

**MINUTES OF REGULAR ZONING BOARD OF ADJUSTMENT  
MEETING HELD ON TUESDAY, AUGUST 8<sup>th</sup>, 2023**

Vice Chairman Zapf called to order the regular meeting of the Board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by notice sent to the Daily Record, Suburban Trends, and posted on the bulletin board and website at Borough Hall. All stood for the Pledge of Allegiance.

**PRESENT: DUBOWSKY, KENNEDY, LUCIANO, WOLFSON, ZAPF, AND VILLAVICENCIO (ALT. #1)**

**ALSO PRESENT: PETRESKI, ENGINEER AND LIPARI, COUNSEL**

**ABSENT: BYRNE AND ZALEWSKI**

Vice Chairman Zapf stated the first order of business is the approval of the minutes from the July 11<sup>th</sup> meeting. Does anybody have anything? Okay, I do. On page 3 the sixth paragraph down, the applicant and I have our names intertwined. It says Mr. Van Zapf and it should be Mr. Van Zant.

Ms. Ward stated I just changed your names.

Vice Chairman Zapf stated I think the computer did this to you, on page 7 all the way down the bottom it should be used.

Ms. Ward stated okay. I will make the corrections. Everyone who is present can vote on the minutes.

Vice Chairman Zapf made the motion to accept the minutes with the corrections.

Mr. Luciano seconds.

**Roll call:**

**Yes: Zapf, Luciano, Dubowsky, Kennedy, Wolfson, and Villavicencio (Alt. #1)**

**No: None**

**Abstain: None**

**Absent: Byrne and Zalewski**

Ms. Ward stated they're approved.

Vice Chairman Zapf stated the next item on the agenda is the approval of the resolution from last month's meeting for the Van Zant application. This is Variance Application #2022-02 by Robert and Pamela Van Zant, on property known as Block 80, Lot 5 on the municipal tax map also known as 15 Alleghany Path.

Ms. Ward stated everyone who is present can vote on the resolution.

Vice Chairman Zapf asked does anybody have any notations.

Mr. Lipari stated I have one error on my part. In the vote I listed Mr. Zalewski as a yes and if you would white that out.

Ms. Ward stated I will take it out.

Mr. Lipari stated my apologies.

Vice Chairman Zapf asked any corrections in the rest of the resolution. Does somebody want to make a motion?

**LINCOLN PARK ZONING BOARD OF ADJUSTMENT**

**RESOLUTION**

**Variance Application #2022-02**

**WHEREAS**, Robert and Pamela Van Zant (the “Applicant”) filed an application before the Lincoln Park Zoning Board of Adjustment (the “Board”) with regard to property known as 15 Allegany Path, Lincoln Park, New Jersey, also identified as Block 80, Lot 5 on Tax Map Sheet 38 (the “Property”); and

**WHEREAS**, all persons located within 200 feet of the Property have been notified according to law and a public hearing was held before the Board on July 11, 2023; and

**WHEREAS**, based on the hearing and a review of all the testimony and documents submitted in conjunction with the application, the Board makes the following findings of facts:

1. The Property is located in the R-15 Residential Zone and consists of a non-conforming lot with a lot area of 10,005 SF where a minimum of 15,000 SF is required. The frontage is conforming at 100.17 feet where a minimum of 100 feet is required. Existing improvements include a single-family home constructed in 1935 and the following accessory structures: enclosed porch, chicken coop, front deck, shed, covered gravel area, koi pond, detached deck, and railroad tie wall. It is unclear when many of the accessory structures were constructed and if permits were issued. The Property is not located in the NJDEP Flood Hazard Area.

2. The Applicant made this application to memorialize the construction of an approximately 9 FT x 18 FT addition and 6 FT x 18 FT deck to the front of the home. Given the denial issued by the Zoning Officer it appears the addition was constructed without the appropriate permit(s).

3. The Applicant’s mother previously applied for and obtained variance relief from the Board in 1997 under Case No. 97-5 in order to construct a second story addition to the dwelling.

4. The Applicant previously applied for and obtained variance relief from the Board in 2007 under Case No. 2007-3 in order to build a 12’ x 17’ sunroom/porch at the rear of the dwelling on the Property.

