

PRINCETON ZONING BOARD OF ADJUSTMENT

Minutes of the Regular Meeting

March 23, 2016 7:30 P.M.

Municipal Complex – Main Meeting Room

Princeton, New Jersey

1. OPENING STATEMENT

The meeting commenced at 7:34 p.m. with Chairman Royce reading the Open Public Meetings Act statement.

2. ROLL CALL

PRESENT: Louisa Clayton, Steven Cohen, Michael Floyd
Barrie Royce, Bairy Suri, Harlan Tenenbaum

ABSENT: Eve Coulson, Wendy Farrington, Doreen Blanc-Rockstrom

ALSO PRESENT: Karen Cayci, Attorney; Derek Bridger, Zoning Officer; John M. West, P.E., Land Use Engineer; Claudia Ceballos, Board Secretary.

There were twenty three (23) members of the public present.

3. MINUTES

a) December 9, 2015 - Motion was made by Mr. Floyd to accept the minutes as written and amended, seconded by Mr. Cohen and carried with a voice vote of six ayes among those members eligible to vote. No one opposed. No one abstained.

4. RESOLUTIONS

a) Application of Princeton Maclean LLC
30 Maclean Street
Major Site Plan with D and C variances
To allow Masonic Temple to change use to Residential Apartments
Block 17.03 Lot 73, R4 Zone (Boro)
Z1515-237UVP
Approved with conditions

A motion was made by Ms. Clayton to adopt the resolution, seconded by Ms. Suri and carried with a voice vote of three ayes among those members eligible to vote. No one opposed. No one abstained.

b) 35 Hillside, LLC/Owner & Applicant
35 Hillside Road, Block 7207 Lot 7, R6 Zone
C1/C2 – Lot width for a new single family dwelling
Z1616-316 V
Approved with conditions

A motion was made by Ms. Clayton to adopt the resolution, seconded by Mr. Cohen and carried with a voice vote of five ayes among those members eligible to vote. No one opposed. No one abstained.

5. APPLICATIONS

- a) Warren and Andrea Stock, Owner & Applicant
39 Pine Street, Block: 33.01, Lot: 86, R4 Zone (Boro)
C1 – Front yard setback and building coverage to permit the expansion
of an existing non-complying covered front porch
Z1616- 318V

Attorney Cayci advised that all the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Mr. Derek Bridger, Zoning Officer was sworn in by Attorney Cayci.

Present for the application was Warren and Andrea Stock, property owners, both were sworn in by Attorney Cayci.

Mr. Bridger provided an overview of the application using his memorandum dated March 3, 2016. Mr. Bridger said that the applicants have applied for a c (1) variance to permit the expansion of an existing non-complying covered front porch in exception to the required front yard setback and building coverage.

Mr. Bridger said that the property is located in the R4 Zone of the former Borough and the existing single-family use is permitted as of right.

Mr. Bridger said that the lot is non-complying with: the lot area, the required lot area is 6,000 sf and the existing lot area is 2,728 sf; the lot width required is 60 ft. and the existing is 48.86 sf; the required lot depth is 100 ft. and the existing is 55.45 ft.

Mr. Bridger said that the property is non-complying with respect to the following bulk requirements: the required prevailing front yard setback is 6 ft. and the existing is 7.9 ft.; the required rear yard setback is 35 ft. and the existing is 21 ft.; the required building coverage is 30% and the existing is 39.41 %; the required height to setback ratio is 3:1 and the existing is non-complying; the required smaller side yard setback is 8ft. and the existing is 1.6 ft.; the required combined side yard setback is 20 ft. and the existing is 11.9 ft.; the FAR is 61.81% and the existing is 66.46%.

Mr. Bridger said that the applicant is proposing to replace the existing covered porch with a new covered porch 5' x 15', which will require the following variances:

1. The Front Yard Setback required is 6 ft., the existing-2.9 ft. and the proposed is 2.9 ft., which will increase in degree of existing non-compliance.
2. The Building Coverage required is 30%, the existing is 39.41% and the proposed is 40.74%.

