

**BOROUGH OF PINE BEACH  
LAND USE BOARD  
REGULAR MEETING  
May 6, 2021**

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The Land Use Board for the Borough of Pine Beach held a regularly scheduled meeting on May 6<sup>th</sup>, 2021 at 7:30pm at the Municipal Building, 599 Pennsylvania Avenue. Vice Chair, Mrs. Lill, called the meeting to order and led all in a flag salute. She then read the opening statement:

1. **Opening Statement:** In compliance with the Open Meeting Law, P.L. 1975 C231, the notice of this meeting was sent to our official newspapers, the Asbury Park Press and the Star Ledger, and also posted on the bulletin board at the Pine Beach Municipal Building and the Pine Beach Post Office. The statement shall become a part of the official minutes of this meeting.

2. **Flag Salute:** led by Mrs. Lill

3. **Roll Call:** Present- Mr. Cuneo, Mr. Budesa, Mr. Higham, Mrs. Lill, Mrs. Saxton, Mrs. Stone, Mrs. Wnek  
Absent- Mr. Keesling, Mr. Pierson, Mr. Slickers  
Mr. Christopher Reid, attorney, and Mr. Mark Rohmeyer, engineer were present.

4. **Reorganization**

Swearing in of members:

Class II-Patricia Wnek(12/31/21)sworn on record

Class IV-Victoria Stone(1/01/21-12/31/22)sworn on record

Election of Vacant Officer Positions for Chairperson and Secretary – Resolution 2021-06

Mrs. Lill- Chair Person

Mr. Higham- Vice Chair

Mrs. Wnek- Secretary

Thanks Charlene Carney for many years of dedication to LUB.

5. **Approval of Minutes**

Approval of the April 1, 2021 meeting minutes

-Change of minutes requested by Mrs. Saxton, item 9 to be read “may be an issue”.

Amendment and minutes were approved. A motion was made by Mayor Cuneo and second by Mr. Higham.

All In favor; Mr. Cuneo, Mr. Higham, Mrs. Lill, Mrs. Saxton, Mrs. Stone, Mrs. Wnek

Abstain; Mr. Budesa (absent from 4/1/2021)

6. **Old Business**

No old business to come before the board

7. **New Business**

Mr. Reid introduced the complete application for variance;

**Block 32 Lot 5.02 - 614 Hillside Ave.**

**Roman Brothers Construction, LLC**

Mrs. Saxton recused herself

Mrs. Wnek recused herself

Mrs. Lill clarified with Mr. Reid that her son owns property within the 200ft of subject; Mr. Reid verified that she can sit for testimony.

Mr. Reid introduced the applicant’s attorney Mr. Russell Whitman to begin the testimony.

**Attorney for applicant: Russell Whitman**

Representing the applicant- Matt Roman of Roman Brothers Construction LLC.

Mr. Whitman stated on the record that his client is requesting a variance to permit a mostly constructed building, determined to be 20” higher than the height requirements as per the Ordinance of The Borough of Pine Beach.

They are also requested a variance for the construction of a retaining wall, 1ft higher than allowable by ordinance.

**Engineer for applicant: Jason Marciano**

Mr. Marciano stated his credentials and was sworn in by Mr. Reid; He has been with East Coast Engineering for 20 years, land use planner for 13 years, a member of New Jersey’s Society of professional Engineers, Ocean County chapter. Madam Chair accepted sworn testimony and credentials of Mr. Marciano.

Mr. Whitman- Asked Mr. Marciano to present materials to the board.

Materials to presented **A1**- described as 12 pages of photos by East Coast Engineering taken 5/6/2021 and 4/16/2021 of the site in question as well as the neighborhood surrounding.

Mr. Marciano- The subject described as block 32, lot 5.02, a NE corner lot of Linden and Hillside. Property has 75ft frontage on Hillside and 125ft on Linden Ave. The lot is a typical 75x125 conforming for lots in R-75 zone. This was a vacant lot before the approved 2011 subdivision.

