

**BOROUGH OF TINTON FALLS  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
May 5, 2022**

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.*

Mr. Lomangino then led the meeting in a salute to the flag.

Ms. Sena took roll call.

**Present:** Chairman Battista, Vice-Chairman Palmieri, William Kuzmin, Charles Lomangino, Marc McKinley, Emily DeMaio, Scott Provines

**Absent:** Steven Porzio, Sheila Hatami

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

**MINUTES-**

Chairman Battista indicated that the minutes of the April 7, 2022, meeting have been previously distributed via email for the Board Members to review.

*Mr. Kuzmin offered a motion to approve the minutes of the April 7, 2022, meeting. The motion was seconded by Mr. Lomangino*

**ROLL CALL**

AYES: Mr. Kuzmin, Mr. Lomangino, Mr. McKinley, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. Porzio, Ms. Hatami

INELIGIBLE: Chairman Battista, Vice-Chairman Palmieri

**RESOLUTIONS-**

**BA2021-14 Resolution in the Matter of Jamie Luna Davila and Alexis Morales, 112 Clinton Place**

Chairman Battista advised that the proposed Resolution in this matter has been previously distributed to the Board Members prior to tonight's meeting. The Board previously approved this application on April 7, 2022.

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Chairman Battista asked if any Board Members have any comment on said Resolution?

*Mr. Lomangino offered a motion to memorialize Resolution BA2021-14, the motion was seconded by Mr. Kuzmin*

**ROLL CALL**

AYES: Mr. Lomangino, Mr. Kuzmin, Mr. McKinley, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. Porzio, Ms. Hatami

INELIGIBLE: Chairman Battista, Vice-Chairman Palmieri

**BA2022-04 Resolution in the Matter of Leonard and Stefanie Hoffman, 14 Daniel Court**

Chairman Battista advised that the proposed Resolution in this matter has been previously distributed to the Board Members prior to tonight's meeting. The Board previously approved this application on April 7, 2022.

Chairman Battista asked if any Board Members have any comment on said Resolution?

*Mr. McKinley offered a motion to memorialize Resolution BA2022-04, the motion was seconded by Mr. Lomangino*

**ROLL CALL**

AYES: Mr. McKinley, Mr. Lomangino, Mr. Kuzmin, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Mr. Porzio, Ms. Hatami

INELIGIBLE: Chairman Battista, Vice-Chairman Palmieri

**NEW BUSINESS-**

**BA2021-08**

**Ramon Rubio & Valeria Nieto**

**1145 Hope Road**

**Block 117, Lot 14**

**Application for Bulk Variances**

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

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***Ramon Rubio, 1145 Hope Road- Applicant***

***Valeria Nieto, 1145 Hope Road- Applicant***

Ms. Nieto testified that they purchased the home in 2020 and explained how this piece of property would be the perfect place to raise their family. However, when they purchased the home, they were unaware that the structures located in the rear yard were constructed without proper permits or approvals. She further explained that she has a property survey from 1986 which shows these structures located on the property at that time. Because of the various zoning violations on the property, they were unable to obtain the CCO from the Borough, however, they were able to close without it. Ms. Nieto stated that the Borough advised them that if the bank lets them close without the CCO, they cannot occupy the premises until the violations have been abated and the property passes inspection. She noted that it was during the CCO inspection that the inspector notified them that the structures were built without permits. Ms. Nieto stated that they are here this evening seeking approval to keep the existing structures on the property.

Chairman Battista inquired about the process in which the home was purchased. He asked if they were made aware of the violations at any point in the purchase process? Ms. Nieto stated that they were unaware of the violations until after they closed on the property.

Mr. Neff stated that the Applicant indicated that the inspector who performed the CCO inspection notified them about the zoning violations on the property, he asked if that was before the CO process and closing on the house? Ms. Nieto explained that they closed on the property before obtaining a CCO from the Borough. It was after they closed on the property that a Borough inspector came to the house and outlined the various violations.

Attorney Hirsch clarified that banks typically require the CO in order to close on the mortgage. He asked if they closed on the property without a CO, and Ms. Nieto confirmed that they did.

Ms. DeMaio stated that as a realtor she has seen people close on properties without a CO, however, typically the bank would require the buyers to sign an Affidavit, she asked the Applicant if they had to sign anything like that in order to close? Ms. Nieto stated that she believes they did have to sign a document stating that they can close on the loan, however they cannot occupy the premises until a CO is obtained.

