

**LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
SEPTEMBER 11, 2024**

CALL TO ORDER

Chairman Gary called the meeting to order.

PLEDGE OF ALLEGIANCE

OPEN PUBLIC MEETINGS STATEMENT

Chairman Gary stated “Adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Express Times, Warren County Zone and The Star Ledger and by posting a copy on the bulletin board in the Municipal Building.”

ROLL CALL

Present: Chairman Fred Gary, Vice-Chairman Gus Rutledge, Member Doug Mace, Member Michael Unangst, Member Jose Valente, Member William Vine and Member Ben George.

Also Present: Planner George Ritter, Engineer Adam T. Wisniewski and Attorney James Bryce

OLD BUSINESS:

- Minutes – Approve Regular Meeting Minutes from August 14, 2024

Chairman Gary: Alright. Move to old business. Minutes. Approval the regular meeting minutes from August 14, 2024. Is there a motion to approve?

Vice-Chair Rutledge: So moved.

Chairman Gary: Is there a second?

Member George: Second.

Motion by: Vice-Chairman Rutledge

Seconded by: Member George

ROLL CALL

AYES: Chairman Gary, Vice-Chairman Rutledge, Member Valente, Member Vine and Member George

NAYS: None

ABSTAIN: Member Mace and Member Unangst

NEW BUSINESS:

- Jessamine – Block 65, Lot 5.01 – Two variances (front yard and side yard setbacks)

Chairman Gary: Alright. New Business. Jessamine, Block 65, Lot 5.01. Two variances. Front yard and side yard setbacks.

Attorney Brian T. Grace: Good evening. My name is Brian Grace. I am an attorney. I represent the applicant, Annual Jessamine as well as, for this purpose, the homeowner, Mr. Obidike, who is present today. We are seeking a side yard and front yard variance for basically ... to correct an error that was made during the construction phase of the property. The property was originally subdivided under a minor subdivision in, I think, 2021. Subsequent to that, the property ... construction began by Mr. Jessamine onto the lot. Unfortunately, and unbeknownst to either my client as well as Mr. Obidike, the property was constructed outside of the area that it was designated and it was shifted to the front and to the right. If you're looking at the property and you guys all have the maps in front of you, you can see how the red square was the actual building but the property was built, instead of 25 feet from the roadway, it was 17 feet and instead of 12 feet from the right side yard, it was 7.1 feet when it was constructed. The closing on the house took place on December 8, 2023. The As-Built was not provided to us until December 22nd and that's when the issue was realized. We had already closed. Mr. Obidike had already been moved in. We received the As-Built from the engineer and he basically said, "oh there's a problem". So, we looked at it and verified what was going on. We had some discussions with the Township Engineer. There was a temporary CO issued for the sale of the property. It was contingent upon the As-Built being submitted as well as the typical contractor warranty. So, this was part of the ... required for part of the completion of the ... to get the final CO from the town. So, right now, there is still a temporary CO on the property and we're trying to rectify the situation, obviously, to make sure we get the final CO for Mr. Obidike. My office represented ... they represent the seller, Mr. Jessamine in the actual sale of the property. So, again, right now, we are requesting the two variances for the front yard and for the side. It is a very unique situation. I've never seen it or come across it and neither have some other gentlemen who I have spoken to. So, rather than me just standing up here ... if there's any ... I don't know what testimony cause it's such a unique situation. Again, the property was already subdivided. It was already approved for the 12-foot side yard as well as the 16-foot side yard on the lefthand side. We're just trying to rectify that. From what I understand, we would need to resubmit the minor subdivision plat plan if the variance is approved in order to correct what has been submitted to the Township and what's on record with the County as well. Okay ... which, obviously we are more than willing to do that. But right now, I think tonight, the first step is the approval of the variances that we're requesting.

Member Mace: Could I ... Before we proceed any further, I just want ... for the record ... I worked on a subdivision for Mr. Jessamine probably 20 years ago now. So just in case anybody has a problem with that, I just would like it on the record.

Chairman Gary: Well, that's fine. Thank you for disclosing that.

Member Mace: Sorry I didn't get up right in the beginning.

Attorney Grace: I'm sorry, because this is a novel issue, I honestly don't know what testimony you guys would want to hear. I would rather have you guys ask questions if you want to. Mr. Jessamine is here. This is Annual Jessamine for those of you who don't know. And also Donny Jessamine is here. Donny was the project manager for the construction. He can testify to ... it was an honest mistake as far as where the property was built. There was no malice intended of it, obviously, otherwise we wouldn't be wasting our time here ... and wasting your time.

Member George: And there's no pending construction?

Attorney Grace: Construction has been completed.

Member George: It's just to get the CO?

Attorney Grace: Correct. Everything's been completed. It's been approved by the town. The last issue was, again, the final As-Built which revealed the situation and then the construction warranty. That's it.

Member George: Is there a new building ready for ...

Attorney Grace: No. The property on the left, Block 55, Lot 5, that is already an existing house. That was there previously.

Member Mace: Are we going to hear some ... You've done a very good job of telling us the issue ... Are we going to hear some testimony cause I do have some questions, but I don't know if there're appropriate to hear from the attorney. No offense. I certainly am happy to hear from him.