Proposed subject, to be finished, is a 2story dwelling, on a crawl space. Home will have 3 bedrooms, 2 baths, and with a covered porch. Home proposed to be a total of just over 2,200 sqft. Drive way will be on Hillside Ave. Proposing drywells to recharge runoff from down spouts. Mr. Marciano displayed a survey and plot plan with a height diagram that was not on original application. The provided plot plan is showing the home in same location with grading, same features, as prepared documents in November. These documents were submitted, permits were issued, builder requested stake out in early January and construction got underway. Mr. Marciano stated that in early March, an as-built on the roof was performed, at this time I reached out to the Borough for clarification on the definition of the height. Mr. Rohmeyer and Mr. Marciano clarified the as-built height. This is when Mr. Marciano realized the height of subject was too high. As presented, variance requested is 26.89ft being the 25ft height requirement for the R-75 zone. All setbacks are met and Mr. Marciano stated the maximum air, light and open space has been met of the subject's lot. Mr. Marciano noted that a hardship variance for the retaining wall is being requested. After grading and disturbing ground on the new construction lot the slope of the yard is going back towards the neighbor's yard. The location of the retaining wall is on the rear and side yard (Linden Ave) of the subject. The retaining wall is proposed to be constructed from wood ties. The Linden Ave side that is shared with neighbor the property drops 3.55ft. The same back corner is 7" lower, sloped towards the neighbors. The proposed retaining wall is to prevent runoff to neighbor. The variance they are seeking is for the extreme corner to be constructed at 2ft in height, 1ft is in compliance. Mr. Marciano sees this as a hardship variance based on the exceptional topography and cause for circumnavigating the sloping grade into the neighbor's yard.

Mr. Marciano presented A5, architects elevation view of subject to support primary variance, height.

Mr. Marciano explained his definition of baseline was natural grade. Natural grade is defined as reference plane measured 2ft from the crown of the road, or two feet from the existing level of ground surface of any disturbance. Based off of his understanding of these definitions, Mr. Marciano reached out to Mr. Rohmeyer for clarification. Mr. Rohmeyer clarified that the baseline is 2ft from foundation, pre-construction grade. The front door of subject faces Hillside Ave., the measurement from the crown of Hillside Ave is 26.89ft. Mr. Marciano noted that if same measurement was taken from the mid-line of the house and out to Linden Ave., the height would be 22.02ft.

Mr. Marciano presented A1 (photos) - presented to all for the visual representation of subject's neighborhood, the variety of homes, and showing conformity of subject's roof pitch as well as size of home proposed. This goes to support the negative criteria variance proof. Mr. Marciano believes the variance requested for height is a hardship variance for exceptional topography. One road they conform, the other (Hillside Ave.) they need relief.

C2 analysis presented by Mr. Marciano; the relief they are seeking is promoting purposes of municipal land use.

5 purposes stated they are promoting;

- Health and safety of new proposed house is up to code,
- Safety from fire and flood, outside flood zone and home is to code with ample space between neighboring homes.
- Air, light, and open Space
- Appropriate density, conforming lot for setbacks, single family home in a single family zone.
- Promote desirable visual environment with architectural detail.

Negative criteria from C2 analysis- Can the variance be granted without being a substantial detriment to public good? Mr. Marciano believes there is no detriment to the public good. The variance will not substantially impair the intended zone plan. The Relief that they are seeking is minimum on the height and negligible being it would not be over in height from Linden Ave.

Mr. Rohmeyer read his letter into the minutes;

#### **General Comments:**

The subject property is located on the north-east corner of the intersection of Hillside Avenue & Linden Avenue and lies within the R-75 (Single Family Dwellings- Medium Density Residential) Zone. The property grades from south to north. The existing survey 09/28/2020 indicates the lot is vacant, however the application indicates that the property was under construction when they were notified that the dwelling under construction had exceeded the permitted height.