5. The Applicant submitted to the Board for its review the following materials:

a. Standard Development Application Form (Section 17-82.1.A), signed by the Applicant on April 11, 2022;

- b. Checklist for General Information (Section 17 Attachment 1:1), dated April 12, 2022;
- c. Checklist for Board of Adjustment Variance Application (Section Attachment 1:4), dated April 12, 2022;
- d. Search of Municipal Liens, signed by Rabia Ferati, Borough Tax Collector, dated April 11, 2022;
- e. Zoning Permit Application #2022-20Z, signed by Thomas A. Boorady, Acting Zoning Officer, denied March 18, 2022;
- f. Photocopy of Property Survey with Markups, enclosing one (1) sheet, prepared by WM. F. Zimmerly & Associates, no date visible, no revision visible;
- g. Lincoln Park Board of Adjustment Resolution #2007-3, adopted September 11, 2007 memorialized August 14, 2007;
- h. Memo, prepared by Board Engineer, Joseph J. Maiella, PE, PP, dated July 31, 2007;
- i. Lincoln Park Board of Adjustment Resolution (Case No. 97-5), adopted May 13, 2007;
- j. Board of Adjustment Variance Application Rider, prepared by the Applicant, dated February 3, 2022;
- k. Memo, prepared by the Board Engineer, Joseph J. Maiella, PE, PP, dated March 22, 1997;
- l. Certification of Accurate Representation of Survey, signed by the Applicant, no date, stamped received April 11, 2022;
- m. Statement of Ownership indicating that the property was purchased in April of 1998, signed by Applicant, Robert Van Zant, no date, stamped received April 11, 2022;
- n. Development Application Review Fee and Escrow Fee Computation Tables, stamped received April 11, 2022;
- o. Front and Side View Architectural Sketches, enclosing two (2) sheets, no date, stamped received April 11, 2022;
- p. Request for Certified List, dated April 7, 2022, date received by Clerk, April 7, 2022, and updated June 27, 2023;
- q. W-9, Request for Taxpayer Identification Number and Certification, signed by the Applicant, dated April 3, 2022;
- r. Applicant's Offer to Abutting Property Owners, including certified mailing slip;
- s. Existing Condition Survey of 15 Allegany Path, prepared by Robert L. Cigol of DMC Associates, dated August 10, 2022, revised February 1, 2023;
- t. Architectural Drawings, enclosing two (2) sheets, prepared Joseph Solfaro RA, dated September 12, 2022.

6. The Applicant introduced Exhibit A-1 at the public hearing, which consisted of photographs of the existing accessory structures and conditions of the Property including the recently relocated hot tub, tent, and decking.

7. The following variances are requested in connection with this application: (i) minimum front yard setback to the front edge of the connected deck where 40 FT is required and 31.8 FT is existing and proposed, (ii) minimum rear yard setback for the roof over the rear patio where 35 FT is required and 18.07 FT is existing and proposed, (iii) minimum side yard setback for the accessory shed where 10 FT is required and 7.19 FT is existing and proposed; (iv) minimum side yard setback for the accessory roof over gravel area where 10 FT is required and 3.28 FT is existing and proposed; and (v) maximum impervious surface coverage where 25% is permitted and 30.7% is existing and proposed. All of these variances are for pre-existing conditions which will not be changed or altered by reason of this application.

8. The Applicant testified that the detached pool deck had been removed and the Applicant was not seeking a variance for the detached deck, the location of the hot tub in the side yard or the existing tent, as part of this application. The Applicant further testified that the detached deck, hot tub, and existing tent would be relocated, if necessary, so not to encroach upon the 10 FT side yard setback.

9. The Applicant testified that the enclosed porch and deck were needed to add extra space to the house due largely to the number of children in the house.

10. The Applicant testified that they wished to keep the shed in the side yard because it had been in that location for twenty-four years and other neighbors have their sheds much closer to their respective property lines.

11. The Applicant testified that the permanent roof over the patio was erected because the temporary tents could not withstand the elements and were frequently damaged or destroyed.

12. The Applicant also testified that they would not be replacing the pool that previously existed on the Property.

13. The Applicant acknowledged that they would need the appropriate building department approval in addition to any approval granted by the Board.

