

**BOROUGH OF TINTON FALLS  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
July 7, 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.*

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

Ms. Acken took roll call.

**Present:** Chairman Battista, Vice-Chairman Palmieri, William Kuzmin, Steven Porzio, Marc McKinley, Sheila Hatami, Emily DeMaio, Scott Provines

**Absent:** Charles Lomangino

**Also Present:** *Ms. Trish Sena, Board Secretary  
Ms. Regina Acken, Board Secretary Asst  
Cary Costa, Construction Official  
Mr. Thomas Neff, Board Engineer  
Mr. Thomas Hirsch Esq., Board Attorney*

**MINUTES**

Chairman Battista indicated that the minutes of the June 2, 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 June 2, 2022, meeting. The motion was seconded by Vice-Chairman Palmieri.*

**ROLL CALL**

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

NAYES: None

ABSENT: Mr. Lomangino

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**RESOLUTIONS**

**BA2021-01 5171 Asbury Avenue, LLC, 5171 Asbury Avenue**

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 June 2, 2022.

Chairman Battista asked if any Board Members have any comment regarding the Resolution.

*Vice-Chairman Palmieri offered a motion to memorialize Resolution BA2021-01, the motion was seconded by Mr. Kuzmin.*

**ROLL CALL**

AYES: Vice-Chairman Palmieri, Mr. Kuzmin, Chairman Battista, Mr. McKinley

NAYES: None

ABSENT: Mr. Lomangino

INELIGIBLE: Mr. Porzio, Ms. Hatami, Ms. DeMaio, Mr. Provines

**CONTINUED BUSINESS (Carried from May 5, 2022)**

**BA2021-08**

**Ramon Rubio and Valeria Nieto**

**1145 Hope Road**

**Block 117 Lot 14**

**Application for Bulk Variance**

Attorney Hirsch stated for the record that he has reviewed the proofs and affidavit of service from the Applicant at the May 5, 2022 Hearing. He stated that all is in order as to form and that the Board has jurisdiction to hear this matter.

Vice-Chairman Palmieri questioned which Board Members are eligible to vote. It was noted that Ms. Hatami signed an affidavit stating that she listened to the May 5, 2022 meeting and therefore is eligible to vote. Mr. Porzio acknowledged that he is not able to vote on this matter.

Chairman Battista explained that the Board Professionals prepared a report based upon the discussions from the May 5, 2022 meeting. Attorney Hirsch provided Ms. Nieto with Mr. Neff's report. He reminded the Applicant that she is under oath as she was in the initial hearing. Chairman Battista asked if the Applicant would like to begin with any comments? Ms. Nieto declined.

Chairman Battista asked Mr. Neff to summarize his report. Mr. Neff referred to the survey and aerial photos from 1986 which showed two chicken coops which measured at 8 feet x 20 feet, and a barn structure measuring 18 feet by 40 feet. Mr. Neff then referenced a survey from 2021 along with an aerial image from spring 2022 which shows that the two chicken coops measured

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14 feet by 30 feet and 12 feet by 24 feet. He noted that a shed and deck were added and that the barn structure increased by 18 feet in length. He concluded that the prior owners made these changes without obtaining a Certificate of Occupancy. As the new owners of the property, the Applicant requested the CCO on September 30, 2020. The Applicant's realtor signed a certification that the Applicant is aware of the need to meet the zoning requirements before the CCO can be given. Mr. Neff testified that on October 1, 2020, the Borough received a Letter of Intent, in which the Applicant's attorney states that the Applicant is aware that they cannot occupy the property until it is brought up to code and that any work that is required will be completed within 30 days. Mr. Neff said that the Borough responded on October 5, 2020 acknowledging receipt of the letter and reiterated the need to comply. Mr. Neff stated that though there were no inspections done at that time due to the Letter of Intent being submitted. Mr. Neff stated that the closing was on October 27, 2020. The first inspection was on December 9, 2020 when the CCO was denied.

Attorney Hirsch swore in the following witness:

**Cary Costa, Borough of Tinton Falls Code Enforcement Officer, Fire Marshall and Head of the Housing and CCO Department.**

Mr. Costa attested that the realtor for the former owners, submitted an application for a CCO on September 28, 2020. Mr. Costa refers to the letter received on October 1, 2020 from the Applicant in which the Applicant acknowledged that they are aware of the required zoning concerns and that they would not occupy the property until they obtain a CCO. Mr. Costa states that the Borough's inspection on December 9, 2020 noted the deck, the fence and the shed as well as interior infractions. Upon submission of the inspector's report, the Borough became aware of the non-compliant structures.