The applicant is requesting a variance for exceeding the permitted building height for a Single Family Dwelling. All other proposed improvements associated with the SFD (such as setbacks, driveway, etc.) are typical and conforming.

Note: Corner lots contain "front yards" along both streets, and the remaining yards are considered "side yards" per definitions section #175-6.

1. Existing Non-Conformities:

- a. None

2. Variances required for this application:

- a. Building Height – where 25 feet is permitted, and 26.89 feet proposed.

#175-57 Schedule

- b. Retaining Wall Height – where 1 foot is permitted, 2 feet is proposed.

#175-33G

3. Waivers required:

- a. None

4. The Applicant must provide testimony, acceptable to the Board, to substantiate that the relief requested may be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zoning Plan or Zoning Ordinance if the Applicant can describe the process and how the permitted building height was exceeded.

5. Site Grading - The applicant is proposing to improve existing grading patterns and direct more runoff to the west towards Hillside Avenue rather than directly onto the neighboring property to the north. The landscape tie wall is also an improvement to the drainage pattern. Also the roof leaders will be tied into a storm water recharge system on site which has been adequately sized to infiltrate the storm water quality storm to address the impervious coverage proposed.

Note: The proposed wood tie retaining wall varies in height from 6 inches to 2 feet, and is appropriate for grading purposes.

6. Site Specific Questioned/Comments:

- a. Applicant to provide testimony on whether the Architectural drawings apply to this specific application. We note Engineering Plan accurately depicts what is shown on the Architectural Plan.

- b. Applicant to provide testimony on how the proposed improvements fit in with the character of the neighborhood.

7. Engineering Plan comments:

- a. None.

F. Conditions and Recommendations:

Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned on the following;

1. The Applicant shall obtain any and all applicable outside agency approvals, including but not limited to NJDOT, NJDEP, Ocean County Engineering Department, Municipal Building Department, Fire Department, etc.
2. The Applicant shall submit payment of any and all outstanding professional review fees of the Board and the Township.
3. The Applicant shall provide all required plans necessary to show compliance with all required building codes and ordinances to the Building Department at the time of the permit application.

Board member questions:

Mr. Higham asked to clarify if the subject has 9ft ceilings and Mr. Marciano that yes it does and that the original architectural drawings may have 8ft for framing sizes, but it was Mr. Marciano's understanding it was always planned on 9ft ceilings as shown on A5.

Mrs. Stone questioned the ordinance pertaining to the height and has Mr. Marciano clarify the ordinance as he interpreted verse how the ordinance reads. She stated that she feels the ordinance is ambiguous in regards to where the survey measurement should be conducted from. After reviewing the ordinance and the definition Mr. Reid asked Mr. Rohmeyer about how the definition is ambiguous and not clear on where the measurement must be taken from and Mr. Rohmeyer agrees with Mr. Marciano's testimony that the Linden Ave. measurement is within the height requirements and Mr. Reid stated that the subject would not be in need of a variance if this were the case.

Mr. Rohmeyer stated that historically the disturbance is from 2ft around the foundation. Mr. Reid presented that the ambiguous ordinance term of "any disturbance" is meant to be flexible in relief to allow for variation and to work with developer and builders.

Mrs. Stone asked for the measurement of the height from Linden Ave. and Mr. Marciano provided the measurement 24.56ft which is 5inches under the height maximum, from the front it measures 26.89ft.

Mr. Higham clarified that the fence will not be constructed higher than 6ft in total. Mr. Reid put on the record that the variance can be conditional that in total the retaining wall and the fence cannot be higher than 6ft.

Mrs. Stone stated that for a hardship variance in NJ you must have a unique or exceptional problem with the property. She questioned to Mr. Marciano if there is an alternative solution, other than the 3ft variance they are requesting to bring subject to compliance.

Mr. Marciano stated that with the height the subject has already completed the roofing and the solution would be to tear off the roof or lower the foundation.

