2019; we might adjourn the application and make no decision until the May 2019 meeting. A member would be opposed to this. He said that this is an excellent idea, and understands there is a lot invested in this, but it is difficult to enforce. Mr. McLaughlin said if there is a violation, then it would be brought back to the board.

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Mr. Budinich is concerned about noise and structure size.

Mr. Shouldis has skated it. Mr. Affoumado said he skated for 1.5 hours, spoke to Jay (139 Martha) who said that he didn't hear him.

Justin Harrington 139 Martha Road, Harrington Park. He acknowledged that they talked that day. He feels that there is a loss of privacy with the size of the structure right up over the fence about 70ft from their kitchen. He will take Mr. Affoumado's word that he was skating that day, but it is not just the noise it's the entirety of the structure. He could've been on a conference call and not listening for skateboarding.

Mr. Lott asked if the house falls through in the last minute would he stay in the current house? Mr. Affoumado said that the worst case would be to move to another town. He does not want to extend the lease.

Mr. McLaughlin asked for a motion with the matter before the board. There is an option for adjournment.

Tom Hackett, 17 Nelson Street, Harrington Park. He was a member of the Board of Adjustment for 14 years and has experience. The applicant is willing in good faith and will sign an agreement. It has been used a few times, but it does not work. If the police are called, they would say that it is not their jurisdiction. He has seen too many times that it does not work.

Closed to Public

Mr. McLaughlin asked if the board would consider adjournment. He asked if anyone was in favor. Mr. Budinich presented a counter motion. Mr. Schettino said if the board wants action on the application, the first step is the board determining whether the denial by the zoning officer of the structure in the backyard is a permitted use or non-conforming use requiring a use variance. So the member would agree with the interpretation or disagree. You would affirm the zoning office decision that a use variance is required or you would reverse the zoning officer's decision to say that the use variance is not required.

The motion is to affirm the denial the zoning officer has issued. This means that use variance is required, the structure is not permitted and absent in application for a use variance.

If town wants to revisit ordinance and set some parameters, it would go to the Planning Board and Mayor and Council. If you determine the variance is needed, the applicant has an opportunity to submit another application. He is may be getting a couple of months. Mr. Affoumado can come back for a use variance and an attorney is recommended. This is the first step in addressing the application that may or may not be the last step depending on the applicant.

Mr. Schettino said that it is beneficial for Mayor and Council to review ordinance to make it clear what the structures for recreational use will be such as swing sets, swimming pools, basketball backboards and tennis courts. Mr. Lott said that if it is not clarified, this could happen again to someone else. Mr. Roth mentioned that something may be suitable on an acre of land may not be suitable on a smaller lot. It must be thought through.

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To affirm the denial the zoning officer has issued	Motion	Second	Yes	No	Abstain	Absent
Chairman Richard McLAUGHLIN			X			
Vice Chair Michael ROTH			X			
John POWERS			X			
Jin CHO					X	
Steve LOTT			X			
Stephen MARTINEZ						X
Todd CANNAO						X
Robert BUDINICH (alternate a)	X		X			
Gail ZACCARO (alternate b)		X	X			

Mr. Schettino noted that Mr. Affoumado options are to file an application for use variance, remove the structure or appeal to Superior Court. Mr. Roth said that a lot went into building the structure and if the applicant is planning to move, it is such a short span of time, the board may consider that the applicant not having to dismantle the structure. Where would he put it? As long as it is not in use, it may not be a major problem. Mr. McLaughlin had suggested the adjournment, but it wasn't voted on. Mr. Schettino said that the applicant might buy some more time if he filed an application. The zoning officer may hold enforcement of the ordinance pending the outcome of the application. The rational behind it is why would they take it down if it may be approved. The chairman's suggestion to adjourn is for the reason what Mr. Roth suggested. It is November, the weather is not conducive to use in the winter. It would be March, April and May usage. Not to say that it couldn't be used in the winter.

There was discussion about when and why fences around pools became a requirement.

Mr. Schettino asked if the insurance was expensive. Mr. Affoumado said that it was not expensive. Mr. Schettino said if the insurance is not expensive, then the insurance company doesn't believe that would be that much of a risk.

