

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

Case # 2011-40-V

Motion by: Mr. Hochberg

Second by: Ms. Boni

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 October 25, 2011, the following findings of fact and conclusions are made:

1. The applicant is Dr. Theodore Pearlman.
2. The property is commonly known as 2 Iroquois Drive and is taxed as Block 6602 Lot 10. The property is in the R-1 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 arrearages.
4. The applicant has replaced a six foot fence in the front and side yards to a single family residence on the property which fronts on a street with another six foot white vinyl fence that does not comply with the Ordinance.
5. Violation of Livingston Zoning Ordinance
 - (a) Section 170-91B(2)(b) Front Yard Fence (48' maximum height, 50% open required, 72' proposed; and 100% closed requested)
 - (b) Section 170-91B(3)(c) Side Yard Fence facing public right of way (48' maximum height, 50% open required, 72' proposed; and 100% closed requested)
 - (c) Section 170-91B(5) Evergreen plantings in front of fence facing street or public right of way. Variance requested for plantings. This request was waived at the hearing by the applicant.
6. The applicant was represented by Barry Evenchick, Esq.
7. The following persons testified at the hearing: The applicant and Michael Lanzafama, PE, PP and LS.
8. The following persons objected to or expressed interest in the application at the hearing: Cary Grill of 244 West Hobart Gap Road supported the higher fence due to safety concerns for his children who would be attracted to the pool in the applicant's yard.
9. The applicant and Mr. Lanzafama testified that since the fence was set back so far from the street at each location, there was plenty of open space meeting the goals of the

Ordinance. During the hearing the applicant withdrew his request a variance from the plantings and agreed to install evergreen plantings which on planting would be from 4.5 to 5 feet in height to buffer the fence. The suggestion of Mr. Lanzafama that the applicant had merely replaced the prior wooden fence that was in need of repair was rejected by the Board as a basis for a variance.

The applicant has satisfied the statutory requirements of N.J.S.A. 49:55D-70 (c)(1) for the relief sought by demonstrating that an undue or exceptional hardship would be imposed upon the applicant by a denial due to the pool on his property and due to his agreement to buffer the fence from view by plantings.

Now, therefore, be it **RESOLVED** by the **ZONING BOARD OF ADJUSTMENT** of the Township of Livingston that the application herein submitted is granted except with respect to the plantings which will be a condition of the variances.

The Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on October 25, 2011 in which Board voted to approve the application in accordance with and subject to the conditions and terms set forth herein on the record.

CHAIRMAN:



ALAN OZAROW

Dated: November 17, 2011

Prepared by: Herbert S. Ford, Esq.