Mrs. Stone questioned what a compliance solution for the hardship variance for the retaining wall, Mr. Marciano stated that due to the unique topography there is no other solution.

Mrs. Lill brought to attention that previously she has seen the lack of maintenance cause issues to neighboring properties. Mr. Marciano reiterated that the slope is downhill from the neighbor's property and pooling of water should not be an issue and is the reason why they created the retaining wall.

Mr. Reid clarified for the board that the intent of the retaining wall is to keep the storm water contained to the subject's yard instead of flowing towards the neighbor's yard.

Mr. Rohmeyer stated that the subject is using the recharge system for runoff, an improvement of infiltration, by capturing all of water to fall on the footprint of the house plus the retaining wall.

Mr. Reid clarified that the recharge system Mrs. Lill is referring to is more for roof run off of rain water and the retaining wall is for the runoff across the property. Mr. Rohmeyer agreed with Mr. Reid's statement.

Mr. Higham questioned the materials in usage and if a concrete block would be more efficient for the maintenance. Mr. Marciano stated wood ties are proposed.

Mr. Roman, partner of Roman Construction is sworn in by Mr. Reid for his testimony.

Mr. Whitman brought Mr. Roman up to confirm he will use whatever material is approved for the retaining wall.

Mr. Reid stated to the board that a conditional approval for material of retaining wall is possible.

Mayor Cuneo requested to hear from the public; Mrs. Lill asked if there are any objections from the board members or the applicant, Mr. Whitman stated they have no objections and no objections heard from the board.

Public questions regarding expert witness's testimony;

Mr. Jim Saxton, representing 706 Hillside Ave., asked to speak.

Mr. Reid put on the record that Mr. Saxton is an elected official of the Borough and Mrs. Lill asked if there were any objections to Mr. Saxton's public question. No objections from the board and as stated from Mr. Whitman the applicant had no objections.

Mr. Saxton continued with a question on how the subject got this far in the process of building without a realization during the foundation as-built. Mr. Marciano stated that the second or third week in January, the builder asked for the foundation survey and the grade sits slightly below Linden. After the foundation height was taken the framers continued and the house was constructed. After framing, the town advised they needed an as built height certificate. This was where Mr. Marciano stated he needed to consult with Mr. Rohmeyer on his measurements.

Mr. Saxton asked Mr. Marciano what the value of his A1 presentation was for. Mr. Marciano stated that it was to show other 2 story homes in the area, as well as that from the ridge height to the crown these buildings are higher than 25ft with unique topography. Mr. Marciano confirms his previous testimony.

Mrs. Lill questioned that since Roman Brothers construction had been in our community and had all these professionals surrounding the subject, how was this height error made?

Mr. Whitman questioned to Mr. Roman about where he has built homes and if built in Pine Beach before. Mr. Roman stated he has been a builder for 25 years in Ocean County and has built homes in Pine Beach before. When Mr. Roman decided to build the home on this lot he used his team of professional to design and has submitted those plans to obtain approval. Mr. Roman stated that to the best of his knowledge, he built subject in accordance to these professional's plans. There was a question on the height of the home and Mr. Roman leaned on Mr. Marciano's professional advice that the height was in compliance.

Mr. Whitman made Mr. Roman available for questions.

Mr. Higham asked Mr. Roman if at framing there has been a question on the height and if subject was complaint, then why was construction continued. Mr. Roman responded that he was advised that the height was okay and actually an inch under the required height. Mr. Roman continued building while his professional, Mr. Marciano, got the height certificate over to the town.

Mrs. Stone asked when the height certificate was requested from the town. Mr. Roman answered that at the time of framing is when he was questioned on the height from the town and had Mr. Marciano verify the height as he continued construction. Mrs. Stone asked if this is a typical practice, to continue building while waiting for this survey to be complete and submitted. Mr. Roman said that this was the first time he had to deal with the height certificate being requested during construction.

Mr. Reid went over the process of zoning and the proposed plans submitted for review. The construction department, the building sub code, and the zoning officer had approved all plans for construction.

