

BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH

LAND USE BOARD RESOLUTION 2021-24
RESOLUTION OF MEMORIALIZATION
APPROVAL OF APPEAL OF ZONING OFFICER'S
DETERMINATION PURSUANT TO N.J.S.A. 40:55D-70A

Approved: October 7, 2021
Memorialized: November 4, 2021

IN THE MATTER OF GIORDANO

APPLICATION NO. LUB2021-03

WHEREAS, John D. Giordano and Maxine Gustus-Giordano (the "Applicants") have applied to the Highlands Land Use Board (the "Board") for an appeal of the Borough Zoning Officer's determination pursuant to N.J.S.A. 40:55D-70a or, in the alternative, for bulk variance relief pursuant to N.J.S.A. 40:55D-70c, for lands known and designated as Block 113, Lot 6.01, on the official tax map of the Borough of Highlands and more specifically known as 26 Ralph Street, Highlands New Jersey (the "Property") located in the R-2.03 residential zone; and

WHEREAS, a complete application has been filed, the fees as required by Borough ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, an in-person public hearing was held on October 7, 2021, at which time testimony and exhibits were presented on behalf of the Applicants and all interested parties having an opportunity to be heard.

NOW, THEREFORE, the Board makes the following findings of fact based on evidence presented at its public hearing at which a record was made:

1. The Applicants are appealing the decision of the Zoning Officer dated May 5, 2021 determining that their request to construct a six foot (6') high PVC fence required variance relief. The Zoning Officer determined that the proposed fence would be located in a front yard and that the R-2.03 Zone prohibits front yard fences from exceeding four feet (4') in height. The Zoning Officer relied upon Borough Ordinance No. 21-65.7B and determined that the Applicants had constructed a fence in the Willow Street front yard of the subject Property and not in a rear yard.

2. The Applicants also request an interpretation of the Borough Ordinances concerning the definition of front yard and the required fence heights pursuant to N.J.S.A. 40:55D-70b.

3. The Applicants requested bulk variance relief pursuant to N.J.S.A. 40:55D-70c in the alternate to retroactively approve the installation of the six foot (6') high fence on the William Street side of the subject Property, where a maximum four feet (4') high fence is otherwise permitted.

4. Borough Ordinance No. 21-8 (Definitions) provides, in pertinent part:

LOT LINE, FRONT - That boundary of a lot which is along an existing or dedicated public street or, where no public street exists, is along a public way.

LOT LINE, REAR - That boundary of a lot which is most distant from and is most nearly parallel to the front lot line.

YARD, FRONT - A yard extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the "front yard" shall be measured between the front line of the building and the street line. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.

YARD, REAR - A yard extending the full width of the lot and situated between the rear line of the building and the rear line of the lot.

5. Borough Ordinance No. 21-65.7 (Fences) provides, in pertinent part:

A. Fences hereinafter erected, altered or reconstructed shall require a fence permit to be issued by the Building Code Department. A request for a fence permit should be accompanied by a plan which shall show the location of the fence in relation to all other structures and buildings, and in relation to streets, lot property lines and yards.

B. No fence hereafter erected, altered or reconstructed shall exceed four (4) feet in height above ground level when located within the required front yard setback nor six (6) feet in height above ground level when located behind or outside of the required front yard setback. Trellises, located outside the front yard setback, are not considered fences and are exempt from the height and permit requirements of this section.

6. Ms. Giordano testified that the Applicants have owned the subject Property since approximately March 30, 2020 and that the lot is unique because it is a thru lot which abuts Ralph Street on one side and William Street on another side.

7. Ms. Giordano further stated that when the Applicants purchased the subject Property, same was vacant and surrounded on all sides by a six foot (6') high wooden fence that was in a compromised state and dilapidated condition.

8. Since purchasing the subject Property, the Applicants have erected a single-family dwelling and are currently residing on the subject Property.

9. Ms. Giordano further testified that the entirety of the west side of the subject Property fronts Ralph Street and ingress/egress to the lot occurs on the Ralph Street frontage. The single-family dwelling faces and fronts Ralph Street.

10. Ms. Giordano provided additional testimony that approximately nineteen feet to twenty feet (19'-20') of the eastside of the subject Property abuts William Street, with the remaining portion of the eastside of the lot adjoining other properties.

11. Ms. Giordano offered additional testimony that on or about January 14, 2021, the Applicants had the prior wooden fence removed so that a replacement fence could be installed on the subject Property. She then stated that on or about January 28, 2021, the new six foot (6') high white vinyl PVC fence (that is the subject of this Appeal) was installed. Ms. Giordano did not request or obtain a permit prior to installing the fence.

