

**RESOLUTION  
ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF LIVINGSTON  
NEW JERSEY**

Case # 2012-36-V

Motion by: Mr. Klein

Second by: Mr. Hochberg

**FINDINGS AND CONCLUSIONS**

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 hearing on January 29, 2013, the following findings of fact and conclusions are made:

1. The applicant is Steven Barkley.
2. The property is commonly known as 33 Sycamore Avenue and is taxed as Block 2602, Lot 30. The property is in the R-3 Zone.
3. 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.
4. The applicant has constructed decorative walls in the front yard and a retaining wall in lieu of a fence in the rear yard.
5. Violation of Livingston Zoning Ordinance
  - (a) Section 170-91B2(c) Decorative Wall Height (1.5' allowed, 5.5' proposed; 4' variance requested).
  - (b) Section 170-91B12 Retaining walls in lieu of fences (not allowed, variance requested).
  - (c) Section 170-91B(4)(c) Height of Fence (6' allowed, 6' 7" proposed, 7" variance requested)
  - (d) Section 170-87E(1)€ Accessory Structure Setback( 7' required, 3.28' proposed, 3.72' variance requested)
6. The following persons testified at the hearing: The applicant. .
7. The following persons objected to or expressed interest the application at the hearing: Leslie Brauman of 31 Sycamore Avenue and Karen Reichey of 29 Sycamore, both objected. They showed pictures of the wall from their property which was marked as O-1.
8. The Board approved the decorative wall in the front yard but voted to deny the variance for the retaining wall in lieu of a fence and the excess fence height. The applicant claimed the wall was required due to drainage issues but presented no testimony by an expert that the wall was the appropriate method to deal with the drainage issue. Board members who

visited the site indicated that construction debris was evident behind the wall and the applicant was trying to shield his yard from view and that was the reason for the wall, not the drainage issue. Those opposed to the wall indicated that it was ugly and did not belong in the yard, but acknowledged that all the neighbors, including the applicant, had drainage issues. The Board held that the retaining wall would impair the public good and Zoning Ordinance and even if these neighbors would accept a fence to hid the retaining wall, future neighbors would likely not want the concrete retaining wall next door. The Board refused to act on the accessory structure requested as the garage was likely there prior to the ordinance and should be recognized as a non-conforming structure.

9. The applicant has satisfied the statutory requirements of N.J.S.A. 49:55D-70 (c)(2) with respect to the decorative wall in the front yard for the relief sought due to the artistic nature of the installation and because it was not visible from the street.

Based upon the above findings, there will be no detriment resulting to the public good, nor will there be an impairment of the zoning plan or municipal zoning ordinance. 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 variance from the Ordinance:

Decorative wall height variance of four feet (4') feet is granted.

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 survey showing the proposed improvements are attached hereto as an exhibit to indicate the final version thereof.

The Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on January 29, 2013 in which Board voted with in favor and none opposed to approve the application in accordance with and subject to the conditions and terms set forth herein on the record.

CHAIRMAN:

  
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ALAN OZAROW

Dated: February 28, 2013

Prepared by: HERBERT S. FORD, ESQ.