

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

Case #2010-20-V

Motion to Deny by: Mr. Hochberg

Second to Deny by: Mr. Silverman

Motion to Approve Pool Only by: Mr. Wolkstein

Second to Approve Pool Only by: Mr. Gelman

**FINDINGS AND CONCLUSIONS**

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and having heard the testimony and evidence presented at the hearings on September 28, 2010 and December 14, 2010, the following findings of fact and conclusions are made:

1. The Applicants are Robert and Darby Rabinowitz, the owners of the subject property.
2. The property is commonly known as 21 Mayhew Drive, Livingston, New Jersey and is taxed as Block 1307 Lot 29. The property is in the R-2 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 Applicants were represented by Stephen Geffner, Esq.
5. The Applicants proposed to construct a two-story addition to an existing single family residence which addition would increase the total size of the home from 4,870 square feet existing to 6,558 square feet proposed. The R-2 zone permits a maximum habitable floor area of 4870 square feet.
6. The proposed Application is in violation of Livingston Zoning Ordinances as follows:
  - A: 170-97C(2): Front yard setback: 60 feet required, 53.5 feet proposed, 6.5 foot variance requested;
  - B: 170-87AA(2): Habitable floor area: 4,870 square feet allowed, 6,558 square feet proposed, 1,688 square foot variance requested;
  - C: 170-87BB(2): Habitable floor area: 18% allowed, 27.21% proposed, 9.21 variance is requested;
  - D: 170-96A(8)(f): Swimming pool side yard variance: 20 feet required, 18 feet proposed, 2 foot variance requested.

7. Testifying at the hearing was the Applicant, Robert Rabinowitz. Also testifying on behalf of the Applicant was Diana Hoffman, admitted as an expert in architecture, and Richard Keller, of Casey & Keller, admitted as an expert in engineering and planning.
8. The following members of the public appeared in objection to or expressed interest in the proposed Application: Debbie Schneider, Marge Karpan, Richard Shein, Ellen Juran and Sandy Linzner. Appearing in support of the Application were Gary Mendelshon, Wyl Eisenberg, Neil Goldstein, and Jonathan Friedman.
9. With respect to the pool side yard application, the Board found that the Applicant has satisfied the statutory requirements of NJSA49:55D-70(d)(4) for relief sought by demonstrating that the location of the pool will not be a detriment to the public good or the Zoning Plan and Zoning Ordinance, that the variance request is minimal, and that the requirements of NJSA49:55D-70(c)(1) for the relief sought have been met by demonstrating that an undue hardship would be imposed upon the Applicant to relocate the inground pool that was installed by its contractor within the side yard setback, without the Applicant being aware of that error by his contractor. The location of the pool does not present any adverse effects on the neighborhood. None of the members of the public who appeared expressed any concerns about the pool location.
10. The Board finds that the Applicant has failed to meet its statutory requirements with respect to the remaining variances sought. The Board finds that the proposed addition would not fit within the character of the neighborhood, and is not compatible with the surrounding homes. The Applicant has failed to satisfy the statutory criteria of NJSA49:55D-70(c)(1) particularly with respect to the floor area ratio variance requested and would be detrimental to the Zone Plan and Zoning Ordinance in that the proposed addition would result in the home being approximately 35% larger than permitted, will create the appearance of a massive structure, and provide no benefits. Similarly, the Board finds that the Applicant has failed to satisfy the requirements of NJSA49:55D-70(c)(2) in that the proposed addition does not present a better zoning alternative and would be detrimental to the public good and to the Zone Plan and Zoning Ordinance and that the detriment from such an addition would outweigh any benefits.

This Resolution is a memorialization of the action of the Zoning Board of Adjustment of the Township of Livingston taken on December 14, 2010 in which the Board voted unanimously to approve the application for the pool side yard variance and to deny the application for the remaining variances requested. This action is in accordance with and subject to the conditions and terms set forth herein and on the record.

CHAIRMAN:

  
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ALAN OZAROW

Dated: January 25, 2011

Prepared by: Richard W. Vallario, Esq.