

The Regular Meeting of the North Caldwell Zoning Board of Adjustment were held on Wednesday, February 21, 2024 and started at 7:30pm. The meeting was held in-person at Borough Hall and via tele/video-conference.

Chairman Steve Wangner called the meeting to order and announced that the meeting was held in accordance with the Open Public Meetings Act and that notice of the meeting was provided in accordance with the requirements of Chapter 231, P.L. 1975. He noted that tele/video-conference participation instructions were provided to the public in advance of the meeting.

Roll Call indicated the following Board Members present: Ms. Drago, Ms. Hawley-Tsay, Mr. Paulo, Mr. Salan, Mr. Spindler, Ms. Zurlo, Mr. Augustitus and Chairman Wangner. Also present were Lisa Thompson, Esq., Board Attorney, and Tami Michelotti, Zoning Board Secretary.  
Absent: Mr. Kumar.

Chairman Wangner led the Pledge of Allegiance.

### **APPLICATIONS**

#### **Seth Wartski, 17 Meadow Lane (Block 606, Lot 8)**

Mr. Augustitus stated that he reviewed the audio/video recording of the prior testimony regarding the application.

Danielle Federico, attorney for the Applicant, came forward and stated that the Applicant's planner was unable to appear on behalf of Mr. Wartski that evening. She added that the landscape designer was present.

Ms. Federico stated that Mr. Wartski agreed to reduce the existing wall from 12-feet to 8-feet and that Mr. Wartski's neighbor had no issue with the wall at the reduced height. Ms. Federico referred to the Borough Tax Map, Sheet 6 as exhibit A to depict Mr. Wartski's property in relationship to the neighbor's property.

Christopher Rohde of 41 White Oak Drive was sworn in and confirmed the location of his property behind the subject property. He stated that he spoke with Mr. Wartski about his concerns regarding the wall height and requested that Mr. Wartski reduce the wall to 8-feet. Mr. Rohde stated that Mr. Wartski was unable to make any revisions to wall as per direction from the Construction Code/Zoning Official until a variance was approved. In response to a question from Chairman Wangner, Mr. Rohde stated that he was not in favor of the wall at 12-feet but felt that a reduction in height to 8-feet with additional landscaping would be satisfactory to disguise the wall.

Greg Imhoff, landscape designer with Visionscape Design in Lakewood, New Jersey, provided his landscape education, contracting and design credentials to the Board. The Board found him to be an expert in the area of landscape design. Mr. Imhoff stated that he prepared the landscape design depicted in Exhibit A2 dated February 8, 2024 which was submitted as a revision to the original application. He noted that 30-inches of space exist between the recreational wall and the existing retaining wall. He stated that the width provides enough room for planting of Taylor Junipers. He added that 6 to 7-foot junipers would be planted which would grow to 15 to 20-feet in height. Mr. Imhoff stated that each juniper would be planted three-feet apart and would grow to three-feet wide to grow into a hedge over time. He confirmed that the junipers are deer-resistant evergreens that are recommended for this planting zone. He added that the junipers would span the entire length of the retaining wall and approximately six-feet past the recreational wall. Mr. Imhoff added that plantings would also be added to screen the baseball field from front of the property. He offered that "green giant" arborvitae be planted six-feet apart which are deer-resistant evergreens.

In response to a question from Mr. Augustitus, Mr. Imhoff confirmed that the junipers along the rear are evergreens. He added that a one-foot space between each juniper would be viewable for approximately the first year until each plant grows. In response to a question from Ms. Zurlo, Mr. Imhoff confirmed that the junipers do not need much maintenance as they grow to a maximum of three-feet wide and stay columnar in shape. He confirmed that they are fragrant plants which tend to repel deer. In response to a question from Mr. Paulo, Mr. Imhoff noted that he recommends irrigation for these junipers to maintain a healthy, green appearance. He added that the recreational wall will protect them during the harsh winters and from the sun. Mr. Augustitus asked Mr. Rohde if the potential juniper height of 15-feet would be offensive. Mr. Rohde answered they would not.

Hearing no further questions from the Board for Mr. Imhoff, Chairman Wangner allowed for questions from the public.

Ken Barth, 37 White Oak Drive – Mr. Barth asked for a comparison between junipers and arborvitae regarding their resistance to deer. He noted that he has several arborvitae that have been eaten by deer. Mr. Imhoff stated that junipers are more resistant to deer than arborvitae.

