

RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Application #: 2016-42-V
Decided: March 28, 2017
Memorialized: May 23, 2017

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and the testimony and evidence presented at the hearings on November 29, 2016, February 28, 2017 and March 28, 2017, the following findings of fact:

1. The Applicant is YaYaPop Livingston, LLC, owned by Mark and Judy Tabak.
2. The Property is commonly known as 8 Windermere Court, and is taxed as Block 2402, Lot 5.01.
3. The property is located in the R-1 Cluster Zone.
4. The Applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrears.
5. The subject premises are the old "Kean Estate". It was built by Congressman Robert Kean in the early 20th century, and was the childhood home of Governor Thomas Kean. The Kean Estate was the foundation for the Bel-Air community in Livingston. It originally comprised several hundred acres. The house now sits on a five (5) acre lot. It is one of the largest privately owned residential properties within the Township.
6. The subject premises have fallen into a state of decay and disrepair and needs restoration which the Applicant will undertake to perform. The Applicant seeks to repair, renovate and expand the existing mansion which currently is 19,687.5 square feet in total square footage. The expanded premises would encompass a total of 24,900.5 square feet.
7. The Applicant seeks several variances related to the proposal that are described below.

8. The Applicant was represented by Stephen A. Geffner of Schenck Price Smith & King LLP.
9. Objectors, Miles and Suzanne Berger of 6 Windermere Court, were represented by Jeffrey Plaza, Esq. Objectors Ying Liu of 7 Windermere Court and Sherry Izak of 4 Windermere Court were represented by Phillip Abramson, Esq. and Josh Mann Esq.
10. Members of the public, not represented by counsel, appeared both for and against the application and were permitted to ask questions of the witnesses and to make statements:

David Lentz, 27 Hadrian Court
R. Varma, 4 Brighton Court
Lawrence Rafsky, 3 Windermere Court
Brendan Berger, 16 Rainbow Ridge Court
Lauren Feldman, 10 Thames Drive
Gary Krugman, 24 Chelsea Court
David Anfang, 22 Mountain Ridge Drive
Tina Shah, 11 Mountain Ridge Drive
Marty Pollock, 7 Hadrian Drive
Neil Freeman, 1 Windermere Court
Bernard Searle, 14 Washington Court
Michael Rieber, 9 Hadrian Drive
Sam Gershwin, 18 Yale Court

Much of the objector testimony from the neighbors dealt with the addition of a fence and a gate. The proposed fence conformed to ordinance and did not require a variance.

11. The Board heard the testimony of Peter Dome, a licensed architect who described in detail and with the aid of exhibits the current and future appearance of the structure and the grounds, and the accessory buildings which currently exist on the site. He described the proposed addition, including the garages, and a residence for a caretaker that would be approximately 96 feet from the property line.
12. The Board heard from Celia DeHuff and Van Pool, licensed landscape architects, who described the proposed landscape design and the fence and wall at the entrance to the subject premises. Based upon comments of the members of the Board, the neighbors and members of the public, the landscape architects returned at the subsequent meeting with a revised design of the gate and wall intended to soften the appearance and eliminate the variance related to the "solid" wall.
13. Michael Lanzafama, PP, PE and licensed land surveyor, testified on the Applicant's behalf. Mr. Lanzafama prepared the site plan, engineering studies, and testified in his professional capacities. He addressed several variances and offered testimony concerning the residence for the caretaker. Mr. Lanzafama opined that the residence for the caretaker was an integral part of the premises and not a second residence that would require a variance. Mr. Lanzafama gave testimony regarding the

floor area, and floor area ratio, the preservation of an historic structure, the garage deviation, the height of the gate and the supporting pillars, the aesthetics of the Property and the building expansion. Mr. Lanzafama testified that the requested variances could be granted due to the exceptional and unique nature of the Property and its existing structures. He stated that many of the variances were for pre-existing conditions, including the accessory structures, building height, retaining wall, number of garage spaces and the current square footage of the existing mansion.

14. Finally, on behalf of the Applicant, Mark Tabak, a member of the LLC, was called upon. Mr. Tabak testified concerning the disrepair and the safety concerns currently existing at the subject premises. He discussed the Applicant's future plans for the existing structure, for its preservation and restoration, for he and his family for future generations. He further agreed, as the Board had expressed some concern relative to the caretaker's residence, to enter into a deed restriction that it may never be used in any other fashion except as outlined in the testimony and may never be conveyed nor leased to any third party.
15. Testifying on behalf of the objector, Miles and Suzanne Berger, was William Mikesell PP. He testified, that although the subject premises are not listed on any federal, state or local Historic Preservation Sites, that it should be treated as such. He voiced objection to the proposed design elements, and testified that there were unnecessary amenities in the basement and relating to the outdoor pool and the proposed gazebo to the service the pool. He also testified regarding the retaining wall which he thought was proposed which would effectively expand the premises. It was established on cross examination that the subject wall is pre-existing.
16. Christopher Kok, PP testified on behalf of Ying Liu and Sherry Izak in essential agreement with Mr. Mikesell. Mr. Kok also opined that the four-foot fence surrounding the property would require a variance due to the change in the Property's use.

