

**MINUTES OF A SPECIAL MEETING  
ZONING BOARD OF ADJUSTMENT OF  
THE BOROUGH OF MOUNTAIN LAKES  
May 7, 2020**

Chair Chris Richter called the remote meeting to order and announced: Adequate notice of this remote meeting has been provided in accordance with the Open Public Meetings Act by publishing the remote meeting notice in The Citizen and The Morris County Daily Record on April 22, 2020 and by filing the same with the Borough Clerk and posting it on the bulletin Board on April 27, 2020 and was made available to all those requesting individual notice and paying the required fee.

Start: 7:32pm

**ROLL CALL:**

Present: Max, Richter, Murphy, Peters, DeNooyer, Paddock, Vecchione, Caputo and McCormick

Also, Present: Attorney Michael Sullivan

**REVIEW OF MINUTES:** Chris Richter made a motion to approve the minutes from the March 5<sup>th</sup> meeting. Jake DeNooyer provided the second; the minutes were approved by voice vote by all eligible members present.

**RESOLUTION:**

The Construction Department wanted the Zoning Board to add a condition to all their resolutions requiring an applicant provide them with an as built before receiving their Certificate of Occupancy. This is a requirement that is already part of our Ordinances. The Board agreed to include the condition to support the existing Ordinance.

Scott and Vicki Allison

Appl. #20-707

A motion was made by Arthur Max to adopt the resolution of approval, including the new as-built condition, and a second was provided by James Murphy. The Board voted 6 – 0 to adopt the resolution with members Max, Richter, Murphy, Peters, DeNooyer, and McCormick voting in favor.

Lina Shihabuddin

Appl. #20-706

A motion was made by Anne Peters to adopt the resolution of approval, including the new as-built condition, and a second was provided by Chris Richter. The Board voted 5 – 0 to adopt the resolution with members Richter, Murphy, Peters, DeNooyer, and McCormick voting in favor.

**PUBLIC HEARINGS:**

New Application:

Mehrdad Rafizadeh

Appl. #20-710

41 Howell Road

Blk 94, Lot 37

Combined Side Setback

R-A Zone

Mehrdad Rafizadeh, of 41 Howell Road, was applying under the Historic Preservation bulk requirements for a combined side yard setback variance for an outdoor fireplace and pizza oven. The fireplace is partially built. He received a stop work order from the town. He explained he did not realize he needed a Zoning Permit before beginning construction. After reviewing the permit, the Zoning Officer told him he needed a variance to build the fireplace.

Marc Walker, a licensed engineer in the state of NJ, presented the application. Mr. Rafizadeh was at end of his renovation and decided to add a fireplace in the backyard. Part of the originally approved deck became the fireplace. Rick Nelson, a licensed architect in the state of NJ, said he understood any changes made to the previously approved plans needed to go back to the Board. They added a fireplace and removed the cupola originally approved. The FAR went down but they need a variance for the Historic Preservation bulk requirement of a 50ft combined side yard setback. The total combined setback is 27.6ft. The fireplace is attractive and blocks the view of the backyard for the neighbor. They have held the left side of the fireplace to the original deck line. Michael Sullivan confirmed the fireplace was within the same setback, but they changed the deck size. The Board approved a deck and now we have a structure. Rick Nelson referred the Board to sheets DF-2 and DF-3. There is a 6ft cabinet, then a 7.6ft wide fireplace, another 6.6ft cabinet and then a pizza oven. The fireplace must be 3ft higher than the roof structure, so you reduce the chance of embers hitting the main structure. Sheet R-A8 shows the impact on the neighbor to the left and the relationship between the height of the new structure to the house. The cabinets are the same height as the original deck railing would have been. Sheet R-A10 was a rendering of the backyard looking at the house and new fireplace. The fireplace makes the deck more private.

James Murphy pointed out both oven and fireplace had rain caps. The fireplace was 20.74ft to the top of the rain cap. The Administrator explained, by definition, all chimneys are measured to the top of the fireplace excluding the rain cap. The fireplace meets the 20ft height requirement for an accessory structure. Mr. Rafizadeh said all the chimneys have rain caps. He would like to change them all to make them match. Michael Sullivan said if you want to change the caps do it now. Mr. Rafizadeh requested all the chimney caps be changed to stone. He added the cinderblock structure is 60 – 70% built. The stone veneer has not been applied yet. Jake DeNooyer asked what the height of the unbuilt cupola was verses the height of the fireplace. The cupola would have been 7ft higher than the fireplace. Arthur Max found the application confusing; it was difficult to determine what was there before and what they were proposing. Michael Sullivan summarized the application. They have abandoned the approved cupola, they have the same combined side setback as before, but the nature of the improvement has changed from a deck to an outdoor kitchen. They do not exacerbate what was approved before, but it was changed. Anne Peter confirmed the fireplace chimney was 20ft from grade. Mr. Sullivan suggested the Board add a condition to the resolution that the height of the chimney would not exceed 20ft measured without the cap.