14. The Applicant further acknowledged and agreed to obtain and provide the Board with an updated survey.

15. No member of the public testified during the public portion of the hearing.

16. The Board concluded after reviewing all of the testimony, exhibits submitted and documents included with the application, that by reason of the exceptional narrowness, slope and/or configuration of the Property, the strict enforcement of the provisions of the ordinance would result in exceptional and undue hardship upon Applicant. Further, pursuant to N.J.S.A. 40:55D-70(c)(2), the benefits of the deviations from the zoning ordinances outweigh any detriments. The Board also concluded that this approval will not substantially impair the appropriate use or development of any property and will not pose a threat to the public health, safety, and general welfare.

17. The application is consistent with the intent and plan of the zoning ordinances of the Borough of Lincoln Park and will cause minimal, if any, impact on the neighborhood and surrounding properties.

**NOW, THEREFORE BE IT RESOLVED**, that based upon the testimony and facts as found above, the Lincoln Park Zoning Board of Adjustment does hereby grant the application and the requested variances subject to compliance with the following terms and conditions:

1. This Resolution is subject to any comments offered by the Borough's Engineer and on the application and the plans. The Applicant shall comply with any requirements imposed by the Borough's Engineer and Construction Official with respect to this application or the plans.

2. The Applicant shall comply with the comments set forth in the Board Engineer' report dated June 8, 2023,

3. There shall be no changes to the approved plans, including site plans, accessory structure locations, contours, spot elevations, stormwater management facilities, etc. If field conditions necessitate deviations from the approved plans, then all work shall stop until revised plans can be prepared by the owner's professionals and submitted to the Borough Engineer and Building Department for review and approval prior to constructing any modifications.

4. The Applicant will provide a Project Completion Report and six (6) signed and sealed original copies of an as-built topographic survey, prepared by a licensed professional land surveyor. The Project Completion Report shall include information related to the Approval granted pursuant to Applicant's Case No. 2007-3.

5. The as-built survey shall provide the location of all above-ground and below-ground improvements including septic systems, wells, drainage structures and utilities.

6. A final site inspection by the Construction Official and Borough Engineer will be necessary prior to the issuance of a certificate of approval to ensure all items of construction are in conformance with the approved plans.

7. All other State, County, and Municipal regulatory agency reviews that may be necessary must be obtained.

8. The Applicant is hereby notified of the following Borough Code that is incorporated into this Resolution:

**§ 17.3.9. Expiration of Variance.**

Any variance from the terms of Chapter 28, Zoning, hereafter granted by the Zoning Board of Adjustment permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within one year from the date of entry of the judgment or determination of the Zoning Board of Adjustment, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Zoning Board of Adjustment to the governing body, or to a court of

competent jurisdiction, until the termination in any manner of such appeal or proceeding, except, further, in the case of a variance which also involves a subdivision or site plan approval, the variance shall extend for the full period of preliminary or final approval or any extensions thereof pursuant to the Act.

9. Before a Certificate of Approval may be issued, the Applicant must comply with all conditions of this Resolution.

10. The Applicant shall maintain a current escrow account until final inspections are completed. Any remaining balance in the Applicant's escrow account will not be returned until the Project Completion Report has been properly submitted and accepted. The Applicant must submit to the Board Secretary a status report from the Borough Finance Officer confirming that all Borough fees for the Property and this application are current.

11. The Applicant shall further amend its plans as per the representation made at the public hearing and the comments from the Board Engineer, Board Secretary, and Board Members and shall be bound by the testimony and representations of the Applicant and its professionals, if any.

12. All other rules and regulations of any governmental agency having jurisdiction over the Property shall be complied with, including but not limited to the payment of all taxes, water and sewer charges and application fees and/or charges. No alteration of any construction plans submitted with this application and on file with the Board shall be permitted without the Board's prior written approval.

Mr. Dubowsky moved the resolution.

Mr. Wolfson seconds.

**Roll call:**

**Yes: Dubowsky, Wolfson, Kennedy, Luciano, Zapf, and Villavicencio (Alt. #1)**

**No: None**

**Abstain: None**

**Absent: Byrne and Zalewski**

Mr. Ward stated it is adopted.

Vice Chairman Zapf stated the next order of business is Variance Application #2023-02 by Jovanny Gonzalez and Adrianna Faundez, on property known as Block 3, Lot 55.01 on the municipal tax map also known as 16 Mabey Lane. It was complete as of July 17<sup>th</sup>, 2023. Come up and have a seat at the table.