Chairman Battista asked if the same realtor represented the seller as well as the Applicant? Ms. Nieto answered yes. Chairman Battista asked the Applicant if their realtor told them that there were some concerns with the property as far as obtaining and CCO? Ms. Nieto said that the only concerns pointed out by the realtor were for the inside of the house.

Attorney Hirsch asked Ms. Nieto if she read the contract/application in which the realtor agreed to the following statement: "I agree to advise the homeowner that all additions and accessory structures on the property must meet the zoning requirements of Tinton Falls". Ms. Nieto said no. It was Ms. Nieto's impression that to the realtor's knowledge there were no issues with the structures.

Attorney Hirsch asked the Applicant when they were initially informed that relief for the structures was needed? Ms. Nieto responded that although the Borough inspector visited three times, they were only informed during the third visit. Attorney Hirsch replied that regardless of when she was informed, relief is still needed.

Chairman Battista asked if the Board had any additional comments? Vice-Chairman Palmieri asked for options on how to resolve this concern, to which Mr. Neff provided two options. The

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first was to grant the requested variances. The second was to vote against the variances and have the structures removed. Chairman Battista added that the Board could grant some but not all the variances.

Ms. Hatami asked Mr. Neff if the exact date of when the ordinances were enacted is available to which Mr. Neff answered in the negative. Mr. Kuzmin commented that the Board doesn't have the burden of proof of establishing that timeline. Attorney Hirsch contributed that in presenting a pre-existing non-conforming right, the Applicant has the burden of establishing the history of the legality of the structures at a given time. However, the Borough records are not definitive on the timeline, so the default position is that there is no evidence that the structures were ever legal. He stated that the structures were expanded which would have required permits and variances and since there is no proof that occurred, they are not legal. Attorney Hirsch said that the timeline should have been obtained when the property was purchased. He stated that the public may be able to shed some light on the timeline.

Vice-Chairman Palmieri asked that if the structures were the same now as they were in 1986, would that be considered a pre-existing non-conformity? Attorney Hirsch explained that we still wouldn't know if it was legal in 1986, so therefore, no it wouldn't.

Ms. Nieto inquired as to how it was determined that an expansion occurred to the structures? Mr. Neff referenced the aerial photos, tax records as well as from viewing the survey which shows the scale, size and location. Mr. Costa clarified that the only record for a CCO was in 2009 and at that time, there was no inspection of the property for zoning violations because it wasn't being sold. He stated CCO inspections vary by town to town and that Tinton Falls is very stringent.

Mr. Kuzmin asked Ms. Nieto which one of the structures would she most like to keep if only given that option? She responded that she would keep the largest structure and added that she intends to install a pool and use the structure as a cabana. Ms. Nieto said that financially it would be impossible for them to remove the structure and then eventually build a new one to serve as a cabana. Ms. Hatami asked the Applicant to describe the foundations of the three structures. Mr. Rubio responded that the largest structure has cinder block footing. The smaller structures are elevated on cinder blocks.

Mr. Rubio acknowledged that the larger building has plumbing and electricity and stated that if granted the variance to keep the larger building, they will apply for the plumbing and electrical permits. Attorney Hirsch reminded the Board that regardless of the existence/non-existence of existing permits, the issue of the legality of the buildings stands alone.

Chairman Battista confirmed with the Applicant that they would be satisfied keeping only the largest of the three structures. Ms. Nieto confirmed that she would be. Ms. Hatami asked if the deck is still present, to which Ms. Nieto answered no. Ms. Nieto said that she takes responsibility for having a lack of knowledge and that had she the financial means, she would have hired a lawyer for the buying process.

Chairman Battista asked the public if they have any questions for the Applicant?

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**Catherine Perez, 1137 Hope Road**

Ms. Perez stated that the structures have front doors and appears to be a family property and not a cabana. Ms. Nieto responded that they have not made it cabana yet and that the previous owners put the doors on the structures. She reiterated that no one is living in it and that it is only used for storage.