There were no further questions from public.

Ms. Federico offered that landscaping maintenance could be a condition of approval.

Mr. Wangner asked if the Board had any further questions or comments.

Mr. Paulo inquired about landscaping maintenance with regard to the bordering PSE&G property. Mr. Imhoff anticipated light trimming of the juniper for which there is 2.9 feet of room for landscapers to access the plantings near the retaining wall. He anticipated no issues with maintaining the trees.

Mr. Salan asked if the plantings would be guaranteed to maintain the protection from neighbors' views. Ms. Federico stated that the Applicant would not allow the landscaping to die and would maintain their condition.

Mr. Augustitus noted that the fence was constructed without permits. He stated that the fence is currently 12-feet tall with no guarantee that it was built safely, even if it is lowered to 8-feet. He stated his concern with the structural soundness of the wall and the possibility of it falling since it was not approved nor inspected by the Building Department.

Chairman Wangner noted that the Applicant still had not decided if the recreational wall was to be considered as a structure or a fence for variance consideration. He stated that variance requests are evaluated on the hardship of the property and the Borough Code. He added that the Applicant had not yet stated a hardship.

Ms. Federico stated that she would defer to the Applicant's planner for further determination of the wall as a fence or structure and regarding the hardship criteria. She noted that the Borough Code does not address recreational walls, leading the Applicant to believe that permits were not required for the construction. Chairman Wangner noted that setbacks are a consideration when constructing anything close to property lines. Mr. Augustitus asked if the Building Department was contacted prior to construction of the wall.

Seth Wartski, still under oath from prior testimony, stated that he contacted the Building Department to inquire if fences had to be under six-feet in height. He added that he reviewed the Borough's zoning code and found that any structures acting as a fence could not be more than six-feet high. He stated that he built a recreational wall, not a fence. He added that he should have asked more questions from the Building Department staff. He confirmed that he did not ask about permitted height of a wall and saw no reference to walls in the code. Mr. Wartski stated that he found the permitted height of structures to be 16-feet.

Chairman Wangner asked the height of the retaining wall that sits behind the recreational wall. Mr. Wartski stated that the retaining wall is less than three-feet. He confirmed that his property is higher than the PSE&G property.

Mr. Salan asked who constructed the wall. Mr. Wartski stated that a friend, a builder, constructed the wall. He added that the friend agreed with the conclusion that the wall was not a fence and, therefore, was not bound to the six-foot maximum. He added that the wall was kept within the 16-foot maximum as stated in the Borough Code regarding structures.

Mr. Paulo asked if concrete footings were installed as required for something of this height. Mr. Wartski was unsure and stated that he would obtain the information. Ms. Federico asked Mr. Wartski if there were any issues with the wall over the winter. Mr. Wartski stated that it was pretty sturdy. Mr. Augustitus stated that the Building Department would need to inspect the bottom of the wall for footings since permits were not applied for and obtained. He added that the permitting process would still be required if the Board were to grant the variance. Ms. Federico agreed that the Building Department process would be rectified if the Board approved the variance. She added that the Applicant was present to address concerns and correct the process.

Mr. Augustitus asked Mr. Wartski if he would consider reducing the fence height to six-feet. Mr. Wartski stated that his children would be upset as eight-feet was preferred. Mr. Augustitus noted that fences are required to be only 50% solid where the recreational wall is 100% solid. Mr. Paulo noted that the Applicant considers it a wall and not a fence. Mr. Wartski stated that the wall is solid so that the children can hit home runs. Mr. Augustitus noted that the children would need to enter the PSE&G right-of-way to retrieve balls after hitting homeruns.

Mr. Paulo asked if any photos were taken during the construction process and noted that the Building Department may ask that the wall be excavated. Mr. Wartski stated that he would look for photos or get more information.

Mr. Spindler asked about the age of Mr. Wartski's children and their baseball activities. Mr. Wartski stated that the children range in age from 10 through 4 years old and stated that they currently play whiffle ball and would for a long time. He projected that he would not keep the wall once the children were in college.

