

**BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
OCTOBER 7, 2021**

The meeting was opened by Chairman Battista at 7:30 PM.

Chairman Battista read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Coaster and the Asbury Park Press.

Chairman Battista then led the meeting in a salute to the flag.

Ms. Sena took roll call.

Present: Chairman Ronald Battista, Charles Lomangino, Marc McKinley, Sheila Hatami, William Kuzmin, Emily DeMaio

Absent: Vice-Chairman Ronald Palmieri, John Slazyk, Steven Porzio

Also Present: *Ms. Trish Sena, Board Secretary*
Mr. Thomas Neff, Board Engineer
Mr. Thomas Hirsch, Board Attorney

MINUTES- None

RESOLUTIONS-

BA2021-07- Resolution in the Matter of Jacklyn Stark, 21 Wheeling Court

Chairman Battista advised that the proposed Resolution in this matter has been previously distributed to the Board Member's prior to tonight's meeting.

Chairman Battista asked if any Board Members have any comment on said Resolution? Hearing none, Chairman Battista asked for a motion to memorialize BA2021-07.

Mr. Kuzmin offered a motion to memorialize Resolution BA2021-07, the motion was seconded by Mr. Lomangino.

ROLL CALL

AYES: Mr. Kuzmin, Mr. Lomangino, Chairman Battista, Ms. Hatami, Ms. DeMaio

NAYES: None

ABSENT: Vice-Chairman Palmieri, Mr. Slazyk, Mr. Porzio

INELIGIBLE: Mr. McKinley

NEW BUSINESS-

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BA2021-05 Kelly Whalen, 97 Garrison Drive, Block 124.06 Lot 2 Application for Bulk Variance

Attorney Hirsch stated for the record that he has reviewed the proofs and affidavit of service from the applicant, all is in order as to form, the Board has jurisdiction to hear this matter.

Mr. Lomangino offered a motion to accept service, the motion was seconded by Mr. Kuzmin. All present voted in favor.

Attorney Hirsch swore in the following witnesses:

***Kelly Whalen, 97 Garrison Drive, Tinton Falls, NJ- Applicant
Robert Koseyan, 85 Morris Avenue, Neptune City, NJ- Applicant's Contractor***

Mr. Koseyan stated that the Applicant is before the Board this evening seeking variances to construct a new attached garage that is approximately 12 feet wide by 24 feet deep. The existing dwelling does not contain a garage.

Referencing Mr. Neff's Engineering Review letter, Chairman Battista inquired if there was ever an attached garage on this property? Mr. Neff explained that he did research old zoning files and believes that there was a garage attached to this dwelling, however he did not find anything definitive. He indicated that the zoning file shows that an addition was done in 2002 to extend the front where a garage may have once been.

Mr. Neff stated that the required side-yard setback is 10 feet, whereas the Applicant is proposing 4.5 feet from the side property line, therefore a variance is required. The combined side-yard setback of both sides is required to be a minimum of 35 feet where 32.9 feet exists, and 20.8 feet is proposed. Mr. Neff also noted that a variance is needed for the maximum lot coverage; 38% is permitted whereas 40.25% exists and 43.8% is proposed. Attorney Hirsch inquired if a building coverage variance is needed as well? Mr. Neff clarified for the record that a variance for building coverage is not needed.

Chairman Battista asked Ms. Whalen how long she has lived in this house? Ms. Whalen stated that she has lived at 97 Garrison Drive for approximately one year, she indicated that she has since made no improvements to the home. Chairman Battista asked if there are other homes in this neighborhood that do not have an attached garage? Mr. Neff indicated that most of the homes in this development have a small, attached garage on the side of the dwelling.

Attorney Hirsch inquired about the house on lot 3, he asked how far back this house is setback from the common property line? Mr. Koseyan stated that he would calculate the exact measurement.

Mr. Lomangino noted that some of the homes located throughout Park Place and Park Place II have car ports and no garages.

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Chairman Battista and Mr. Neff stated that the Ordinance requires that all homes have a garage or carport.

In regard to Attorney Hirsch's previous question, Mr. Koseyan stated that the house on lot 3 has a setback of approximately 5 feet from the property line. Attorney Hirsch inquired about the setback on lot 1, Mr. Koseyan indicated that the house on lot 1 has a setback of approximately 9 feet from the property line. Mr. Neff stated that it appears to be much further than 9 feet.

According to Ms. Whalen's previous testimony, she purchased the home about a year ago without a garage. Chairman Battista asked Ms. Whalen if she intended to install a garage when she purchased the home? Ms. Whalen stated that when she moved into the home, she realized that she needed a garage, particularly for additional storage. Chairman Battista stated that typically a shed could be used to store various indoor and outdoor equipment and supplies in lieu of a garage.