Attorney Hirsch stated that the bank allowed the Applicant to close on the loan and transfer title on the property, however they had 30 days to bring the property into compliance in order to receive a Certificate of Occupancy from the Borough. Attorney Hirsch inquired about what the Applicants did to the property within that 30-day period? Ms. Nieto testified that it was their understanding that the 30-day period was to fix the various items outlined by the inspector within the house to bring it up to code. It was after this 30-day period that the inspector advised them that the accessory structures were constructed without permits or approvals. She explained that the inspector was at the property on three different occasions. During his first inspection he advised them that the smoke alarms and various other items needed to be replaced or fixed. At the third visit, he advised them that all items inside the house have been fixed and addressed, however, it was then that he told them about the zoning violations.

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Mr. Palmieri asked for further information as to how the Applicant was able to close on the mortgage and obtain the title without a Certificate of Occupancy from the Borough. He asked if the inspector only noticed the structures during his third visit, and the Applicant confirmed that to be true.

Mr. Neff stated that although he does not perform the CCO inspections, he explained that they typically focus on health and safety hazards for the CO. It usually takes quite a bit of research through old zoning files to determine if something was done without permits or approvals. However, the Borough never issued the CO for this property.

Mr. Palmieri noted that there are possible discrepancies in the timeline of events, he suggested that the Board hear from the Borough's Code Enforcement and Zoning Department for further clarification.

Attorney Hirsch inquired about the 1986 property survey that was referenced previously this evening, Mrs. Nieto stated that the survey was given to them by the sellers.

Chairman Battista clarified for the record that the 1986 property survey shows the subject structures on it, therefore these buildings are quite dated.

Chairman Battista asked if the Applicants purchased this particular property because of the existing structures in the yard? Ms. Nieto stated that that is not necessarily true, however, they do like them and have future potential plans to refurbish them. Ultimately, they purchased this property because of its location and the land.

The 1986 survey was circulated to the Board Members for their review.

Attorney Hirsch asked the Applicant to describe the nature of the structures that are existing on the property. Mr. Rubio stated that there are two existing sheds and there is also a structure that is approximately 1,000 square feet that sits on a foundation and is used for storage. Ms. Nieto explained that their plan is to eventually convert this structure into a pool cabana. She noted that they are looking to keep these structures because they were well built.

Mr. Neff noted that the original survey suggests that the structures may have been used as chicken coops at one time. He further explained that the larger structure just discussed was labeled as a barn.

Vice-Chairman Palmieri asked for the dimensions of the structures, and it was determined that they are listed on the property survey.

Chairman Battista indicated that these structures do not look like chicken coops, as they appear to look like a house. He asked the Applicant if they have any knowledge of people occupying these structures and living in them? Ms. Nieto stated that she believes the structures housed different animals at one time as they had to be thoroughly cleaned.

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Attorney Hirsch asked the Applicants to describe what is located on adjoining Lot 13? Ms. Nieto stated that there is another single-family residence located on Lot 13. Attorney Hirsch then inquired about Lot 15, and Mr. Rubio confirmed that it is a vacant lot. Mr. Neff also confirmed that there is nothing located on that particular lot however, the next developed property is a radio tower.

Attorney Hirsch explained that without any historical knowledge, it is difficult to determine how long the structure has been on the property. He further explained that if structures are built when they are not in violation of the Ordinance, they potentially can become pre-existing non-conformities if there is a change made to the Ordinance. If a resident has a pre-existing non-conformity on their property, they would be permitted to keep it as it was once a legal structure. Attorney Hirsch indicated that there has been no evidence submitted to the Board this evening that establishes that they were once permitted structures.

Mr. Kuzmin asked the Applicant what their plans are for the smaller structures on the property? Ms. Nieto stated that they do not have any plans for the smaller structures at this time.

Attorney Hirsch explained that Mr. Neff's report outlines the various variances that are required. The Ordinance permits two accessory buildings on a lot, whereas four accessory structures currently exist. A variance is also needed for the total area of accessory buildings on the lot.

Mr. Neff indicated that a variance is also required for the elevated deck that was constructed without permits. He explained that this structure is not shown on the 1986 survey, therefore, it must have been constructed sometime after. The Ordinance states that any deck or patio shall meet the required yard setbacks. A 25-foot side yard setback is required for the elevated wood deck, whereas 5.2 feet exists.

Chairman Battista explained that the Board often hears applications in which the work has already been done without permits and approvals. However, with this Application he would like to have a better understanding of what occurred with the Borough's inspections. He explained that as per the provided testimony, it seems as though the Applicants were unaware of the zoning violations on the property before they purchased the home.

Attorney Hirsch inquired if the Applicants needed a property survey to close on the property? Ms. Nieto explained that they closed on the property in October of 2020, and they ordered their own property survey in January of 2021. Attorney Hirsch again asked if the bank required a property survey to close on the mortgage? Ms. Nieto does not recall if the bank required a survey, however, they did have one done shortly after closing on the property.