Mr. Augustitus asked Mr. Wartski to identify what he considered the subject of the discussion to be. Mr. Wartski stated that he considers the subject to be a wall. Mr. Augustitus noted that walls have setback requirements which would require Mr. Wartski to remove the wall and move it. Ms. Federico stated that the wall is unique and not contemplated in the Borough Code. Ms. Federico offered to return with the planning if the Board would like more information. Mr. Augustitus stated that the decision between returning with the planner or moving to a vote was to be made by the Applicant. Ms. Federico asked if the Board desires the Applicant to address the semantics of the subject as a wall vs. a fence and provide a final conclusion. Chairman Wangner provided the Applicant the opportunity to return with the planner or move onto a vote. Ms. Federico asked if the Board would like testimony from the contractor regarding the footings. Ms. Thompson noted that the footings would be governed by the Building Department and not by the Board.

Mr. Wartski agreed to have the Board to vote on the Application. Chairman Wangner opened the hearing to public comment one last time. No one from the public came forward.

Mr. Augustitus asked for clarification from the Applicant regarding the variance requested. Mr. Wartski stated that he requests an eight-foot "fence/wall" with a full landscaping screen. Ms. Federico stated that the Applicant is open for feedback from the Board regarding the final height. She noted that it would be completed screened with landscaping. Mr. Wartski stated that he prefers the eight-foot height but would accept six-feet. Ms. Hawley-Tsay asked if the recreational wall would serve the same purpose at six feet as it would at eight or twelve feet. Mr. Wartski stated that it was built as a replica of Fenway Park but the reduced height would not prevent the children from playing.

Chairman Wangner asked the Applicant to confirm if the variance sought is for the setback or the height. Ms. Federico stated that a setback variance is not needed for a fence. Chairman Wangner noted that the Applicant previously referred to the structure as a wall. Ms. Thompson added that testimony is also needed regarding the hardship in order to seek a variance. She explained that the Board cannot instruct on how to proceed. She noted that the hardship must be stated in order for the Board to render a decision. Chairman Wangner reviewed that the hardship has not yet been presented and that the determination of the structure as a wall vs. a fence had not yet been settled. He summarized that the Board was unclear as to what would be voted upon at this time. Mr. Wartski stated that he could return with the contractor and planner for additional testimony. Ms. Federico stated that they were unable to provide proofs at that time to address the Board's questions. She stated that the planner could better address the outstanding issues. Mr. Wartski stated that safety concerns could be addressed by the contractor.

Mr. Augustitus stated that the Board was unable to authorize any work on the fence to reduce it to six-feet or eight-feet at this time. Mr. Wartski noted that the Zoning Official issued a stop-work order until the Board rendered a decision on the variance request. Mr. Augustitus suggested that Mr. Wartski meet with the Building Department to ask that the stop-work order be rescinded to reduce the wall height. Ms. Thompson confirmed that the Board is unable to rescind a stop-work order. Ms. Federico asked if the Board preferred a six-foot height or eight-foot height if the work-order were to be rescinded. Chairman Wangner stated that the Board was unable to provide an answer. He stated that the Board makes a determination based on what is presented. He noted that stating the hardship of the property is required.

Mr. Wartski welcomed questions from the public.

Barbara Barth, 37 White Oak Drive – Ms. Barth asked Mr. Wartski built the wall with his children. Ms. Federico clarified that Mr. Wartski built it for his children. Ms. Barth asked about the number of variances sought. Mr. Augustitus noted that the Board was unclear on the variances and that the question should be addressed during subsequent testimony. Ms. Barth noted that the wall was installed over one year ago and that the application had spanned several months.

No one else came forward.

Ms. Thompson announced that the next meeting was scheduled for March 20, 2024. She noted that the Applicant could continue testimony at said meeting if the Applicant agreed to an extension. Ms. Federico agreed to the extension. Ms. Thompson announced that no further notice was required by the Applicant.

#### **Approval of Minutes**

Mr. Paulo made a motion to approve the January 17, 2024 meeting minutes, seconded by Mr. Salan. Ms. Drago and Ms. Hawley-Tsay abstained. Said motion passed with six (6) affirmative votes and two (2) abstentions.

**2023 Annual Report**

The Board had no revisions to the report draft. A resolution would be prepared for the Board's consideration at the March meeting.

There being no further matters to come before the Board, Mr. Salan made a motion to adjourn the meeting, seconded by Ms. Zurlo. Said motion passed unanimously with seven (7) affirmative votes. The meeting was adjourned at 8:23p.m.

Respectfully Submitted,

  
Tami Michelotti  
Zoning Board Secretary