Mr. Richter asked if there were questions from the public. Mr. Mitchell said there were no questions for Mr. Nelson.

Marc Walker said since the house was built, they did an as-built site plan. The front left corner of the house was 25.3ft from the property line and the fireplace was 29ft. From the front of the house you will not see the fireplace and deck. They meet the required side

setback on the left side of the house. The new driveway on the right of the house has been expanded. They are instructing the property owner to remove the curb line and bring the driveway back to the originally approval width. The existing walkway needs to be removed from the neighbor's property. They access the backyard from the right side of the house. The client would like to replace the lattice fence for their vegetable garden. As discussed, they do not meet the combined side yard setback. They are viewing the fireplace as a continuation of the house not an accessory structure. They need to modify the driveway & walkway that are over the property line.

Michael Sullivan said the northerly side setback on the site plan is 2.3ft but on the last resolution it was 2.5ft. Which is right? Mr. Walker said on 10/5/17 they revised the setback to 2.3ft. Chris Richter said the proposed side walkway at 2.3ft was not a reasonable walkway, a pervious buffer would be better. Mr. Walker disagreed by having the walkway you create a defined access and keep people off the neighbor's property. You want to walk around your house. Mr. Rafizadeh said the bluestone walkway was there when he bought the house it allows his family to get to the backyard. Mr. Walker said they will remove what is over the property line and propose a new paver gravel walkway in that area. The old 6ft walkway to the deck in the rear of the house was removed. Now they want to add a walkway in the back. Arthur Max asked what the neighbors to the right would see. Marc Walker said the impact is greater for the neighbor on the left-side due to the fireplace there is no impact on the other side. Mark Caputo asked if the narrow walkway qualified as an easement by prescription. Mr. Sullivan responded this Board does not have jurisdiction in such issues. Chris Richter added this is a pre-existing non-conforming situation. Mr. Rafizadeh said he just added gravel to the existing bluestone walkway increasing the impervious coverage.

Mr. Richter asked if the Board had any questions. Jake DeNooyer asked about the 2.5ft pervious buffer requirement. He felt they should keep the walkway otherwise people will walk on the neighbor's property. He thought it the lesser of two evils. James Murphy asked what the lowest height the fireplace chimney could be. Rick Nelson said it needs to be taller for safety reasons. Chris Richter thought the applicant had a self-created condition by placing the fireplace so close to the house. Rick Nelson placed it less than 10ft from the house, he thought it an attachment to the house. Mr. Richter disagreed; it was an accessory structure. Mr. DeNooyer thought moving the fireplace further from the house would look worse for the neighbors.

Mr. Richter asked if there were any questions or comments from the public.

Lucas Lowenstein, of 43 Howell Road, lived to the left of the house and could see the fireplace from his backyard. It actually looks nicer and affords us some additional privacy. He has no problem with the proposal. He confirmed the walkway on the other side of the house was there before Mr. Rafizadeh purchased the house.

Mark Caputo thought the fireplace was quite high. Could they add plantings to reduce the height visually? Anne Peters said the house was beautiful. Hearing from the neighbor most affected was helpful. The view of the fireplace is huge from Ball Road. I am more comfortable now that I have heard from him. James Murphy made a motion to approve that application with a height restriction of 20ft, and an as-built survey provided. A second was provided by Chris Richter. Jake DeNooyer asked that the hearing be reopened to the public. The session was reopened by voice vote. Lucas Lowenstein said he would appreciate the plantings. Mr. Rafizadeh was willing to add plantings. Chris Richter made a motion that

the plantings not be a condition in the resolution, it should be worked out between the neighbors. Jake DeNooyer seconded that. The Board voted 7 – 0 to approve the application with the conditions above with members Max, Richter, Murphy, Peters, DeNooyer, Vecchione and Caputo voting in favor.

**Other Matters / Public Comment:**

Public Comment – Janet Horst, of 82 Pocono Road, questioned the railroad tie planter on the site plan for 41 Howell Road. She said the elevations should have been on the plans. She was concerned the wall would affect the drainage on the property. It was explained the applicant has requested a waiver from the topography requirement. Chris Richter said the railroad ties were 12ft long and were going to be removed. They were originally for vegetable bed and do not affect the drainage.

Jake DeNooyer made a motion to adjourn the meeting and James Murphy provided the second. The meeting was adjourned at 9:21PM.

Respectfully submitted,

Cynthia Shaw