12. The Applicants' Engineer, Andrew Stockton, P.E., testified that the subject Property was unique because William Street dead-ends into the rear thereby creating two (2) street frontages.

13. Mr. Stockton then testified that the Borough Ordinances' definition of "front yard" does not apply to the eastside of the subject Property fronting William Street. He therefore asserted that the Ordinance did not prohibit a six foot (6') high fence on the eastside of the subject Property abutting William Street.

14. Mr. Stockton further stated that only the Ralph Street side of the subject Property meets the definition of "front yard" and that the Applicants would be prohibited from building a six feet (6') high fence on the west side of the Property, fronting Ralph Street.

15. Mr. Stockton provided additional testimony that the Borough Ordinance definitions of "lot line" for front and rear yards, could have led to confusion for the Zoning Officer and led to her determination that the subject fence could not be erected on the William Street side of the subject Property.

16. At the time of the hearing, Mr. Stockton submitted a survey of the Property, which was marked as exhibit "A-1".

17. The Board inquired whether the Applicants required setback variance relief in order to construct the subject fence. Mr. Stockton responded that no setback variances were required or requested.

18. The Board asked whether the fence was a non-conforming existing structure. The Board Attorney responded that once the prior fence was removed, the non-conforming, existing structure no longer existed. Mr. Stockton agreed with the Board Attorney.

19. The appeal was opened up to the public, at which time Richard Sciria, Esq. appeared on behalf of Carol Stafford of 7 William Street.

20. Mr. Sciria asked whether William Street was akin to a cul-de-sac. Mr. Stockton responded that it was not and that William Street was rather a dead end.

21. Mr. Sciria then questioned whether a property could have two front yards, to which Mr. Stockton responded it could. Mr. Sciria asked whether, based on the Borough Ordinances, the William Street side of the subject Property was a “front yard”. Mr. Stockton did not agree.

22. Mr. Sciria further questioned whether the new fence was constructed in the same location as the prior fence. Mr. Stockton responded that it was not and that the new fence was constructed closer to the property line but that no setback variances were required.

23. Mr. Sciria reviewed the definition of a “front yard” and offered that based upon the wording thereof, the William Street side of the subject Property would be considered a “front yard” and that the Zoning Officer’s decision was therefore correct.

24. The Board asked what Ms. Stafford’s objection was to the erection of the new fence. Mr. Sciria responded that his client was concerned with the placement of the new fence and that snow would be pushed up on his client’s property because the new fence prevents same from being appropriately discarded.

25. Kevin Mullan of 7 William Street asked, if approved, what the maximum permitted fence height would be. The Board responded that six feet (6') was the height of the fence and the maximum.

26. Lynn Mullan of 7 William Street asked whether the Applicants intended on using the William Street side of the subject Property for ingress/egress. Ms. Giordano testified that there is a gate on the new fence and that during construction of the dwelling and deck, the William Street side of the subject Property was used for deliveries. Ms. Giordano further testified that the William Street side of the subject Property is not normally in use and that it will likely only be used to deliver mulch approximately twice per year.

27. Mr. Mullan also asked why the Applicants placed a sign on the fence saying "do not block". The Applicants responded that the DPW had directed the installation of the sign at that location.

28. There were no other members of the public expressing an interest in this application.

NOW, THEREFORE, the Board makes the following conclusions of law based upon the foregoing findings of fact:

1. The Applicants have filed an appeal of a determination of the Borough of Highlands Zoning Officer pursuant to N.J.S.A. 40:55D-70a seeking a reversal of her decision that the construction of a six foot (6') high PVC fence required variance relief and a reversal of her interpretation of Borough Ordinance Nos. 21-8 and 21-65.7B that the William Street side of the Property satisfies the definition of a "front yard".

I. Jurisdiction

2. Under the Municipal Land Use Law, pursuant to N.J.S.A. 40:55D-70(a), a Land

Use Board shall have the power to:

[h]ear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance.

3. The Municipal and Use Law also vests exclusive jurisdiction with zoning boards to render interpretations of the zoning ordinance. N.J.S.A. 40:55D-70b.