Mr. Bridger noted that the proposed porch will not impact existing lot area, width or depth or the existing rear or side yard setbacks, floor area ratio or height to setback ratio and for that reason, variances are not required with respect to those bulk standards.

Mr. Bridger reviewed with the Board the standards for granting the requested variances.

Mr. Stock said that the porch is rotting and requires replacement and he proposed widening the porch to include room for seating. Mr. Stock mentioned that many of the other homes on the street have a covered front porch and the stairs are consistent with the other houses on the street.

Member Cohen asked if the front steps go over the property line.

Mr. Stock advised that he will make sure that the porch remains entirely on their property within the footprint shown on the application.

Member Clayton noted that the design fits within the street.

Member Tenenbaum said that he spoke to some of the neighbors and they are in support.

The application was opened to public comment but no comment was provided.

Board Members discussed the application and a motion was made by Ms. Clayton and seconded by Mr. Tenenbaum to grant C (1) variances to allow a front yard setback of 2.9 ft. and building coverage of 40.74% to allow the replacement of an existing covered front porch with a new 5' x 15' covered porch, as set forth in the application with conditions.

ROLL CALL:

Moved by: Clayton
Seconded by: Tenenbaum
Those in Favor: Clayton, Cohen, Floyd, Royce, Suri, Tenenbaum
Those Absent: Coulson, Farrington, Rockstrom

b) David E. Cohen, Applicant
Appeal from Zoning Officer's interpretation of the Zoning Ordinance
"side lot line" and "lot width"
Z1616 – 334 I

Present for the application was Mr. David E. Cohen.

Mr. Bridger, Zoning Officer, presented his memorandum dated March 23, 2016. Mr. Bridger said that Mr. Cohen has filed an appeal to Mr. Bridger's interpretation of the definition of "side lot line" and "lot width", this appeal relates to irregular subdivisions. Mr. Bridger said that Mr. Cohen supplied a sketch that illustrates the principle of these irregular subdivisions which he refers to as "zipper lots" in his text.

Mr. Bridger explained that Section 10B-241 of the former Township land use ordinance defines side, rear, and front lot lines and lot width.

"Lot line, side". A continuous line which runs back from an intersection with the lot front line, and which forms the boundary line between the lot and the adjacent parcel of land."

“*Lot line, rear*”. Any lot line, except a front or side lot line.

Mr. Bridger said that the plot plan sketch supplied by Mr. Cohen reflects a red side line that begins at the front lot line. Mr. Bridger said that once that line changes direction, the side lot line becomes the rear lot line and that it is not possible to permit the sufficient lot width which requires that a straight line be drawn perpendicular from side lot line to side lot line.

Mr. Bridger said that assuming that every break in the line via either a vector or an arc would create a rear yard. In other words, each separate line segment or arc is a continuous line, which ends when the vector direction or arc radius changes.” (See March 1, 2016 letter for David Cohen, AIA).

Mr. Bridger said that he respectfully disagrees with this position. The definition of a side lot line speaks of a continuous lot line. Mr. Bridger said that it is his interpretation that a lot line is continuous regardless of the descriptive metes and bound description.

Mr. Bridger noted that the ordinance does not define a lot line as a single straight line, rather it refers to a continuous lot line.

Mr. Bridger said that if this type of interpretation were carried out it would be impossible given the current zoning to develop a piece of property as each time a lot line has a new vector or arc it ceases to be the side line and by default becomes a rear lot line. If this reasoning is applied to the side lot line it must also be applied to the front lot lines and would create similar difficulties.

Mr. Bridger provided the definition of lot line, front and lot width:

Lot line, front. The continuous line formed by the lot frontage. A corner lot shall be deemed to have two front lot lines, one along each of its lot frontages.

Lot width. The distance between the side lines of a lot measured along a straight line lying between the required front and rear building setbacks and making equal angles with the side lines. For a corner lot, the lot width is the distance between one of its front lot lines and the side lot line opposite thereto, measured along a straight line making equal angles with such front and side lot lines and lying between the required front building setback from the other front lot line and the required side building setback from the side lot line opposite such other front lot line.