Mr. Koseyan testified that when Ms. Whalen first moved in, she only had one car, however she now has a second work vehicle. He explained that the garage would allow her to park the vehicle in the garage which would be helpful in inclement weather, allowing her to access the home through the garage rather than from the front walkway. Overall, Ms. Whalen would like to get more use out of the property.

Mr. Kuzmin asked the Applicant to confirm that the garage will be used to store a vehicle as well as other home equipment, therefore a shed would not be feasible? Mr. Koseyan agreed that the garage is needed to store a vehicle. Mr. Kuzmin asked the Applicant if they have considered moving the proposed garage further back? Mr. Koseyan explained that due to the grading of the property, the proposed garage could not be placed anywhere else on the property. Ms. Hatami also inquired if there is room for this structure toward the back of the house. Ms. Hatami stated that this is a small property and therefore adding an attached garage would add a lot more structure to the lot than is permitted by the Ordinance.

Mr. Lomangino stated that it is his understanding that all houses in Tinton Falls must have at least one, one-car attached garage. He stated that since this home was purchased one year ago, a CCO inspection would have shown that this home did not meet the garage requirement. Mr. Neff stated that a CCO was issued at the time of the transfer of title.

Mr. Neff asked the Applicant to confirm that the proposed garage would not be used for any business storage as there was a call to the Borough inquiring if businesses were permitted in this zone? Mr. Koseyan stated that there will not be any business storage.

Attorney Hirsch asked if the house on lots one and three have a garage? Mr. Koseyan stated that those properties do not have a garage.

Ms. Hatami inquired if the Applicant were to propose a carport, would it require the same variances? Mr. Neff stated that a car port would still require lot coverage and setback variances, however, aesthetically it might look more open.

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Chairman Battista noted that given the history of the homes in the neighborhood, it does not appear that this property ever had a garage.

Attorney Hirsch stated that if this is a pre-existing nonconformity, it would not have been addressed during the CCO inspection.

Ms. DeMaio noted that on the MLS database this property is listed as "parking type undefined, type one-car garage."

Mr. Neff stated that based upon the original survey before the addition was done, it does appear that there could have been a garage. Ms. Hatami noted that if this was the case, the addition would have created more living space by removing the attached garage.

Mr. Neff explained that his main concern with this application is the setback of the garage, stating the structure is going to be very close to the neighbor's property.

Chairman Battista asked if any members of the audience have any questions at this time?

Hearing no questions, Chairman Battista asked if any members of the audience wish to make any statements in regard to this application?

Renee James, 93 Garrison Drive- Ms. James stated that she has obtained a copy of the final zoning approval to enclose the den that was issued in 2002. Mr. Neff stated that this is the permit he referenced earlier this evening, noting the permit does not make reference to a garage. He also noted for the Board that Ms. James' property is located on lot three, to the left side of the subject property.

The following exhibit is entered into the record:

J-1 Zoning Permit Files for 97 Garrison Drive, consisting of five (5) sheets. *(This exhibit was reviewed by the Board Members)*

Referencing the architectural plan for the den addition, Chairman Battista asked if the den addition had a new foundation? Mr. Neff stated that it appears to be a new concrete slab.

Ms. James stated that the Applicant testified that the garage was needed for safety purposes to enter the house during inclement weather, however there is no door into the house indicated on the proposed plan.

Attorney Hirsch asked the Applicant where the current doors to enter the house are, and Ms. Whalen indicated that there is a front door and a backdoor into the house.

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Ms. James voiced her concerns with the proposed garage only being 4.5 feet from the property line, as well as a possible fire hazard given the proposed structure is very close to her home. Ms. James provided photographs taken from her property to show the close proximity.

The following exhibits are entered into the record:

- J-2 Photo taken by Renee James from bedroom window**
- J-3 Photo taken by Renee James of driveway**
- J-4 Photo taken by Renee James showing proximity of window to proposed garage**

Ms. James explained how these photos depict how close the proposed garage would be to her property. She discussed how her property does not have a garage, and she also would not be able to construct one without variance approval. Ms. James voiced her concerns with the proposed lot coverage of 43.8%. She indicated that the proposed garage is a potential fire hazard, and she is concerned for the safety of her family.

Ms. Hatami noted that the Applicant previously testified that the number of feet from the edge of Ms. James' house and the property line is approximately 5 feet, she asked Ms. James if she agrees with that number. Ms. James stated that her house is not 5 feet from the property line it is 9.5 feet from the property line.

