

**BOROUGH OF ALLENHURST  
PLANNING BOARD**

**RESOLUTION # 8-18-21 (1)**

Whereas, Helder and Nancy Mendonca, the record owners of the property have timely appealed, pursuant to N.J.S.A.40:55D-72a, to the Planning Board of the Borough of Allenhurst certain Stop Work Orders and alternatively, the applicants sought either an amendment to or new Certificate of Appropriateness should the Planning Board deny the appeal at the premises located at 222 Cedar Avenue, Borough of Allenhurst and known as Block 4, Lot 11 on the official tax map of the Borough of Allenhurst which premises are located in R-1 Zone. The consideration of the appeal, Certificate of Appropriateness and proposed improvements require Planning Board and Historic Preservation approval.

The Applicants/Appellants ("Applicants") appealed the Stop Work Orders issued by the Zoning Officer on April 12, 2021 and April 22, 2021.

A hearing was held on May 19, 2021 relating to the appeal.

Whereas, the Board after carefully considering the evidence presented by the Applicants, the Zoning Officer, and if any, by the general public and/or experts offered on behalf of Objectors, has made the following factual findings:

1. The Applicants are the owner of the property.
2. The Applicants presented the following exhibits:

A-1 Notice of Hearing

A-2 Notice of Appeal dated 4/14/21.

A-3 Notice of Appeal dated 4/22/21.

A-4 April 22, 2021 Email chain between the applicants' attorney, Paul V. Fernicola, Esq., Borough Attorney David Laughlin and Borough Zoning Officer Joseph McGrath.

A-5 Paul V. Fernicola's email dated 4/23/21.

A-6 Joseph McGrath's reply to Paul V. Fernicola's email dated 4/23/21.

A-7 Paul V. Fernicola's email dated April 29, 2021 to Joseph McGrath .

- A-8 April 30, 2021 Email chain between Paul V. Fernicola and Joseph McGrath.
- A-9 Paul V. Fernicola's email dated April 29, 2021 to Joseph McGrath.
- A-10 Notice of Appeal dated April 30, 2021.
- A-11 May 6, 2021 Email chain between Paul V. Fernicola and Erik Anderson, Esq..
- A-12 Resolution 4-21-21 (1)
- A-13 3/17/21 Planning Board transcript.
- A-14 Letter dated May 4, 2021 from Borough Engineer, Matthew Mariano.
- A-15 Letter dated May 5, 2021 from Borough Engineer, Matthew Mariano.
- A-16 Ordinance #2021-04.
- B-1 Zoning letter dated 4/21/21.
- B-2 Zoning Officer submission.

4. The Applicants filed timely appeals in response to Stop Work Orders issued on April 12, 2021 and April 22, 2021. It should be noted that the Applicant initially identified a Stop Work Order issued on April 29, 2021 as part of the appeal. This Stop Work Order consisted of a "Red Placard" and was issued by the Construction Official. The April 29, 2021 Stop Work Order was ultimately not part of this appeal. Alternatively, should the Planning Board deny the appeal, then the Applicants sought either an amendment to or new Certificate of Appropriateness.

5. On March 17, 2021, the Board granted a Certificate of Appropriateness for the subject property for certain improvements.

6. Pursuant to N.J.S.A. 40:55D-75, the timely filing of the Applicants' Notices of Appeal to the Planning Board served to stay the enforcement of the Stop Work Orders and the Applicants were thereby authorized to continue working at the property at their own risk pending the May 19, 2021 hearing of the Planning Board.

7. One of the issues addressed in connection with the Appeal concerned the installation of windows at the subject property. The windows installed by the Applicant were not the windows approved at the March 17, 2021. The April 22, 2021 Stop Work Order was based, in part, on this issue. At the May 19<sup>th</sup> hearing the Applicants advised that the delivery for the

approved/permanent windows were delayed due to Covid-19. Accordingly, the Applicants ordered and installed temporary windows to ensure the integrity of the building. It is the intention of the Applicants to replace the temporary windows with the approved/permanent windows upon their delivery.

8. The Board heard testimony regarding issues which were perceived to still be “open” at the time of the hearing. This included issues regarding the windows, construction of the rear dormer and the proposed finished basement height.

9. Testimony was provided that at the time the April 12, 2021 and April 22, 2021 Stop Work Orders were issued outstanding issues existed which have since been resolved.

10. At the May 19 hearing, the finalized plans for the project approved March 17, 2021 were submitted to the Board for final signature.

11. The Applicants represented that the final/permanent windows to be installed will be of the type and size previously approved by the Board.

Whereas, the Board deliberated with regard to the facts presented and determined as follows:

1. There was adequate and sufficient basis for the Zoning Officer to issue the Stop Work Order on April 12, 2021.
2. There was adequate and sufficient basis for the Zoning Officer to issue the Stop Work Order on April 22, 2021.
3. The Applicants had remedied the issues noted in the April 12 and April 22, 2021 Stop Work Orders thereby rendering these Stop Work Orders as moot.
4. The Applicants have represented that the final/permanent windows to be installed will be of the type and size previously approved by the Board.
5. The final basement height issue is moot as the final plans submitted by the Applicants reflecting 8-foot ceilings have been signed by the vice-chairman of the Board.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Allenhurst on the 19<sup>th</sup> day of May 2021 that the Applicants’ Appeals of the Zoning Officer’s Stop Work Orders are **DENIED** as it has been deemed that the issues upon which the Stop Work Orders were based have been resolved and as such the appeal is **MOOT**.

Moved by: Commissioner McLoughlin

Seconded by: Schechner



ROLL CALL VOTE

Those in favor: Commissioner McLoughlin, Schechner, Costello, Hochster, Horowitz, Hochster

Those opposed: none

Recused: Toaino, Roger, Varley

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Allenhurst on the 18th day of August , 2021 that this Resolution be adopted.

Moved by: Commissioner McLoughlin

Seconded by: Costello

ROLL CALL VOTE

Those in favor: Costello, Mayor McLaughlin, Chairman Tomaino, Commissioner McLoughlin, Hochster

Those opposed: None

Those absent: Schechner

Those not voting: Rogers

The foregoing is a true copy of a resolution adopted by the Planning Board of the Borough of Allenhurst at its meeting on the 18<sup>th</sup> day of August , 2021.

As copied from the minutes

Of said meeting



Kelly Barett

Secretary, Planning Board

Borough of Allenhurst, N.J.