Mr. Bridger said that the definition of lot width is pertinent to this discussion. He said that the definition speaks of a straight line drawn perpendicular between the side lines. This distinction is important because the ordinance specifically references a straight line. I would interpret the side lot line differently if the definition referenced a straight line, but it does not, it references a continuous line.

Mr. Bridger provided a copy of the tax map, where there are numerous vectors or arcs along a side or front line. Many of the lot lines do not follow a straight path.

Mr. Bridger explained that irregularly shaped subdivisions were created in the former Princeton Township because the land use ordinances permitted lot frontage equal to only 50% of the lot

width. He advised that in December 2015 the ordinance was amended to require that lot frontage and lot width equal each other.

Mr. Bridger confirmed that his interpretation of side lot lines and lot width is also consistent with that made by previous zoning officers.

Board Attorney, Karen Cayci, informed the Board that there were questions regarding the Board's jurisdiction.

Mr. Eric Goldberg, Esq. from Stark and Stark, appeared on behalf of Mr. and Mrs. Hadaya who have a subdivision application pending before the Princeton Planning Board which may be affected by the Zoning Board's interpretation.

Mr. Goldberg presented two letters sent by him to the Board counsel which were marked:
Exhibit O-1: letter dated March 17, 2016
Exhibit O-2: letter dated March 22, 2016.

Mr. Goldberg said that the Zoning Board has no jurisdiction to hear the subject appeal because: the Planning Board has deemed the application complete, has assumed and accepted jurisdiction.

Mr. Goldberg said that public notice should be provided because the appeal should be considered as arising from the Hadaya's application which relates to a specific property.

Mr. Goldberg said that there are several pending subdivision applications which would be impacted by the Zoning Board's interpretation.

Mr. Goldberg said that his client granted an extension of time to hear his subdivision application based on his belief that the Zoning Board would not take up the within appeal until after the extension of time had expired.

Mr. Goldberg said that the Planning Board was made aware at its March 3, 2016 hearing of the within appeal to the Zoning Board.

Mr. Goldberg said that at that time, it was anticipated that the Zoning Board could not take up the appeal until late April 2016 due to scheduling matters.

Mr. Goldberg said that the Planning Board requested that his clients provide a time extension to the Board and that they consider further revisions to the subdivision plan. Mr. Goldberg said that his clients consented to the time extension and believed that the Planning Board would complete its review of his client's application prior to the Zoning Board being able to schedule the appeal.

Board Attorney Cayci, said that she responded to Mr. Goldberg's letters. Cayci summarized with respect to the Zoning Board to hear the appeal of the interpretation of the Zoning Officer that the Zoning Officer is designated to interpret the municipal zoning ordinances and that an appeal of such interpretation must be heard by the Zoning Board.

Attorney Cayci said that the fact that the Planning Board has pending subdivision applications which may be impacted by the Board's interpretation does not deprive the Zoning Board of its statutory obligation to hear an appeal from the Zoning Officer's interpretation of a zoning ordinance.

Attorney Cayci noted that the Municipal Land Use Law does not require noticing of appeals from an interpretation by the Zoning Officer and leaves such requirement to local regulation. She said that Section 10B-46 requires noticing where there is an appeal from the determination by the Zoning Officer as to a specific property. She said that this is an appeal of general interpretation that has been made by the Zoning Officer and noticing is not required.

Attorney Cayci said that regarding the general equity arguments, the Planning Board has jurisdiction with respect to the objector's arguments regarding time extensions granted to that board.

Attorney Cayci said that due to changes in the Zoning Board's schedule, the within appeal was able to be scheduled for a hearing in March rather than April.

David E. Cohen, AIA, was sworn in by Attorney Cayci. Mr. Cohen used the diagram that Mr. Bridger highlighted indicating properties that will be impacted by this interpretation, there are already 20 properties, for one sheet out of 130 tax maps for the Town. Mr. Cohen said that he does not know how he can be expected to notice the affected property owners.

Chairman Royce said that we are not talking about a particular case. The case before the Board is what a lot line is.