Attorney Hirsch stated that the Board has indicated that they would like to get a better understanding of the timeline of events from the Borough before making any decision. He suggested that the Applicants also obtain a copy of the title search that was done when they purchased the property.

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Mr. Lomangino stated that he is surprised that the Applicants were able to close on the property without obtaining a survey.

Chairman Battista explained that this is a particularly special case, therefore the Board needs more information in order to make any decision. He suggested that the Applicant also gather more information that could potentially help clarify some of the confusion.

Vice-Chairman Palmieri inquired if these structures would have been permitted in 1986? Mr. Neff explained that he does not have a record of what the Ordinance would have been in 1986.

Mr. Neff explained that he conducted an inspection on this property about a year ago. He asked the Applicant to confirm that he is not running a construction business out of this property? Ms. Nieto explained that her husband, Mr. Rubio, owns his own construction company. She further explained that his equipment was there simply to clean up the property after it had been purchased. He has his own construction yard in Long Branch; therefore, he is not running a construction business out of this property.

Mr. Neff clarified that the photos included in his report were taken by him when he conducted his inspection of the property last July 2021. Attorney Hirsch suggested that the Applicants provide the Board with current photographs that depict the property as it exists today.

Chairman Battista advised that the Board will now open the meeting to public questions. He explained that this is the time in which an interested member of the public may ask questions relating to the Applicant's testimony. This is not the time to give comments or make statements.

***Christopher Monether, 27 Alpine Trail-*** Mr. Monether stated that he recalls meeting the Applicant when a survey was being performed and flags were being placed to mark the property lines. Therefore, shouldn't there be a more recent survey than the one from 1986? It was explained that the Applicant previously testified that they had a survey done in January of 2021.

***Pat Zilly, 15 Alpine Trail-*** Ms. Zilly inquired if an appraisal of the property was conducted, and if so, was it an as-is purchase? Ms. Nieto indicated that the property was being sold as-is. Ms. Zilly stated that the appraisal would have to be "as-is" in order to not get the CCO. Attorney Hirsch and several Board Members stated that that is incorrect.

***Denise Catalano, 11 Alpine Trail-*** Ms. Catalano inquired about the state of the structures and what they looked like when the Applicant purchased the property? Ms. Nieto explained that Mr. Neff's photos depict what the structures looked like when they purchased the home. They have not done any work to them; they have simply just cleaned them up. Ms. Catalano asked if there was barn on the property at the time of purchase? Ms. Nieto explained that they assume the larger structure was used as a barn at one point in time. Mr. Neff clarified that the 1986 survey labels the larger structure as a barn.

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Chairman Battista asked Ms. Sena for the next available hearing date. Ms. Sena indicated that the next available meeting is Thursday, July 7, 2022, at 7:30 PM.

Chairman Battista advised the Applicant's that this matter can be carried to the July 7, 2022, meeting. He further explained to the interested members of the public that this matter will be carried without any further notice or publication to the July 7, 2022, meeting at 7:30 P.M.

**BA2022-03**

**Joseph & Joan Todaro  
44 Green Meadow Drive  
Block 33, Lot 25  
Application for Bulk Variances**

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.

*Vice-Chairman Palmieri offered a motion to accept service, the motion was seconded by Mr. Lomangino. All present voted in favor.*

Attorney Hirsch swore in the following witness

***Joseph Todaro, 44 Green Meadow Drive- Applicant***

Mr. Todaro explained that he is here this evening seeking approval to install a fence on his property located at 44 Green Meadow Drive. His dwelling is located on the corner of Hance Avenue and Green Meadow Drive. He testified that the homes in the surrounding area on Hance Avenue all contain a 6-foot high cedar fence. Mr. Todaro bought this property three years ago and he now wishes to install a 6-foot-high solid cedar fence to privatize his property. He explained that when he initially applied for the zoning permit, he was denied because his property is a corner lot. The Borough advised that because his property contains two front yards, only a four-foot 50% open fence would be permitted. When he purchased the home, he explained he had plans on installing a privacy fence and was unaware of the Ordinance limitations. He explained that a 50% open 4-foot-high fence would provide little to no privacy and is not conducive to having a dog. He further testified that as a corner lot without a privacy fence, the headlights from the passing cars reflect into his home.

Mr. Todaro advised the Board that he provided photographs of his property with his application submission for their review. Mr. Todaro explained that he is in the landscaping business and intends on also adding landscaping as a natural buffer. Attorney Hirsch inquired about the proposed landscaping and suggested that it would provide a vegetive buffer from car headlights, etc. Mr. Todaro argued that it would take an immense amount of landscaping to provide enough of a privacy buffer with a 4-foot 50% open fence.