Mayor Cuneo called the Borough Zoning Officer, Mr. Gary Stocco for questioning.

Mr. Gary Stocco- Zoning Official to The Borough of Pine Beach (sworn in)

Mayor Cuneo asked Mr. Stocco to run the board through the process of the zoning application.

Mr. Stocco explained that when applicant applied for zoning, he reviewed the setbacks, the proposed grading plan, and all materials supplied from applicant. On the application for initial approval, Mr. Stocco placed directly on form, that approval was contingent on the as built foundation, as built height, and as well as final survey being submitted to the his office at Borough Hall. Mr. Stocco stated that he asked multiple times for the height verification to be sent to him from the subject's contact on the application.

Mr. Marciano stated that he hand delivered the height verification to the Borough Hall on or about April 9<sup>th</sup>.

Mr. Higham asked that if applicant knew at framing there was an issue, why construction continued knowing subject was in violation.

Mr. Roman stated that he continued to work to finish the home because one way or another, the issue had to be fixed and he has clients who would like to move into their house.

Mr. Richard Lill- 707 Hillside Ave. was sworn in.

Mr. Lill asked for more details on the water catcher and how the mechanisms worked to prevent pooling of water and mosquitos. Mr. Marciano answered that the proposed gutters go directly into the basin, there are no out reaching object and the retaining wall is to direct the water away from neighbor's property.

Mayor Cuneo stated that if there is a future issue with the neighbors due to this retaining wall and water run-off that the neighbors can handle together or seek legal advice.

Mr. Marciano stated that they are not proposing any grading on to the neighbor's topography and in the 2011 subdivision shows the grading continuing straight through.

Mr. Budesa asked Mr. Marciano when Mr. Roman raised concerns to his office. Mr. Marciano's replied that in February is when Mr. Roman forwarded an email from the town requesting a height certificate. Mr. Marciano felt at that time all elevations and plans matched what was submitted. The official measurement was taken March 9<sup>th</sup>. Mr. Budesa asked Mr. Marciano that at time of approval what height was on the plans. Mr. Marciano stated that on the plans submitted it stated that height must be verified in the field.

Mr. Budesa asked Mr. Marciano that in his professional opinion, at 9ft ceilings and a 9ft pitch for the roof line was changed would rectify? Mr. Marciano stated the roof would have to be lowered 3ft to get the mid rafter height to change and there is not enough room.

Mrs. Lill asked if there are any further questions for the professionals- no further questions.

Mayor Cuneo made a motion to open for public comments, seconded by Mr. Higham.

No public comments were made.

Mayor Cuneo made a motion to close public comments, seconded by Mr. Higham. Public portion closed.

Mrs. Lill opened up board deliberation-

Mrs. Stone stated that based on the ordinance and the ambiguity, the measurements taken from Linden Ave. at 24.56ft, there would be no variance required. Historical events cannot be used in the judgement for a variance. Mayor Cuneo stated that height is one of the biggest issues the board is faced with. The height always seems to come after the issue and the construction of the house proceeds and then applicants ask for forgiveness. The issue is not looked at importantly enough. Mayor Cuneo stated that another issue he has is the subject's future occupant looking down into the neighbor's yards and the neighbor's staring up into the subject house is an uncomfortable situation for both parties involved. Mayor Cuneo proceeds that our ordinance is known and was clarified through our Borough Engineer but was not asked at the opportune time because the answer wasn't wanted.

Mr. Budesa began with stating that the wording in ordinance is not clear enough and he does not believe this was done maliciously. Mr. Budesa believes that the subject is not a detriment to the neighborhood. Going forward he stated that this type of issue needed to be clearer to builders from the beginning of the process and that he has no problem with the retaining wall.

Mr. Higham stated that he is trying to prevent issues for the neighbors and feels the best solution would be to have the retaining wall constructed out of concrete blocks for easier maintenance and longevity.