Referencing exhibit J-3, Chairman Battista asked Ms. James if she knows the distance of the edge of Ms. Whalen's driveway to the property line? Ms. James stated that she did not measure the distance of the driveway to her property line. Mr. Neff indicated that the distance of the Applicant's driveway to the property line is 4.5 feet.

In reference to exhibit J-3, Mr. Lomangino inquired if the proposed garage would be in the same location as the car in the photograph? Mr. Neff stated that according to the submitted plan, that is the location of the proposed garage.

Ms. Hatami inquired if the properties located across the street are similar in nature to Ms. James' and Ms. Whalen's properties? Ms. James stated that although as she does not have measurements of those properties, it is her understanding that the homes are not nearly as close as her and her neighbors' properties.

Mr. Kuzmin asked if the homes across the streets have a garage, and Ms. James stated that they do. He asked Ms. James how long she has lived in her house, and if she knows if her property ever contained a garage? Ms. James said that there was a garage at one time, but not since she has lived there.

Ms. Hatami asked if there are any drains or drainage systems between lots 2 & 3? Ms. James explained that there is one drain located in between the houses as shown on exhibit J-2. Ms. Hatami questioned whose drain that is, and Ms. James explained that she does not know whose property the drain is on.

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Beth Desmond, 108 Garrison Drive- Ms. Desmond voiced her overall concern with the precedent allowing this garage would set. She explained that there are numerous homes on this street that do not have a garage and would therefore need a variance if they wanted to construct one. She also voiced concerns with the proposed lot coverage, stating that there is an issue with drainage on that side of Garrison Drive. She explained that the drainage causes water runoff down into the street and stated that it becomes a safety hazard in the winter when it freezes.

The following exhibit is entered into the record:

D-1 Photo taken by Beth Desmond on 10/7/2021 showing discoloration of curb from water runoff.

Ms. Desmond discussed previous testimony given by the Applicant in which she testified that the proposed garage would allow her to access the home from the garage during inclement weather. However, she noted that there is no door shown on the proposed plan creating an entry way into the dwelling from the garage. Mr. Neff confirmed that there is no connecting door shown on the provided architectural plans.

Attorney Hirsch asked Ms. Desmond how long she has lived at 108 Garrison Drive, and she stated that she has lived there 21 years. He asked if she knows if there was ever a garage at 97 Garrison Drive? Ms. Desmond confirmed that there once was a garage on this property.

Mr. Koseyan discussed possible ways to mitigate some of the neighbor's concerns. He stated that the Applicant would be more than willing to remove the proposed window on the garage and install fire resistant board to add extra protection to Ms. James' home. The Applicant could also install various barriers such as a fence or shrubs as a buffer to the neighboring homes.

In regard to exhibit J-4, Mr. Koseyan noted that Ms. James has an air conditioning unit within the setback that is not permitted. Mr. Neff questioned why Mr. Koseyan believes the air conditioning unit is not permitted, he explained that the Tinton Falls' Ordinance does not speak to setbacks for air compressors.

To clarify previous testimony, Mr. Koseyan explained that the Applicants would like to create a door from the garage into the dwelling, however it would require the kitchen to be reconfigured as well. He stated that the Applicants do intend to reconfigure the kitchen at some point to allow for a door into the garage. Attorney Hirsch noted that the Applicant's testified that the garage would allow them to safely enter the house, however the plans submitted to the Board do not reflect an entryway.

In regard to the issue with drainage, Ms. Whalen stated that they installed underground drains from the rear of the property to the curb to try and mitigate the runoff. Mr. Neff confirmed that there are issues with drainage in this general area.

Ms. Hatami inquired about the curtain drain the Applicant installed and how it works? Ms. Whalen explained that it drains the water towards the curb. Referring to exhibit J-2, Ms. Whalen

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stated that the drain shown in the photo is on her property that was installed when the home was built.

Referencing exhibit J-4, Ms. DeMaio noted that there is a shed on the property, she inquired if the shed was included on any of the plans distributed to the Board? Mr. Koseyan stated that the 8x6 shed will be removed if the garage were to be approved. Ms. DeMaio asked what is currently being stored in the shed, and the Applicant explained that it stores a snowblower, miscellaneous tools, shovels, toolbox, etc.

Mr. Kuzmin asked if the concrete slab the shed currently sits on will be removed as well and the Applicant confirmed that it would. Mr. Neff clarified that if the shed and slab were to be removed, it would reduce the lot coverage.

Ms. Hatami asked Mr. Neff if he could speak to the homes across the street and the distance in between the properties? Mr. Neff explained that without seeing any property surveys, he cannot provide any definitive numbers.

