

**APPLICANT: EDGAR ALACAN**  
**ATTORNEY: GREGORY W. VELLA, ESQ.**  
**APPLICATION NO. 2024-06**  
**BLOCK 1; LOT 45.02**  
**PROPERTY: 301 16<sup>TH</sup> AVENUE**

**LAKE COMO PLANNING BOARD**  
**RESOLUTION OF THE PLANNING BOARD**  
**OF THE BOROUGH OF LAKE COMO,**  
**COUNTY OF MONMOUTH AND STATE OF NEW JERSEY**  
**DENYING APPLICATION**

**WHEREAS**, Edgar Alacan, Applicant, is the owner of the property located at 301 16<sup>th</sup> Avenue, Block 1, Lot 45.02, in the Borough of Lake Como, County of Monmouth, and State of New Jersey, hereinafter referred to as the “Applicant”, and has filed an application with the Planning Board of the Borough of Lake Como, hereinafter referred to as the “Board”, seeking all appropriate approvals for a previously constructed open-air pavilion with a kitchen; and

**WHEREAS**, the application applies to the property on Block 1, Lot 45.02, also known as 301 16<sup>th</sup> Avenue in the Borough of Lake Como; and

**WHEREAS**, all notice requirements were satisfied by the Applicant, and the Board had jurisdiction hear, consider, and decide the application; and

**WHEREAS**, the Board held public hearings on the application on June 10, 2024, July 2023, and October 2024 in executive session and March 13, 2024, in executive session, and the June 10, 2024, meeting. The Applicant was represented by Greg Vella, Esq.; and

**WHEREAS**, the Board has given due consideration to the evidence, exhibits, and testimony presented herein, and the unique circumstances of the application, does hereby make the following findings of fact and conclusions of law:

1. The premises are located in the R-40 zone and is an approximately 5,000 square foot lot. Single-family homes are a permitted use in the zone. The lot currently contains a 2 ½ story single-family dwelling unit, a shed, paver driveway, and a number of patios and walkways. In addition, a 10’ x 21’ open-air pavilion/kitchen was constructed without zoning approval, but with a building permit inappropriately granted in March 2020. The pavilion includes a kitchen with cooking appliances, a bar area and seating for multiple people, televisions, and speakers for music.
2. The following variances are required:

A. Front yard setback where 20 feet is required, and 3.6 feet is existing or proposed.

B. Rear yard setback where 3 feet is required, and 2.5 feet is proposed.

C. Building coverage where a 40% maximum is allowed, 37.8% was existing prior to the construction of the pavilion, 42% is existing with the pavilion, and 43.44% is proposed with the dwelling, pavilion, and the shed in the backyard.

D. Impervious coverage where 60% is allowable, 49.4% existed prior to the construction of the pavilion, 53.6% is existing with the pavilion, and 73.7% is proposed with the dwelling, pavilion, sheds, walkways, and driveway, all of which existed prior to the application being filed. At the June 2024 hearing, the attorney for the Applicant represented that the plans would be changed to eliminate this variance.

E. Front yard coverage where 50% is the maximum allowable, 22.3% is existing, and 58.2% is proposed with the addition of the pavilion and other existing improvements.

F. Bulk variance relief for the construction of an outdoor pavilion with cooking facilities, including chimney, entertainment features, television, heating and a bar with seating, a non-permitted accessory use

3. It is further noted from the Board Engineer's review of the application and survey that the Applicant has installed a shed within the nine-foot utility easement on the south side of the property, along with other walkways and paving without permits constructed apparently at the same time as the pavilion.
4. In March of 2020, the first month of the pandemic crisis, the contractor for the property owner filled out an application for a building and zoning permit. Borough employees were, for the most part, working remotely. The Applicant did not pay the fee for the zoning permit and the permit was neither acted upon nor issued. The building permit was issued on July 23, 2020.
5. The building permit application filed by the Applicant's contractor indicated that the work to be done was a refurbishment of an outdoor structure at an approximate cost of \$50,000.
6. Construction started soon after the building permit was issued. Some of the required inspections took place. No final certificate of approval was ever issued as it was determined that zoning approval had never been granted.
7. A resident contacted the Borough in approximately March of 2021 questioning how the structure was approved. An internal investigation ensued, and it was determined that the zoning permit was never acted upon, and the building permit was erroneously issued. During a time that most work was remote. The property owner

was contacted about the issue. This application was filed with this Board on or about \_\_\_\_\_ 2022.

8. The first public hearing was held on May 8, 2023, and testimony was presented that evening. However, it was determined after the hearing the Applicant, failed to properly notice property owners in Belmar, within 200 feet. New notices were sent out by the Applicant, and the hearings started from the beginning, with the first hearing held on or about July 10, 2023.
9. Tom Paolina, a self-employed masonry contractor doing business as Millennial Masonry, Colts Neck, New Jersey, testified on behalf of the application. He represented that as the agent for the owner he filed and signed the zoning permit and the building documents submitted to the Borough. It was his testimony that he received the building permit but did not receive a zoning permit. He did testify that he was surprised he didn't receive a zoning permit but didn't believe that was his concern. Testimony was presented representing that the cost of the project to the homeowner was approximately \$150,000, and that it was new construction. His testimony contradicted the building permit application submitted to the Borough, signed by Mr. Paolina as the agent for the Applicant. When asked about the discrepancy, the attorney for the Applicant responded, "Everyone does it."
10. Monica Alacan testified that she was told either by her husband or the contractor to provide checks for payment of the applications to the Borough, and the applications were filed. No evidence was presented of the fee for the zoning permit being paid in a prompt manner.
11. John Taikina of 30 Newman Road, Kendall Park, New Jersey, a licensed planner in the State of New Jersey, testified on behalf of the application. Mr. Taikina's testimony was that this was a unique application for a number of different reasons, from the nature of the request of a front yard accessory use on a corner lot, to the fact the construction took place without zoning approval. He testified this was a corner property with a single-family home and there was no substantial detriment to the neighborhood with the addition of the outdoor pavilion. His testimony was that the addition met the definition of an accessory structure and should be allowed to remain as a reasonable solution to the problem of the building being done without a zoning permit. He testified that the removal of the structure would create such an expense and hardship to the Applicant and the Borough that it made sense to approve the application since the structure was already in place.
12. The Applicant's attorney, Gregory Vella, gave his consent to the Board going into executive session at a later date to discuss the application. Mr. Vella stated