Ms. Perez asked if the Applicant is currently using the property for business purposes as she noted that they are many construction-like vehicles on the property. Ms. Nieto responded that Mr. Rubio owns a construction company with a yard in Long Branch and that he does bring home his pick-up truck and extra materials at times to work on the property. However, she claims that the property has been cleared of those materials. Attorney Hirsch inquired if there are any extra trucks or materials. Ms. Nieto answered no.

**Denise Catalano, 11 Alpine Trail**

Ms. Catalano referenced a photo dated July 6, 2021, from page 8 of Mr. Neff's letter which showed construction equipment. Ms. Nieto explained that it took months to clean up the property and that equipment was present at that time. Ms. Catalano asked if the trailer that is present will always be on the premises. Ms. Nieto answered that it will be there only when they are working on the premises. Ms. Catalano asked if anyone is living in the house. Ms. Nieto said that her family is. Ms. Catalano pointed out that they do not have a permit to live there yet. Mr. Neff agreed that they are not currently allowed to live there. Vice-Chairman Palmieri asked if the Applicant is permitted to stay in the home during this application process? Mr. Costa answered that the Borough would put that concern in abeyance until the current issue before the Board is resolved. Attorney Hirsch agreed.

**Jerry Spumberg, 11 Alpine Trail**

Referencing Mr. Rubio's employment as a contractor, Mr. Spumberg asked Mr. Rubio if he is familiar with getting permits. Mr. Rubio responded that his employer handles all the permits, so he is not.

Chairman Battista asked the public if there were any statements?

Attorney Hirsch swore in the following witness:

**Catherine Perez, 1137 Hope Road**

Ms. Perez asked what the repercussions are for the Applicant if it was determined that they are using the property as a multi-family residence or for a construction business? Attorney Hirsch stated that the Board will not comment on hypothetical situations. Ms. Perez commented that she moved into the area in 1995 and that she doesn't want to live next to a construction zone or multi-family property.

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Vice-Chairman Palmieri inquired as to the distance of Ms. Perez's property to the subject property as to which she replied 600 feet and that her home is behind the Applicant's. Mr. Kuzmin asked if the smaller structures were chicken coops when she moved in, to which she said yes. She stated that she would be content with the three structures remaining if they are being used for agricultural purposes. Upon inquiry from Vice-Chairman Palmieri, Ms. Perez offered that she owns two properties which she rents out and does not reside in either. She purchased 48 Alpine Trail in 1995 and 1137 Hope Road in 2012.

Ms. Nieto referred to Ms. Perez's comment that she would not like to live next to a construction site and asked if Ms. Perez was aware that her tenants in 1137 Hope Road have commercial work vans and equipment there daily? Ms. Perez answered that she is aware and has asked them to stop.

Attorney Hirsch swore in the following witness:

**Denise Catalano, 11 Alpine Trail**

Ms. Catalano commented that there were guinea hens on the property in 1994. She recalls that in 2009 the chicken coops were shabby shelters, so the current buildings were not there in 1994. Vice-Chairman Palmieri asked if the larger building was there when the survey was done in 1986? Mr. Neff confirmed that yes it was. Ms. Catalano commented that there was an additional barn on the property around 2009-2010.

Attorney Hirsch asked if there were any more questions?

Ms. Nieto referred to the aerial photo from 1986 and pointed out that the larger structure is already on the property. She mentioned that perhaps people couldn't see the larger building because there were boats and debris blocking it. Ms. Catalano clarified that she was on the property when she observed the larger building in 2009.

Attorney Hirsch swore in the following witness:

**Jerry Spumberg, 11 Alpine Trail**

Mr. Spumberg stated that 10 years ago he was exploring both his property and 1137 Hope Road for potential real estate opportunities and observed the guinea hens. He concluded that although he doesn't know exactly when the buildings were constructed, that it had to be after he walked the property.

Vice-Chairman Palmieri asked Mr. Spumberg to comment on how the property looks now compared to how it looked in the past. He replied that he has not walked the property, however, he felt anything would have been an improvement. Mr. Neff clarified that the photo being referenced taken in approximately March 2022.

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Referencing the survey dated January 8, 2021, Mr. Kuzmin noted that the wooden deck had been removed and inquired as to why the Applicant removed the wooden deck ahead of a decision by the Board? Ms. Nieto explained that they were in disrepair and dangerous.

