

**BOROUGH OF ALLENHURST
PLANNING BOARD**

RESOLUTION

#2-17-2021 (1)

Whereas, Chris and Michelle Rogers, the record owner of 312 Spier Avenue, Borough of Allenhurst, has appealed the Borough of Allenhurst's Zoning Officer's ("Zoning Officer") interpretation of Ordinance 25-3.19 to the Planning Board of the Borough of Allenhurst ("Board") relating to the determination that the variances granted in Resolution #5 17 17 – 2 have expired. The consideration of the Appeal by the Board is appropriate under applicable law.

The Applicant/Appellant ("Applicant") challenges a determination by the Zoning Officer that Resolution # 5 17 17 – 2, which was granted on May 17, 2017, granting side yard setback, rear yard setback and impervious coverage variances for the construction of a pool expired pursuant to Ordinance 25-3.19 ("Ordinance"). The Zoning Officer has advised that the timing requirements to commence construction pursuant to the Ordinance have lapsed. The Applicant contends that the Zoning Officer's interpretation is incorrect. The Board now sits in judgment of this Appeal.

In addition to this Appeal, the Applicant has re-submitted an application seeking variance relief to construct the pool previously granted in May 2017 by this Board. The Applicant seeks variance relief for side yard setback, rear yard setback and impervious coverage in the event that the Board finds the Zoning Officer's interpretation correct and denies the Appeal.

Hearings were held on January 20, 2021 relating to this matter.

THIS RESOLUTION ADDRESSES THE APPEAL ONLY.

Whereas, the Board after carefully considering the evidence presented by the Applicant, the Applicant's expert and the comments, if any, by the general public and/or experts offered on behalf of Objectors, has made the following factual findings:

1. The Applicant is the owner of the property.
2. The Applicant presented the following exhibits:
 - A-1 Application.
 - A-2 Resolution # 5 17 17 – 2 dated 5/17/17
 - A-3 Survey dated 1/10/17.
 - A-4 Notice.
 - B-1 Zoning Officer Determination
4. The Applicant received variance relief to construct a pool on their property. The variance relief included side yard setback, rear yard setback and impervious coverage. This approval was memorialized in Resolution #5 17 17 – 2, dated May 17, 2017.
5. The Applicant sought to obtain permits to construct the pool approved in Resolution #5 17 17 – 2.
6. The Zoning Officer advised that the variance had expired and such permits could not be issued.

7. Applicant has appealed the Zoning Officer's determination, and in the alternative sought variance relief for the proposed pool.

8. The pool now proposed is identical to the pool approved in Resolution #5 17 17 – 2.

9. Borough Ordinance 25-3.19 provides:

Any variance from the terms of this chapter hereafter granted by the Planning Board permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation and become null and void unless such construction or alterations shall have been actually commenced on each and every structure permitted by the variance or unless such permitted use has actually been commenced, within one (1) year from the date of publication of the notice of judgment or determination of the Planning Board; except however, that the running of the period of limitation herein provided, shall be tolled from the date of filing and appeal from the decision of the Planning Board to the Governing Body, or to a Court of competent jurisdiction, until determination in any manner of such appeal or of proceedings. Variances previously granted by the Zoning Board of Adjustment prior hereto, shall expire in the fashion herein provided. In the granting of a Certificate of Appropriateness, a time limit of one (1) year from the date of the Certificate of Appropriateness approval shall be set within which the owner shall secure a building permit; otherwise the Certificate of Appropriateness granted shall be null and void. The Planning Board may for good cause shown at a hearing before the Planning Board, extend the period for securing a building permit for an additional period not exceeding six (6) months.

10. The Applicant testified that they did not begin construction of the pool within one year from the date of the publication of the determination of the Planning Board.

11. There was no action taken which would have tolled the time limit set forth in Ordinance 25-3.19.

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

1. The Board found that the Applicant commenced construction of the pool within one year from the date of the publication of the determination of the Planning Board.

8. The Board found that the Zoning Officer's determination was appropriate and consistent with Ordinance 25:3-19

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Allenhurst on the 20th day of January 2021 that the Applicant's Appeal of the Zoning Officer's interpretation of Ordinance 25:3-19 is **DENIED**.

FURTHERMORE, BE IT RESOLVED, that Applicant will be permitted to present its variance application at a subsequent hearing before the Planning Board of the Borough of Allenhurst.

Moved by: Costello

Seconded by: Schechner

ROLL CALL VOTE

Those in favor: Mayor McLaughlin, Commissioner McLoughlin, Varley, Boyd, Schechner, Costello

Those opposed: none

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Allenhurst on the 17th day of February, 2021 that this Resolution be adopted.

Moved by:

Seconded by:

ROLL CALL VOTE

Those in favor:

Those opposed:

Those absent:

Those not voting:

The foregoing is a true copy of a resolution adopted by the Planning Board of the Borough of Allenhurst at its meeting on the 17st day of February, 2021

As copied from the minutes
Of said meeting

Kelly Baret
Secretary, Planning Board
Borough of Allenhurst, N.J.