Mr. Cohen said that he is appealing the Zoning Officer's interpretation of side lot line, rear lot line and lot width as set forth in Section 10B-241 of the former Princeton Township land use ordinance. Mr. Cohen acknowledged that the addendum attached to his application is a copy of the Hadaya subdivision plan and that he lives within 200 feet of that proposed site and the plan was provided only to illustrate his argument and that he brings the within appeal as an interested party challenging a general interpretation by the Zoning Officer.

Mr. Cohen said that he disagrees with the Zoning Officer's interpretation and that he interprets the ordinances to mean that each separate line segment or arc is a continuous line which ends when the vector direction or arc radius changes and once the vector direction or arc radius changes, the side lot line would become a rear lot line.

Mr. Cohen said that the ordinance definition of "lot width" should be interpreted to mean that lot width can only be measured between side lot lines for internal lots and not between a side lot line and rear lot line.

Mr. Cohen also said that the ordinance definition of "rear lot line" did not clearly mean the lot line opposite the front line.

Mr. Cohen said that the pending Hadaya plan would create very irregular lot lines which he believes are inconsistent with the legislative intent of the ordinance.

Tom Olenick, P.E., was sworn in by Attorney Cayci. He said he is a licensed engineer in State of New Jersey and is the engineer for the objectors. He said that he agrees with Mr. Bridger's interpretation of Section 10B-241 regarding the definition of side lot line and lot width.

Chairman Royce opened the application for public comment, and the following provided comment:

Kip Cherry of 21 Dempsey Road – sworn in by Attorney Cayci. She said that she agrees with Mr. Cohen's appeal. Ms. Cherry said that the Planning Board had previously indicated its concerns regarding subdivisions created on Valley Road with lot lines which were not straight.

Richard Schatzman, Esq. said that he had represented the applicant in the Valley Road subdivision and that the subdivision received all necessary approvals.

Members discussed the jurisdiction issue and it was determined that noticing was not required as the appeal challenges a general interpretation of ordinance.

The Board determined that with respect to the general equity arguments made by Mr. Goldberg he should bring to the Planning Board as the Zoning Board does not have jurisdiction over that application.

The Board determined that the Zoning Officer's interpretation of the "side lot line", "rear lot line" and "lot width" as set forth in Section 10B-241 of the former Princeton Township land use ordinance is appropriate and consistent.

The Board agreed that the use of the word "continuous" in the definition of side lot line and the absence of that term in the definition of lot width is significant and that it is reasonable to conclude that the legislative intent was to make a distinction between continuous line and a straight line.

The Board agreed that the ordinance definition of "rear lot line" clearly identifies a rear lot line as any line other than a side or front line and by process of elimination, a rear lot line should be considered the line opposite the front lot line.

The Board agreed that the Zoning Officer's interpretation that a line should be considered continuous regardless of changes in vector or arc is consistent with the former Princeton Township land use ordinance as a contrary interpretation would prevent development of a property as each time a lot line had a new vector, it would cease to be a side line and by default would become a rear lot line.

The Board determined that the Zoning Officer's interpretation is consistent with past interpretations, the Board affirmed the Zoning Officer's interpretation of Section 10B-241 with respect to side lot line, rear lot line and lot width.

A motion was made by Mr. Cohen and seconded by Ms. Clayton to take jurisdiction of appeal.

Roll Call

Moved by: Cohen
Seconded by: Clayton
Those in Favor: Clayton, Cohen, Floyd, Royce, Suri
Those Opposed: Tenenbaum
Those Absent: Coulson, Farrington, Rockstrom

A motion was made by Mr. Cohen and seconded by Ms. Clayton to affirm the Zoning Officer's Interpretation.

Roll Call

Moved by: Cohen
Seconded by: Clayton
Those in Favor: Clayton, Cohen, Floyd, Royce, Suri, Tenenbaum
Those Opposed: None
Those Absent: Coulson, Farrington, Rockstrom

7. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:34 pm.

Respectfully Submitted,

Claudia Ceballos
Secretary

Approved: 10/26/16