Attorney Hirsch assigned Mr. Neff's letter, photos and report outlining his research dated July 7, 2022 as Exhibit B1. He assigned the Applicant's documents including letter from the Applicant's attorney, the inspection reports, and emails regarding the CCO as Exhibit B2.

Chairman Battista asked if the Applicant had any additional comments before we close the public portion? Ms. Nieto declined.

Vice-Chairman Pamieri inquired about the size of the larger structure. Mr. Neff responded 58 feet x 18 feet wide, which, Vice-Chairman Palmieri concluded is more than twice the size permitted.

Ms. Hatami inquired as to the size of the property? Mr. Neff responded it is 2.76 acres. Mr. Neff added that the 1986 survey showed the four structures totaled 1,040 square feet, while the current survey shows 1,780 square feet. He referenced the ordinance that states no single structure is to be more than 400 square feet whereas there is a 420 square foot structure and a 1,044 foot structure on the property. He pointed out that the larger structure doesn't meet the 5-foot setback ordinance as it is 4.8 feet.

Attorney Hirsch summarized the relief requested; four accessory buildings where two are permitted, total area of 1,780 square feet where 400 square feet is permitted, and no single structure shall exceed 400 square feet where the Applicant has two structures in violation. One of structures exceeds this ordinance by 423 square feet and another exceeds by 1,044 square feet.

Mr. Kuzmin inquired as to whether there is a time requirement for fixing a violation? Attorney Hirsch responded that the Board can set a timeframe if the variance is approved.

Chairman Battista asked if there are any more questions? Upon hearing none, he asked for a motion.

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

Attorney Hirsch commented that consideration should be given to the known history of the structure impact considering the 40-year history. He stated that, unlike granting a new variance, the impact is already known. He further stated the fact that being a pre-existing non-conforming right doesn't give the Applicant any advantage.

Mr. Kuzmin pointed out that the Applicants weren't properly informed about the challenges and potential pitfalls of purchasing the property. However, he stated, he is struggling with the size and magnitude of the violation which cannot be diminished due to the lack of knowledge the Applicant claims to have had upon purchasing the property. Mr. Porzio interjected that is it the

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responsibility of the seller to get the CCO, so the fault is on the seller. He stated that, upon instruction from their realtor, the Applicant waived that right and while he has sympathy for the Applicant, he states that the Board has to protect what the Borough has asked them to do as the Board of Adjustment.

Mr. McKinley referenced the testimony of the Applicant that the structure will not be multi-family, that the decks have been removed and that the yard is being cleared. He reiterated that it is a large property at 2.76 acres.

Attorney Hirsch reminded the Board to consider the use of the structure and to consider the size of the lot.

Mr. Kuzmin inquired as to how much space would be appropriate for a cabana? In response, Mr. Neff detailed an ordinance stating that a resident is allowed two secondary structures, but they are to be for two separate uses. Ms. Hatami pointed out the temporary footings on the smaller buildings and that she is in alignment with former comments to remove the two smaller buildings and keep the larger.

Ms. DeMaio expressed concern that the listing and buying agent were one in the same and expressed doubt that in the 181 days the house was on the market that the realtor wasn't informed as to the specifics of the property. She pointed out that the ten residents present at the meeting are proof that there is an impact on the community. She also expressed concern regarding the Borough being able to regulate or monitor future activity on the property which might be in opposition to the variance stipulations.

Attorney Hirsch pointed out that the Board can give conditions which would be enforced by the Code and Zoning Departments.

Mr. Kuzmin commented that the Board needs to consider what the decision would have been if this application came before the board prior to the buildings already being on the property. He stated that the Board needs to consider the size of the property.

Chairman Battista acknowledged the conflict this application presents when considering the neighbors and the new homeowners. Mr. Kuzmin suggested a stipulation that no more than 684 square feet be used for the cabana, which allows 360 square feet for storage and addresses the concern of some of the public regarding the potential renting of the structures. Ms. Hatami asked about the average size of a cabana to which Mr. Neff responded that there is no ordinance regarding cabana dimensions per se.

Ms. Hatami agreed with the limitations that Mr. Kuzmin proposed.

Chairman Battista asked for a motion.