RELIEF SOUGHT

The Applicant proposes additions and alterations to an existing single-family residence. Violations of the following Livingston Zoning Ordinances were noted:

- (a) Section 170-87DD(2)(a) – Habitable Floor Area – 10,000 square feet permitted; 24,900.5 square feet proposed; a 14,900.5-square foot variance is requested.
- (b) Section 170-96A – Permitted Use – Single Family residence permitted; 2-family residence proposed to accommodate quarters for house domestic help/caretaker.

- (c) Section 170-96C -Building Height – 35 feet permitted; 42.25 feet proposed; a 7.25-foot variance is requested.
- (d) 170-91B (16) – Retaining Wall Fence – 4-foot-high fence on top of 10-foot retaining wall requested; 4-foot variance requested.
- (e) 170-87L (1) – Garage Parking – 3 cars permitted; 4 cars proposed; a 1 car variance is requested;
- (f) 170-91B (2) – Fence Design Standards at Proposed Front gate – 4 feet permitted; 10.5 feet proposed; a 6.5-foot variance is requested.
- (g) 170-91B (2) – Fence Design Standards at Proposed Front gate – 50% minimum openings required; Proposed solid stone wall with gate proposed.
- (h) 170-91(17) – Fence Design Standards at Proposed Front gate – 2-foot maximum pier width; 2.3 foot proposed.
- (i) 170-87E(1)(a) - Accessory Structure Height for a pool gazebo- 13 feet permitted; 19.2 feet proposed; a 6.2-foot variance is requested.

CONCLUSIONS OF THE BOARD

1. The Board finds that the Property has a significant connection to the community. The current state of decline of this 19,687.5-square foot mansion demonstrates the necessity for upgrade and restoration.
2. The Applicant has satisfied the statutory requirements of N.J.S.A 40:55 D-70 for the relief sought by demonstrating that the purposes of the Municipal Land Use Law (MLUL) would be advanced by the proposed additions and alterations and site improvements. The Board finds that the Applicant has demonstrated that the additions and alterations would fit within this exceptional property and will harmoniously blend with the streetscape.
3. The Board further finds that there will be no substantial detriment to the public good, nor will it impair the Master Plan nor the zoning ordinances of the Township of Livingston.
4. The Board finds that the residence requested for the domestic help/caretaker, did not require a "D" variance, as it was a part of the premises and passes the "suitability" test, will not infringe on the neighbors or neighborhood and will not have a detrimental impact on the zoning ordinance of the Township of Livingston.

Now, therefore, BE IT RESOLVED by the ZONING BOARD OF ADJUSTMENT of the Township of Livingston that the application herein submitted is granted the following variances from the Land Use Ordinance:

- a. A Habitable Floor Area variance of 14,900.5 square feet is granted;
- b. A variance is granted to permit quarters to accommodate domestic help and/or a caretaker;
- c. A Building Height variance of 7.25 feet is granted;
- d. A variance is granted to build 4-foot-high fence on top of an existing 10-foot retaining wall;
- e. A Parking Garage variance is granted to build a 4-car garage;
- f. A variance is granted for Fence Design Standards to permit a 10-foot, 5-inch high front yard fence plus the various height variances need for the balance of the fence in conformity with the final plan of Celia DeHuff attached hereto;
- g. A variance is granted for Fence Design Standards for the proposed front gate to allow 2.3-foot pier widths in conformity with the final plans of Celia DeHuff that were submitted; and
- h. A 6.2-foot variance is granted for Accessory Structure Height for a pool gazebo.
- i. The pre-existing accessory structures, while in violation of the current code are permitted to remain in their location and dimensions.

CONDITIONS OF APPROVAL:

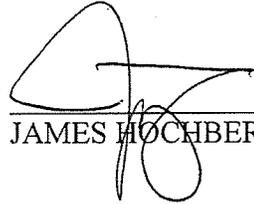
1. The proposed residence for the domestic help and/or caretaker may only be used for that purpose, and the Applicant will prepare and execute a Deed Restriction which shall be approved by the Board Attorney.
2. Any produce planted or harvested upon the property may not be sold for profit, and may only be used for domestic consumption.

This approval is subject to all other requirements of the Township ordinances, building code, and the right of appeal by any interested party. Also, as required by Livingston Ordinance 170-27(A), construction must be commenced within one year of the date hereof or the variance shall expire.

Copies of the Applicant's plans and survey showing the proposed improvements and architectural plans are attached hereto as an exhibit to indicate the final version thereof.

This Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on March 28, 2017 in which Board voted seven in favor of the application on the record and none in opposition.

CHAIRMAN:



JAMES HOCHBERG

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Livingston on March 28, 2017 by the affirmative votes of Mr. Hochberg, Mr. Nardone, Mr. Vieira, Ms. Hwang, Mr. Bier, Ms. Khanna and Mr. Dunec, they being all the Members present and eligible to vote.

PLANNING ADMINISTRATOR:



JACKIE COOMBS-HOLLIS

Prepared by: Alan Ozarow, Esq.