Beth Desmond, 108 Garrison Drive- Ms. Desmond asked for some clarification as to how the curtain drain works, and Ms. Whalen stated that it drains water and runoff toward the curb and the street.

Renee James, 93 Garrison Drive- Ms. James stated that the proposed garage is an extreme request that would ultimately impact her property as well. She stated that she is concerned about her property value as the lots are already small. She would like the Board to consider the close proximity of the proposed structure to her property.

Mr. Koseyan explained that Ms. Whalen would like to get more utility out of the home as well as the concern of entering and exiting the home. He stated that Ms. Whalen was unaware that this house previously had a garage when she purchased the property.

Ms. Hatami asked Mr. Neff if the existing asphalt driveway is where the proposed garage would be built? Mr. Neff stated that the width of the garage is the same as the width of the driveway, the garage would be located further in the back corner of the house.

Attorney Hirsch asked if the Applicant meets the permitted building coverage and Mr. Neff confirmed that they are under the 25% that is permitted by Ordinance. In order to comply with the permitted lot coverage, the Applicant would have to remove approximately 435 square feet of the concrete patio.

Ms. Hatami inquired if the Applicant were to shift the proposed garage toward the front of the house on the asphalt driveway, would it reduce lot coverage? Mr. Neff stated that this would cut down on the proposed lot coverage, however the setback would still be an issue.

Mr. Neff explained that from an architectural standpoint, the proposed garage should include a window to prevent it from being a blank wall for aesthetic purposes.

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Renee James, 93 Garrison Drive- Ms. James stated that her upmost concern is the setback of the garage to the property line.

Ms. Hatami inquired if there are any setback requirements for a fence, and Mr. Neff noted that a fence can be installed to the property line.

Chairman Battista asked if any members of the audience have any further questions? Hearing none, he asked for a motion to close the public discussion.

Mr. Lomangino offered a motion to close the public discussion, the motion was seconded by Mr. Kuzmin. All present voted in favor.

Chairman Battista asked if any Board Members have any further questions or comments?

Mr. Kuzmin stated that the concerns presented by the neighboring residents should be considered by the Board. However, he noted that this house did previously have a garage and explained that they do increase property values. He stated that the Applicant provided legitimate testimony as to why the garage is needed. It is his opinion that this proposal is not overly burdensome and would be in favor of approving.

In response to Mr. Kuzmin's statement that garages increase property values, Chairman Battista noted that it is the neighbor who is concerned about her property value if the garage is approved and constructed.

Chairman Battista noted that this home was purchased knowingly without a garage, he added that the approval of this garage could potentially set precedent for neighboring properties. He stated that there are various ways to mitigate health and safety concerns without constructing a garage.

Mr. Lomangino noted for the record that every case before the Zoning Board stands on its own facts and merits, therefore, nothing should be considered as precedent setting.

Ms. Hatami stated that the Applicant has not presented adequate evidence that there is a hardship associated with this variance. Ms. DeMaio echoed the comments of Ms. Hatami and agrees that this could possibly decrease property values to neighboring homes.

Mr. McKinley stated that he understands the need for the garage, however the 4.5-foot setback from the garage to the property line is very tight.

Chairman Battista asked the Board for a motion.

Mr. Kuzmin offered a motion to approve BA2021-05, the motion was seconded by Mr. Lomangino.

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ROLL CALL

AYES: Mr. Kuzmin, Mr. Lomangino

NAYES: Chairman Battista, Mr. McKinley, Ms. Hatami, Ms. DeMaio

ABSENT: Vice-Chairman Palmieri, Mr. Slazyk, Mr. Porzio

INELIGIBLE: None

Attorney Hirsch stated that the motion has failed, is there another motion?

Ms. DeMaio offered a motion to deny BA2021-05, the motion was seconded by Ms. Hatami.

ROLL CALL

AYES: Ms. DeMaio, Ms. Hatami, Chairman Battista, Mr. McKinley

NAYES: Mr. Lomangino, Mr. Kuzmin

ABSENT: Vice-Chairman Palmieri, Mr. Slazyk, Mr. Porzio

INELIGIBLE: None

Attorney Hirsch stated the motion to deny is carried.

MOTION TO ADJOURN

Chairman Battista asked for a motion to adjourn.

Ms. Hatami offered a motion to adjourn, seconded by Mr. Lomangino.

All in Favor: AYE

Time: 9:20 PM

Respectfully submitted,


Trish Sena
Zoning Board Secretary

APPROVED AT A BOARD OF ADJUSTMENT MEETING ON: January 6, 2022