*Mr. Kuzmin made a motion to approve BA2020-08 with the conditions set forth by Attorney Hirsch. The motion was seconded by Vice-Chairman Palmieri.*



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Before roll was taken, Mr. Costa informed the Applicant that the Borough will not be able to issue a full CCO on the remaining structure until the Applicant meets the Board's conditions.

**ROLL CALL**

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

NAYES: Ms. DeMaio

ABSENT: Mr. Lomangino

INELIGIBLE: Mr. Porzio

The Board took a Break at 9:26pm and returned at 9:32pm.

**NEW BUSINESS**

**BA2022-14**

**Arthur Hotaling**

**14 Garrison Drive**

**Block 124.15 Lot 67**

**Bulk Variance**

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

*Mr. Porzio offered a motion to accept service. The motion was seconded by Mr. McKinley. All present voted in favor.*

Attorney Hirsch swore in the following witness:

**Arthur Hotaling, 14 Garrison Drive, Applicant**

Mr. Hotaling detailed the need to expand his kitchen into the garage which would provide a 10 foot by 12 foot addition to their kitchen area. Chairman Battista confirmed with Mr. Hotaling that the exterior garage door would remain as is. Mr. Neff commented that the Borough ordinance states that every single-family house must have a garage, either attached or detached for the storage of one automobile. He pointed out that although Mr. Hotaling might not have need to use the street for parking, this variance stays with the property and therefore granting this relief could contribute to the current street parking issue in the Borough. Mr. Neff pointed out that if the variance is granted, there will be no room in the garage for a vehicle.

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Chairman Battista asked if any other interior design can be considered to accommodate the desired expansion? Mr. Hotaling responded that the space would be 12 feet by 3 feet, which is inadequate. Mr. Hotaling stated that his home is less than 1,000 square feet and that his

neighbors have built upward to add more square footage, but that he is not in a financial position to do the same. Mr. Palmieri commented that during his time on the Board, the only time the variance was granted was to someone who required an ADA compliant home and even in those conditions, the resident was required to make the garage compliant upon selling the home.

Mr. Palmieri explained the concerns with having an abundance of cars parking in the streets which results in complaints from fellow residents. He also mentioned that once a variance is approved for one resident, there will be a snowball effect which would be detrimental to the Borough.

Members of the Board asked Mr. Hotaling if he was able to expand the footprint of his home, however, the Applicant reiterated that he can't afford those options. Vice-Chairman Palmieri asked Mr. Neff to clarify the ordinance regarding carports. Mr. Neff stated that carports are not listed as an option.

Chairman Battista explained that the Applicant did the correct thing by applying for a variance because not having one creates a lot of problems when selling. Attorney Hirsch reminded the Board and the Applicant that the issue at hand is not related to parking in the driveway, but rather, that the ordinance says the garage needs to be able to hold one vehicle. Attorney Hirsch said that financial hardship does not play a role in the decision-making process for variance approval.

Chairman Battista asked for a motion to close the public portion.

*Vice-Chairman Palmieri made a motion to close the public portion. The motion was seconded by Mr. Kuzmin. All present voted in favor.*

Chairman Battista asked for a motion.

*Mr. Porzio made a motion to deny BA2022-14. The motion was seconded by Vice Chairman-Palmieri.*

Mr. Hotaling asked which, if any, fees will be returned to him? Ms. Sena advised the remaining balance in the escrow account will be returned to him, however, the administrative fee cannot be refunded.

**ROLL CALL**

AYES: Vice-Chairman Palmieri, Chairman Battista, Ms. Hatami, Ms. DeMaio, Mr. Porzio

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NAYES: Mr. Kuzmin, Mr. McKinley

ABSENT: Mr. Lomangino

INELIGIBLE: Mr. Provines

**MOTION TO ADJOURN**

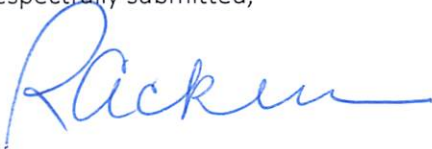
Chairman Battista asked for a motion to adjourn.

*Mr. Pozio make a motion to adjourn. The motion was seconded by Vice Chairman-Palmieri.*

All in Favor: AYE

Time: 9:58 pm

Respectfully submitted,



Regina Acken  
Zoning Board Secretary

APPROVED AT A BOARD OF ADJUSTMENT MEETING ON: August 4, 2022