Mr. McLaughlin said that the decision will be a written resolution. The resolution should be available by Dec. 19th meeting. Once the written resolution is adopted, the timeframe to file a complaint in Superior Court starts the time. It is a 45-calendar day timeframe. It would be sometime around the end of January. You can file at the Superior Court. If the applicant doesn't want appeal the decision, he can file an application for a use variance and go through the same procedure. Except there would be an attorney present for the necessary proofs for the board to grant the variance.

The options are:

1. use variance – The procedure to come back based on the half-pipe is not permitted. It includes testimony on why it should be permitted where it is to the board. The board could pose reasonable conditions for terms of use e.g. hours of use, times of use
2. Superior Court – The applicant would be suing the board.
3. Remove the structure.

Marianne Apa, 220 Harriot Ave. asked what happens to the June deadline?

Mr. McLaughlin said that this is off the table. We have heard that this is the intension, but there is nothing that requires that to happen. Mr. Schettino said that it cannot not go on indefinitely. If the

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applicant appeals it, the zoning officer can allow the applicant to keep the structure there until appeal is heard. The Superior Court appeal would take about 6-8 months before for a decision. If he files an application to this board within 60 days, the board will make a decision within 60-90 days. The zoning officer, at his discretion, absent of an appeal or application, will require it to be removed after the board memorializes the decision in December. In December, the applicant can go the zoning officer and say that he is appealing it, and ask if can keep it up until there is a decision made. The zoning officer can say yes or no. Or the applicant can file an application before the board for a use variance, and ask if he can keep it until the board makes a decision. The zoning officer can say yes or no. If the applicant doesn't do either of the options, the zoning officer will ask him to remove it in January. The zoning officer is the enforcement.

Note: The recorder's memory was full and recording stopped for about 3 minutes.

Mr. Affoumado said that the property owner has insurance coverage on the property. The decision that the half-pipe is not permitted use. The decision on this application affects the owner also.

The minutes are prepared and are redacted in writing at the next meeting. If you appeal this decision, you will be required to get a transcript of both meetings. The decision is made.

8:05pm

3) 32 Deal Street – 2nd floor addition - Judy Jones

Judith Jones, 32 Deal Street, Harrington Park, was sworn in. She said there are two additions/changes to the house. They do not exceed the current footprint of the house. The variances are for setback and side setback that were set after the house was built. So the house doesn't meet the current standards. They are taking the current front entrance way, and pushing out the exterior shy of the windows to the sides of the house and not to the street. With the 2 closets and the stairs, there are people tumbling trying to get through the front door. It is safety issue to increase the space because there is no other option because of placement of the stairs in the interior. They have to do something with the porch because the concrete and pillars are starting to go. They were told if they were to touch the porch they would need a variance.

The second part is they are extending over the garage for office space that would connect through the master bedroom. It is not going further then existing side garage. To extend out to the edge of garage, they would need a variance. Otherwise they would have to go in 3-4ft and require additional beams and would loose additional storage. Judith provided pictures to the board to review.

Mr. Schettino asked if the second floor addition was only for an office. Ms. Jones said that it was for and office space/storage. There was no additional entrance except French doors from the existing master bedroom. There wouldn't be access through the garage.

Mr. Schettino asked about the distance of the left existing side yard. Ms. Jones said that there was 12ft. They are not building any further than the existing garage.

Mr. Roth asked if there will be a window on the side? Ms. Jones said that there will not be a window on the side. There will be 2 smaller windows on the back and one window in the front.

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Mr. Schettino asked if they were removing the closets. Ms. Jones said that the closets will be pushed back. One will remain and the other will be cut out for a bench and hooks.

Mr. Schettino asked if the front steps and canopy will be replaced or repaired? Ms. Jones said the steps, canopy and pillars will be replaced.

Mr. Lott asked if it will be wider. Ms. Jones said that it would be wider because the new entryway will be wider, but it is not substantial. It is about 4-5ft on each side. It is not being built forward. It is going to the side.