Mark Rohmeyer stated that adding concrete block is a good idea and sees the retaining wall as an improvement overall. Any water that is not absorbed will now be redirected away from South to North.

Mrs. Lill agreed that the block wall will help with the longevity of the retaining wall and prevent rot and water pooling. Mrs. Lill stated she has an issue with the applicant coming in for "forgiveness" after the fact. At the time

of application if the height was portrayed as 8ft ceilings and now the subject has 9ft ceilings, this is a misrepresentation of what the structure will be.

Mr. Higham stated that at a certain point the applicant knew he was over the 25ft this could have been stopped. The professionals have to get the measurements right and not present to the board after the fact.

Mrs. Lill stated that the issue of measuring off of Linden Ave. and the ambiguity of the ordinance is of concern and directed for Mr. Reid to clarify.

Mr. Reid stated that the discrepancy over the interpretation of the ordinance was a misunderstanding and also the changeover with Borough employees may have led to the confusion. Mr. Reid continued with Mr. Rohmeyer, board engineer agreed with the applicant's testimony and the determination is based on if there is enough evidence for positive and negative criteria.

Mr. Reid stated the ambiguity in the ordinance cause a discrepancy between the engineers. Due to the ambiguous interpretation of the ordinance there was a delay in issuing a violation from the zoning office. Mr. Reid added that the variance may not be even necessary if the measurement from Hillside Ave was acceptable.

Mrs. Stone decided that based on the negative criteria presented, the height being over by 1½ ft., is not a detriment to the neighborhood.

Mr. Whitman in conclusion stated that the outcome of this meeting should be a clarification of the ordinance and the ambiguity of the ordinance should favor the applicant and not the town. He believes the legal requirements of a C variance have been met for the variance to be granted as requested. Mr. Whitman indicated the applicant is happy to make the retaining wall a concrete block wall.

Mayor Cuneo made a motion to vote on approval of the applicant's variance for height and concrete block retaining wall;

Mayor Cuneo voted yes and wanted it put on the record that article (1) photos were unprofessional and a poor decision.

Mr. Budesa voted yes, but stressed the importance of correcting the ambiguous ordinance. Also, voted yes on block wall installation.

Mr. Higham voted yes, and would like to see the ordinance change so this issue does not continue to be brought after the fact to the board.

Mr. Reid amended the motion by Mayor Cuneo to add retaining wall as a conditional factor to the variance and both previous board voting members had no objection to adding this.

In totality, retaining wall and fence must not exceed total 6ft. 6ft includes base, 4ft wall.

Mrs. Stone voted yes with all conditions.

Mrs. Lill stated that based on the additional cost to the community and applicant she is voted yes for the height variance. With the conditions for the block retaining wall she also voted yes. Mrs. Lill objected to article (1) presented by Mr. Marciano.

Mr. Reid thanked the applicant and stated that based on the vote (5 yes) they have been granted the height variance as well as the condition for retaining wall construction. Roman can continue with construction at risk.

Mr. Stocco concluded he will notify the construction department and remove the stop order based on this resolution.

#### 8. New business

Mayor Cuneo stated that a change in the ordinance is needed to clarify the ambiguity on where the measurement is taken, must state from crown of road located from front door. These requests must be presented to the Mayor and Council for amending.

Mr. Whitman and Mr. Roman left the meeting. Mrs. Wnek and Mrs. Saxton returned to the meeting.

Mr. Rohmeyer stated that the Borough should add, to our zoning application process, a procedure to require for the calculation of height for all new construction.

#### 9. Vouchers for payment

None

#### 10. Public Portion

Madam Chair opened to general public comment;

Mr. Saxton thanked Mayor Cuneo for his comments on article (1).

Motion made to close public comment by Mayor Cuneo, seconded by Mr. Higham.

#### 11. Any Other Business to Come Before the Board- No other business

#### 12. Adjournment- Motion to adjourn meeting made by Mayor Cuneo and second by Mr. Higham, all ayes, no objections.