Attorney Grace: We can swear the gentleman in?
Obviously, I don't know what testimony you would be looking at.

Attorney Bryce: He can provide a basis ... a factual basis for it. So swear him in and he can provide factual basis.

Attorney Grace: Okay. Come on Donny. You're up first.

Don Jessamine: Hi. Don Jessamine.

Attorney Bryce: I'm just going to have you raise your right hand. Do you swear and affirm that the testimony you are about to give this Board is the truth, the whole truth and nothing but the truth?

Mr. Jessamine: I do.

Attorney Bryce: Please state your name. Spell your last for the record.

Mr. Jessamine: What?

Attorney Grace: State your name and spell your last name.

Mr. Jessamine: Oh. Don Jessamine. J-E-S-S-A-M-I-N-E.

Attorney Bryce: Thank you sir.

Attorney Grace: Mr. Jessamine, I'm showing you what is marked as an As-Built survey for Block 65, Lot 5.01. It's dated December 22, 2023. Is this what's in front of your, correct?

Mr. Jessamine: Yes.

Attorney Grace: And looking at this As-Built survey, are you familiar with this property also known as 413 S. Second Street?

Mr. Jessamine: I am.

Attorney Grace: Okay. How are you familiar with this property?

Mr. Jessamine: We built the house. We did the two up front on Third Street and this one.

Attorney Grace: And this one? When you say you built the house, exactly what did you do when constructing the home.

Mr. Jessamine: I managed the whole project for my uncle.

Attorney Grace: Okay. And your uncle is Annual Jessamine?

Mr. Jessamine: Yes.

Attorney Grace: Okay. During the construction of the house, were you aware of any issue regarding where the property ... where the house was being constructed in relation to the 25-foot front yard setback, were you aware of any issues there?

Mr. Jessamine: No. We did do 25-foot setback from the curb and didn't know that there was an easement in there.

Attorney Grace: How about on the ... looking at the drawing on the righthand side, you can see that the 12-foot from the property line to the red but then next to it there is a 7.1 foot from the property line to where the actual house is built. Were you aware of any issues during construction regarding that discrepancy?

Mr. Jessamine: No.

Attorney Grace: Okay. When did you become aware of the issue?

Mr. Jessamine: When we did the As-Built ... When they did the As-Built and got me the keys back. I went down and saw the engineer.

Attorney Grace: Okay.

Mr. Jessamine: Cause this line was obviously moved and then to get this square footage in there for him to subdivide that off the property and when they moved the line ... and then ... I asked my uncle and he thought it was 15 and it actually ended up being 12.

Attorney Grace: When you say “they moved the line”, what line are you referring to?

Mr. Jessamine: The lot line for this house that was existing to make it ... I think it was ... square footage wide for the ... to be a bigger lot.

Attorney Grace: You’re talking about the lot the house that’s existing on Lot 5?

Mr. Jessamine: Correct.

Attorney Grace: Okay. And the property line between Lot 5 and Lot 5.01?

Mr. Jessamine: Yes.

Attorney Grace: Okay. Do you remember what ... any discussions that were occurring when the minor subdivision was being presented before the Board?

Mr. Jessamine: No. I just knew they needed a bigger square foot for this property. I don’t think I was at the meeting. I think my uncle was at the meeting when we had to do that.

Attorney Grace: Okay. I have no further questions for him. Any questions from the Board?

Chairman Gary: Doug?

Member Mace: Mr. Jessamine, I guess ... so I’m understanding you did not have this house staked out ... You laid it out yourself? Was that it?

Mr. Jessamine: Yes.

Member Mace: Is that what I’m understanding? I guess ... I’m just wondering, cause I did notice those other two houses particularly evident when I looked at Google Maps and when I measured the setbacks, those two houses were okay. So, I’m just trying to find out how this error occurred.

Mr. Jessamine: There were 25-foot setbacks which I went from the curb to the other houses and I just did the same thing not knowing there was an easement in there.

Member Mace: Okay. Alright. Cause I also, you know, did look at that. It sits roughly where almost every house on the block sits.

Mr. Jessamine. There’s a 10-foot easement that I didn’t know was in there.

Attorney Grace: Just to clarify, Mr. Mace, for the record, you're talking about the two houses on Third Street that were constructed by ...

Member Mace: Yeah, I went out ... when I looked at Google Maps it's an old photograph ... probably a year old and it's very obvious that there's communication ... (inaudible) communication going on in the backyard.

Mr. Jessamine: Yeah, we did those two first and then came over and did this one.

Member Mace: Yeah, and that's ...

Mr. Jessamine: And we just thought it was the same.

Member Mace: Those are far enough back cause I did it on Google Maps. Okay. At least I know how it happened.

Chairman Gary: Anyone? You guys have ... George?