Mr. Lipari swore in Mr. Gonzalez.

Mr. Gonzalez testified Jovanny Gonzalez (G-o-n-z-a-l-e-z).

Vice Chairman Zapf asked would you like to give the Board a brief overview of what the project is.

Mr. Gonzalez testified we would like to erect a fence on what is the back end of our lot.

Vice Chairman Zapf stated so across your backyard around the side corners and the major issue I guess is the height.

Mr. Gonzalez testified yes.

Vice Chairman Zapf stated okay. Would you like to go over your report Alex?

Mr. Petreski stated sure. The lot fronts on Mabey Lane, what is considered the front, and West Drive is a backyard but because it is abutting West Drive it is considered a front yard. The Borough Ordinance §28-4.5 C. stated that no fence in the front yard can be greater than 4 feet in height. The proposed fence is 6 feet in height which requires a variance.

Just going through my technical review letter where the fence is located on the outside corner of West Drive, it will not affect sight distances so we do not seem to have any issues associated with constructing the fence within the front yard of West Drive.

I have two conditions that I want to go over with you. If the application is approved, I am going to recommend that you get a surveyor to come and stake out the corners of the property so we can make sure you are putting the fence on your property in the location that you stated in your variance application.

Mr. Gonzalez asked okay need another survey.

Mr. Petreski stated you have a survey but you are going to be installing a fence, so just to make sure you are putting the fence in the right location, if we approve it. I would recommend you get a surveyor to stake it out and mark the corners of your property to make sure you are putting the fence in the location that you say you are going to be putting it, for your sake and our sake.

Mr. Gonzalez testified okay.

Mr. Petreski stated it is not required but I would highly recommend it.

The second thing we are going to ask is, if this application is approved, as with all applications for variances, the applicant should agree to provide a project completion report and provide 4 signed and sealed surveys prepared by a licensed land surveyor. After you are done with the project, you are going to fill out a project completion report and include a new survey with the fence as it has been built.

Mr. Gonzalez testified okay.

Mr. Petreski stated to verify that it is the size and in the location that you are proposing.

Mr. Gonzalez asked so we need another survey afterwards.

Mr. Petreski stated yes exactly. That is all I have.

Ms. Ward asked Alex they should just stake it out first.

Mr. Petreski stated stake it so you know where the corners are because you are proposing it to be 5 feet from the property line so we can verify that it is going to be within the property. Then afterwards do an as-built survey document showing where the fence has been built.

Ms. Ward stated so they will just have to do the survey when the project is completed.

Mr. Petreski stated exactly.

Vice Chairman Zapf stated your house was recently sold as that was the Remus house right?

Mr. Gonzalez testified correct, four years ago.

Vice Chairman Zapf stated four years already. When you bought the property did they stake it out for you then? Do you have markers in the ground?

Mr. Gonzalez testified no.

Vice Chairman Zapf stated it is good to have that.

The one question I had when I googled the property, and I grew up at the corner of East Drive and Longview which comes up and then, there is a mention in here several times about Mason Ave. which was a paper road that ran in our backyard, and here it is saying West Drive and West Drive is really kind of short and it does seem to go all the way down like a road. What is behind the area where you are going to put your fence is it a wooded area?

Mr. Gonzalez testified it is an easement just grass.

Vice Chairman Zapf stated okay that is what I thought. When you go down West Drive it ends at Freddie Vaillancourt's driveway and your house is the third one, not the second one on West Drive so that easement goes down farther. Is Mason Ave. behind you and it looks like it curves around like an L?

Mr. Gonzalez testified if anything I think we would just touch the tip of Mason.

Vice Chairman Zapf stated okay because it was mentioned and I thought wait a minute do we have the wrong road written down. Mason Ave. was a paper road my entire life.

Mr. Gonzalez testified it is West Drive and then --

Vice Chairman Zapf stated okay. I was just trying to figure out what was behind you. So you are going to bring that 5 feet in and there will still be greenery behind the fence.

Mr. Gonzalez testified yes.

Vice Chairman Zapf stated okay so the only issue is the height.

Ms. Ward stated Mr. Gonzalez why don't you tell the Board what your issue is and why you want to put the fence that high.