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Vice-Chairman Palmieri noted that he is familiar with the property and understands that the neighboring homes have a 6-foot solid cedar fence; therefore, it would be consistent with the homes in the area.

Mr. Todaro explained that several properties on Hance Avenue have berms, some have a fence placed on top of the berm. He further explained that his property never contained a fence. His proposed fence would be intermingled through staggered pine trees. The proposed landscaping is intended to be a visual buffer from Hance Avenue.

Chairman Battista indicated that he is familiar with the homes in this area and stated that the character of the neighborhood seems to mirror six-foot fencing in front yards.

Mr. Neff clarified that in Tinton Falls, any property line that fronts on two streets is considered a front yard. Mr. Todaro's property has three front yards. Mr. Kuzmin suggested that this Ordinance requirement be rereviewed.

Mr. Lomangino voiced his concerns with installing 6-foot fencing that aesthetically looks like a cement wall. Chairman Battista clarified that the Applicant is not seeking approval for a 6-foot solid vinyl fence, rather a 6-foot cedar fence that fits the character of the neighborhood. Mr. Todaro testified that the landscaping he is proposing will provide an aesthetic buffer as well.

Vice-Chairman Palmieri suggested that the Resolution shall indicate a 6-foot cedar fence, prohibiting a 6-foot vinyl fence. Chairman Battista asked the Applicant if he would be amenable to this condition? Mr. Todaro confirmed that he absolutely does not want to install a vinyl fence, the proposed material is cedar. Further, the fence will not look out of character from the homes in the neighborhood.

Attorney Hirsch asked if all the homes on Green Meadow Drive have 6-foot solid fences in the front yard? Mr. Todaro confirmed that they do. A brief discussion ensued regarding the neighboring homes in the area. Attorney Hirsch explained that the Board must determine if this property faces a unique situation in which a variance should be granted to permit a 6-foot solid fence in the front yard.

Mr. Neff asked Mr. Todaro to clarify the landscaping he is proposing for his property? He explained that the Ordinance does require a landscape buffer in front of solid fences. Mr. Todaro testified that the fence will be located 30 feet from the curb with pine trees acting as a buffer in the rear yard facing Hance Avenue. He will also provide underplanting as well as in the sight-triangle.

Mr. Neff clarified for the record that the proposed fence will be 8 feet from the property line along Hance Avenue, and 10 feet along Green Meadow Drive.

Mr. Kuzmin inquired if the style of fence will match the surrounding properties? Mr. Todaro explained that his neighbor's fence to the North is solid fence, the neighboring property to the south is board on board fence. Mr. Todaro is proposing solid fencing.



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Chairman Battista asked the Board if they had any further questions? Seeing none, he asked if any members of the public have any questions of the Applicant? Seeing none, he asked if any members of the public wish to make a comment?

***Mitch Kulberg, 21 Cedar Place-*** Mr. Kulberg stated that he is here this evening to observe the proceedings. He explained that what Mr. Todaro has requested seems perfectly reasonable and in character with the surrounding properties.

Hearing no further comments, Chairman Battista asked for a motion to close the Public Discussion.

*Mr. Kuzmin offered a motion to close the public discussion, the motion was seconded by Vice-Chairman Palmieri. All present voted in favor.*

Attorney Hirsch discussed the conditions that will be included in the Resolution. Mr. Lomangino suggested that Mr. Neff work with the Applicant to ensure that the proposed landscaping is sufficient. Attorney Hirsch suggested that the Applicant submit a landscape plan as a condition of approval. Vice-Chairman Palmieri stated that the Resolution shall include approval for a 6-foot solid cedar fence, not vinyl.

Chairman Battista asked for a motion.

*Vice-Chairman Palmieri offered a motion to approve BA2022-03, the motion was seconded by Mr. Lomangino.*

**ROLL CALL**

AYES: Vice-Chairman Palmieri, Mr. Lomangino, Chairman Battista, Mr. Kuzmin, Mr. McKinley, Ms. DeMaio, Mr. Provines.

NAYES: None

ABSENT: Mr. Porzio, Ms. Hatami

INELIGIBLE: None

**MOTION TO ADJOURN**

Chairman Battista asked for a motion to adjourn.

*Mr. Kuzmin offered a motion to adjourn, seconded by Mr. Lomangino.*

All in Favor: AYE

Time: 9:00 P.M.

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Respectfully submitted,

  
Trish Sena  
Zoning Board Secretary

APPROVED AT A BOARD OF ADJUSTMENT MEETING ON: June 2, 2022