Mr. McLaughlin marked the plans dated August 23, 2018 as exhibit A-1. The photographs where the additions are marked as exhibit A-2. Ms. Jones said that the windows back to back uses the natural light. Mr. McLaughlin asked if there was anything else to add. Ms. Jones said that they were careful with their designs to maximize the property and bring value to the property. She they tried to be respectful of the neighbors.

Mr. Schettino asked if there was a buffer between the side neighbors. Ms. Jones said that nothing will be effected. There is an approximately 12ft high hedge along the side to the back fence. The garage is next to the neighbor's garage that also built out over their garage. The distance between their house and the neighbor is about 24ft.

Ms. Jones said that they are planning a tesla roof. They are a pilot family. They tried to keep the plans simple.

Mr. McLaughlin opened the meeting to the public. There was no public and there were no questions. The meeting was closed to the public.

The board members will look at the property before the next meeting. On December 19, the board will vote.

4) 160 Bogerts Mill Road – Pool house – Michael Kopel

There was a wrinkle in this application. The notice for publication was sent to the Record within time, but the record neglected to publish the notice. The neighbors and utilities received the notices for the November 28, 2018 meeting, but the notice to the general public was not published in time.

The board will hear testimony tonight. It was note that there was no one from the public present for the application relating to 160 Bogerts Mill Road. The notice must be published and neighbors and utilities must be noticed for Dec. 19th meeting.

Michael Kopel and Margarita Kopel were sworn in. The Kopels purchased the house in 1986. The structure was there and not used at that time. Mr. Kopel used it as an exercise room. Later, they build a pool and use it as a pool room. They had 3 kids and they used it as a pool house. They stopped using it after a hurricane, and then raccoons got in. The kids are now in college and the Kopels want to put the place back together the way it was. They don't want to make it any bigger or higher. There was a flaw in the design. They would change the windows so the water would not fall in. The height required is 16ft, but the existing structure is 19ft. There would be no change in the footprint. They are replacing the 2nd floor. The 1st floor would remain the same. There is no new siding. The 2nd floor would be a complete

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replace as existing. It will be an exercise room. There is a full bathroom and a sink. There is no kitchen. It is not intended to be used as an apartment.

A member asked why the drawings indicate a future kitchen sink. Mr. Kopel said that it is just a sink.

Mr. Budinich asked why there is a stove. Mr. Kopel said it is just a plate for heating up water. The pool is right behind the pool house.

Mr. Lott asked if the property is partially in River Vale. Mr. Kopel said it is. Mr. Schettino noted that River Vale must be notified if the property is in both towns. Mr. Kopel said that the structure is only in Harrington Park. Mr. McLaughlin said that they need something in writing or approval from the River Vale Zoning Board. Mr. McLaughlin asked the Kopels to ask River Vale Zoning Board between now and the next meeting.

Mr. Roth said that if the house is sold in 20 years, people might think that the owners were given permission to make it a 2-family home because it has a kitchenette, bathroom, a separate entrance and a living room. It should be written that it will not be a second dwelling.

Mr. McLaughlin assigned the plans A-01, A-02, G-01 as exhibit A-1. The survey or minor subdivision plan dated March 3, 2000, is marked as exhibit A-2.

The meeting will be changed to 8pm on Dec. 19. The notices need to indicate that the meeting starts at 8pm. Ms. Lee will let the applicant for 32 Deal St will need to be notified that the time is changed and put a note on the Borough Hall door. The mailings will have to be done again. Mr. McLaughlin suggested asking if the Record will reimburse the cost because of the rennotice if they had published when they had supposed to. Between now and the next meeting, members will come out the property to see how it relates to the neighbors.

NEW BUSINESS

2019 Meeting schedule dates

4th Wednesday of each month at 7pm

Jan. 23, Feb. 27, Mar. 27, Apr. 24, May 22, Jun. 26, Jul. 24, Aug. 28, Sep. 25, Oct. 23, Nov. 27, Dec. 18*

The board will review the dates and defer the vote until the next meeting.

ADJOURN

Motion: Ms. Zaccaro

Second: Mr. Powers

All in favor said "Aye". None opposed.

Meeting adjourned at 8:45PM.

NEXT SCHEDULED ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
Wednesday, December 19, 2018 at 8pm