II. Standard of Review

4. The principles governing the interpretation of a zoning ordinance are the same as those for interpreting legislation in general. Tp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). Those principles require that an ordinance should be interpreted to ““effectuate the legislative intent in light of the language used and the objects sought to be achieved.”” Merin v. Maglaki, 126 N.J. 430, 435 (1992); *see also*, State Dep’t of Law & Public Safety v. Gonzalez, 142 N.J. 618, 627 (1995). The first step of statutory construction requires an examination of the language of the ordinance. Bergen Comm’l Bank v. Sisler, 157 N.J. 188, 202 (1999). The meaning derived from that language controls if it is clear and unambiguous. Id. If the text, however, is susceptible to different interpretations, a board should consider extrinsic factors, such as the statute’s purpose, legislative history, and statutory context to ascertain the legislature’s intent. Wingate v. Estate of Ryan, 149 N.J. 227, 236 (1997); *see also*, Lesniak v. Budzash, 133 N.J. 1, 8 (1993).

5. Above all, a board must seek to effectuate the “fundamental purpose for which the legislation was enacted.” New Jersey Builders, Owners and Managers Ass’n v. Blair, 60 N.J. 330, 338 (1972). Thus, for example, where a statute or ordinance does not expressly address a specific situation, a board will interpret it “consonant with the probable intent of the draftsman ‘had he

anticipated the matter at hand.” AMN, Inc. v. So. Bruns. Tp. Rent Leveling Bd., 93 N.J. at 518, 525 (1983). In that regard, “[i]t is axiomatic that an ordinance will not be construed to lead to absurd results.” State v. Provenzano, 34 N.J. 318, 322, (1961).

III. Analysis

6. This Board uses the above standard of review in interpreting Section 21 of the Borough Code.

7. Borough Ordinance No. 21-8 defines a “front yard” as:

A yard extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the "front yard" shall be measured between the front line of the building and the street line. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.

8. The Board finds that it is undisputed that William Street does not extend the full width of the subject Property. The Board employs the previously discussed standards of statutory construction and finds the plain language of the Ordinance requires a frontage to extend the full width of the lot in order to be considered a “front yard”. The Board therefore finds that the William Street frontage of the subject Property is not a “front yard” as defined by the Ordinance. The Board therefore reverses the decision of the Zoning Officer.

9. Based upon the evidence submitted and testimony presented, the Board finds that the William Street side of the Property is a “rear yard” as the term is defined in Borough Ordinance No. 21-8.

10. Borough Ordinance No. 21-65.7(B) provides that:

No fence hereafter erected, altered or reconstructed shall exceed four (4) feet in height above ground level when located within the required front yard setback nor six (6) feet in height above ground level when located behind or outside of the required front yard setback. Trellises, located outside the front yard setback, are not

considered fences and are exempt from the height and permit requirements of this section.

11. The Board therefore concludes that the maximum permitted fence height along the William Street frontage is six feet (6’).

12. The Board wishes to be clear that this decision is based upon the plain language of the Ordinance and not the particulars of how the subject Property is utilized.

13. The Board further determines that the reversal of the decision of the Zoning Officer renders the Applicants’ request for variance relief pursuant to N.J.S.A. 40:55D-70c moot.

NOW, THEREFORE, BE IT RESOLVED by the Highlands Land Use Board that the application of John D. Giordano and Maxine Gustus-Giordano for lands known and designated as Block 113, Lot 6.01, as depicted on the Tax Map of the Borough of and more specifically located at 26 Ralph Street as depicted on the Tax Map of the Borough of Highlands, is determined as follows:

1. In accordance with the Municipal Land Use Law under N.J.S.A. 40:55D-70a, the appeal of the determination of the Zoning Officer dated May 5, 2021 is hereby granted.
2. The Zoning Officer’s interpretation of Borough Ordinance Nos. 21-8 and 21-65.7B is reversed in that the William Street side of the Property does not satisfy the definition of a “front yard” and, thus, that a six foot (6’) high fence may be constructed on the Property along the William Street side as presently exists.
3. The remainder of the Applicants’ requested relief is moot.
4. The Applicants shall make payment of all fees, costs, and escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.



Robert Knox, Chairman

Borough of Highlands Land Use Board

ON MOTION OF: Vice Chair Tierney

SECONDED BY: Mayor Broullon

ROLL CALL:

YES: Mayor Broullon, Mr. Kutosh, Mr. Montecalvo, Vice Chair Tierney, Chair Knox

NO:

ABSTAINED:

ABSENT: Chief Burton, Councilmember Martin, Ms. Walsh, Ms. Pendleton

DATED: November 4, 2021

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Borough of Highlands Land Use Board, Monmouth County, New Jersey, at a public meeting held on October 7, 2021.



Michelle Hutchison, Secretary
Borough of Highlands Land Use Board