Planner Ritter: Well, I think the ... obviously what's done has been done out there. The only direct impact besides encroaching into the yard that the Board should be aware of is that under RSIS, Residential Site Improvement Standards, to be able to count the apron for parking, it has to be a full 18 feet deep. As you can see, this is 17 and a half. So officially, this is a two-car garage even though the applicant can park his car on the apron. Officially, this is a two-car garage which would limit the house to a three-bedroom unit and the only thing I think we would ask is, and I'm making the assumption of this, he just go in as testimony, this is a three-bedroom home as it stands right now so the parking is adequate even though they can't count the full depth of the apron for parking. The only other point that I think the applicant should make is, though this is an encroachment into the front yard, it's very similar to the one that's on Lot 5 in terms of being front and, I just wondered if anybody has some testimony that ... as it relates to the neighboring house in terms of frontage. I think they're virtually the same but I ... or ones ... it looks very close.

Attorney Grace: Frontage along Second Street?

Planner Ritter: Yeah, along Second Street. But, what I'm saying is there's not ... this house isn't being pushed in front of the existing home adjacent. It's essentially at the same street line as that existing home and that's how it looks. I assume that's the case.

Mr. Jessamine: Fairly close. Yeah.

Member Mace: I know I'm not supposed to testify, but I did look at that on Google Maps and I drew a line from Cromwell Street all the way up to Dana ... Edwards rather, and all these houses are in a line. It's ,...

Planner Ritter: Yeah. Well, that's why I'm asking for a little testimony.

Member Mace: Yeah, it'd be nice to get a little testimony. But it's ...

Planner Ritter: Those are the two main issues with this encroachment and if the Board is comfortable with the applicant's testimony as to the apron ... that the house does not exceed three bedrooms, which is permitted, although this is an error that I would not like to see happen.

Mr. Jessamine: Oh, we don't like that either.

Planner Ritter: It seems to remain fairly consistent with the character of the neighborhood.

Attorney Grace: Yeah.

Chairman Gary: Yeah, I agree. I happened to drive by so I agree.

Member George: I drove by too and I agree also.

Chairman Gary: Yeah.

Attorney Grace: If you'd like, I can put Mr. Obidike on ... the homeowner. He can testify to the position.

Chairman Gary: I don't think that's necessary unless the Board ... Anyone on the Board? Are there any questions from the Board?

Engineer Wisniewski: My only comment ... and I didn't issue a letter but I did review the issue with Mr. Jessamine and with Mr. Ritter ... my only request of the applicant is, you know, should they be willing, hopefully ... what I'd like to see is that, rather than, you know, previously we had recorded the subdivisions by deed ... I prefer that this plan be recorded by plat at the County so that this deviation from the setbacks is recorded in, you know, a graphic form rather than another deed ... another renewed deed just to show that, you know, the deviation so someone that does a title search in 50 years, which I've been doing for old properties now back in the 70's. You know ... you could see a history of what happened and there's an understanding that it was resolved at the Board level and everything is copasetic. So, that would be my only request.

Attorney Grace: No objection, obviously ... Makes perfect sense.

Chairman Gary: Anyone else? I mean, short of picking this thing up and moving it, you know, I don't see any reason that we should not grant the variance. So, is there ...

Member Mace: Can I ... I think if it didn't line up predominately with the two ... at least from Cromwell up, then you got a problem but it really does.

Chairman Gary: Yeah.

Member Mace: Yeah. Everybody's got the same driveway problems.

Chairman Gary: Sure. Yeah. Alright. Anyone? Anyone from the public like to speak? I see no ... okay. So, is there a motion to approve the variance?

Member Valente: Motion to approve.

Member Mace: Second.

Motion by: Member Valente

Seconded by: Member Mace

ROLL CALL

AYES: Chairman Gary, Vice-Chairman Rutledge, Member Mace, Member Unangst, Member Valente, Member Vine and Member George.

NAYS: None

ABSTAIN: None

Member Mace: Could I ...

Chairman Gary: Alright.

Member Mace: I'd just would like to make you aware of one thing ... I also when I looked at this measured again on Google maps, the coverage on this and I think it's very, very close to 25 percent, you might want to have it checked because that would affect anything you wanted to add in the future.

Member George: That's why I asked if there were any future plans.

Member Mace: Yeah. Okay. Yeah. It just ... I measured it out and I think it's right at the 25 percent for the roof. So.

Attorney Grace: Right. The original construction of the home has been completed though. So, any applicant or any new construction would require an application because of that issue.

Chairman Gary: Correct. Correct.

Member Mace: Yeah. I'm just saying somebody should know that.

Attorney Grace: Yes.

Member Mace: I'm recommending.

Chairman Gary: Okay.

Attorney Grace: Thank you very much.

Chairman Gary: You're welcome. Anyone else? Anything to come before the Board? Is there a motion to adjourn.

Member Unangst: I'll make the motion to adjourn.

Chairman Gary: Is there a second?

Vice-Chairman Rutledge: Second.

Secretary Segeda: Who seconded? Gus?

Chairman Gary: Gus. All in favor?

Everyone: Aye.

Chairman Gary: Opposed? We are adjourned.

MOTION TO ADJOURN:

Motion by: Member Unangst

Seconded by: Vice-Chairman Rutledge

ALL IN FAVOR: Ayes

NAYS: None

Respectfully submitted by:

Patricia A. Segeda
Secretary, Zoning Board of Adjustment