Mr. Gonzalez testified we would like to build the fence because we have numerous amounts of people crossing our yard at various times of the day. People walking their dogs and going through our yard all day long, many times during the week. I have two small daughters and we would just like some privacy.

Vice Chairman Zapf asked does anybody else have any questions for the applicant.

Mr. Dubowsky stated I looked at your property and I see exactly what you are talking about people walking their dogs, but rather than coming here and getting a variance why don't you just build a four foot fence which is allowed.

Mr. Gonzalez testified we would just like a little more privacy.

Mr. Dubowsky stated probably when the cars come the lights --

Mr. Gonzalez testified you can actually see our entire backyard and the kids playing from the top of the street.

Mr. Dubowsky stated okay. You have curtains in your gazebo and stuff like that.

Mr. Gonzalez testified right. We have trees and branches all over just to give us a little privacy, but it is just a nuisance just trying to get through the backyard.



Mr. Dubowski stated okay.

Vice Chairman Zapf stated plus if the easement were ever completed farther down, then you would have a road front/road back and that is common between Utne Court and East Drive. All the houses on Utne Court face onto East Drive so nobody has any privacy in their backyards over there, but it was a little different world when I was a kid. Anybody else have any questions?

I don't really see any issues with it. We don't have any major concerns or anything like that, just make sure it winds up in the right place, and this is a good recommendation to get your property staked out and this way ten years down the road if you move, or if you are still there and somebody comes in and all of a sudden you have one piece of your fence not where it is supposed to be and you have to move it that's a pain in the neck. It is good to make sure it is going to land where it is going to land where it is going to be five feet in, it is a good safety net as opposed to 1 foot in or something like that.

Mr. Luciano asked did you have a survey done when you purchased the property.

Mr. Gonzalez testified no.

Mr. Luciano asked did you get one from the previous owner.

Mr. Gonzalez testified no we got a survey done when we lived there just not previously.

Mr. Luciano stated oh you did.

Mr. Gonzalez testified I forgot why we did it.

Mr. Luciano stated so you may actually just be able to call the surveyor and ask him to stake those two corners.

Ms. Ward stated we have his survey.

Mr. Luciano stated it usually runs around \$95 per stake. So only the corners where the fence is you would probably be looking at \$200, \$95 per stake, and actually you are saying it is recommended not required, so you are talking about a couple hundred bucks, it is not like they have to do the whole thing over again.

Mr. Gonzalez asked have the guy who did the survey do it.

Mr. Luciano stated right the guy who did it.

Vice Chairman Zapf stated it will help him when he comes back to do the as-built.

Mr. Luciano stated true. About 5 years ago it was \$95 per corner but just about \$100 per corner.

Vice Chairman Zapf stated it is a good safety factor.

Mr. Luciano yeah.

Vice Chairman Zapf asked does anybody else have any questions. Seeing that the Board doesn't have any questions we'll open it up to the grand attendees from the public that we have out here. Seeing none, I will close the public hearing.

Would anybody like to make a motion?. I don't see any issues with it.

Mr. Dubowsky moved it.

Mr. Villavicencio seconds

**Roll call:**

**Yes: Dubowsky, Villavicencio (Alt. #1), Kennedy, Luciano, Wolfson, and Zapf**

**No:           None**

**Abstain:    None**

**Absent:     Byrne and Zalewski**

Ms. Ward stated the resolution will be adopted at the September 12<sup>th</sup> meeting. You do not need to attend, I will send you a copy, and after adoption you will get a signed copy of the resolution too.

Mr. Gonzalez asked nothing built until then.

Ms. Ward stated right, you will need the resolution and a copy of the signed plans, but in the meantime you can have it staked.

Vice Chairman Zapf stated our attorney has to draft the resolution and we have to read it to make sure it is correct and vote on it. It will be a publicly announced meeting just like tonight.

Ms. Ward stated I will provide you with a project completion report.

Vice Chairman Zapf stated and four copies of a survey that has the fence on it after it is all done.

Ms. Ward stated that will be addressed in my correspondence.

Mr. Gonzalez thanked everyone.

Vice Chairman Zapf stated have a good night.

Any other business to come before the Board tonight? Motion to adjourn.

Mr. Luciano seconds.

Meeting adjourned 7:23 P.M.

Respectfully submitted:

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Joan Ward, Secretary

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Thomas Zapf, Vice Chairman