specifically that unless the application was granted, the Applicant would most certainly file litigation against the Borough and possibly the Board. Mr. Vella further proposed that he would submit engineering plans to bring the property more in conformance with Borough ordinances, eliminate or minimize some of the bulk variances, improve draining conditions, and address other engineering concerns of the Board Engineer or the issues presented by Board members. The matter was originally scheduled to be heard in executive session in October of 2023, but was carried until January of 2024 so as many members of the Board as possible could attend.

13. The matter was scheduled to be heard on February 12, 2024, and new notices were provided to the public by the Applicant. The week prior to the scheduled date, the Applicant, via his attorney, advised there would be no appearance as the Applicant was going to attend the Super Bowl in Las Vegas and would be out of town. The Board did not consent to the adjournment, offered dates for special meetings to accommodate the applicant, but ultimately the matter was carried until the June meeting.
14. The Board chose to accommodate the Applicant and the matter was re-scheduled for the regularly scheduled meeting of June 10, 2024, at which time the Applicant's attorney represented lot coverage would be reduced to eliminate the need for a variance.
15. Two members of the public testified. Blaise Toto of 303 16<sup>th</sup> Avenue testified that he resides next to the Applicant. He testified that the Alacans' fence encroaches onto his property, plantings obstruct the views from his property, and the plantings are also a safety hazard for pedestrians, cyclists, and drivers. The sound of multiple televisions and music interferes with his enjoyment of his property, and that his porch is effectively unusable. Elaine Consolate, 305 16<sup>th</sup> Avenue testified that the fence and shrubs are an eyesore in the neighborhood, and that the use and accompanying noise are disruptive.
16. The matter before the Board was one of first impression for this Board. No member of the Board had ever heard an application in which the building permit had been issued without proper review of the zoning application. The Board gave extensions of time to the Applicant for reasons including failure to notice all appropriate parties and failure to appear at the February 2024 hearing, and scheduled an executive session on a date that would permit as many members as possible of the Board to participate. The Board chose to give the Applicant every opportunity and as much time as possible to present an application in an effort to see if there was some way to resolve the issues.

The Board in its deliberations considered the testimony presented, the unusual circumstances of the application, sound planning principles and the legal requirements for variances to be granted.

**WHEREFORE**, the Board made the following conclusions of law:

1. The testimony of the Applicant's planner did not make a convincing argument that the Applicant was entitled to variances. While a settlement would be convenient for the Applicant, the Board determined that voting based on convenience would be a dereliction of statutory obligation for the Board. The Board considered Mr. Taikina's testimony credible, but did not accept his conclusion. The Board's obligation is to decide applications based on planning principles, not convenience or expediency.
2. Engineering plans and reports submitted indicated there could be some improvement to the various coverage issues and other requested variances, however, there was still going to be an outdoor entertainment area in a front yard, creating the need for and intensifying the impact of the variances. The Board saw no reason to permit this accessory use or any of the variances. Had this application had been properly presented, the accessory use would have been denied. Testimony demonstrated that the structure and its use is disruptive to the neighbors and neighborhood, presents safety concerns, and disrupts the quiet enjoyment of the neighbor's use of their property. The fence protrudes on to a neighbor's property and interferes with their views and enjoyment of their own property. There are no reasons to grant any of the variances.
3. The Board found that the building permit application intentionally misrepresented the project. This was never a rehabilitation of an existing structure, as set forth in the application for the building permit. The misrepresentation was made so that inspections by the Borough that might have halted the building of the pavilion were avoided. The Applicant is claiming they spent \$150,000, not \$50,000 as set forth on the application. The building permit given by the Borough was for a less intrusive project than the one that was ultimately constructed. The argument that the building permit permitted what was actually built is disingenuous.
4. The Board did consider the possibility of voting for the variances to settle the matter. They understood that, under the circumstances of this case, litigation was a certainty if the application wasn't approved. However, the Board considers their responsibility to be the review of the application from a planning perspective and whether the Applicant met its burden of proof. Issues for settlement purposes, such as credibility of witnesses, fact issues, the fact pattern of how the building permit was granted, and what the Applicant did or did not know at the time they received the building permit, while relevant to this Board's decision, are more appropriate for the governing body, or even on an appeal to the Superior Court.

5. The Applicant's fence, designed to protect his privacy, is six feet high where only four feet are permitted, is in the front yard set-back, and is on the neighbor's property. The fencing and shrubs are visually disruptive to the neighborhood and create safety hazards for drivers, pedestrians, and cyclists.
6. Revisions proposed to the plan eliminated the need for a variance for lot coverage, leaving all the other variances in place. The Board considered the proposed change as minor when compared to the request for an outdoor kitchen in the front yard and other necessary variances.
7. Variances requested were significant and exacerbated by the accessory use:
  - A. Front yard setback where 20 feet is required, and 3.6 feet is existing or proposed.
  - B. Rear yard setback where 3 feet is required, and 2.5 feet is proposed.
  - C. Building coverage where a 40% maximum is allowed, 37.8% was existing prior to the construction of the pavilion, 42% is existing with the pavilion, and 43.44% is proposed with the dwelling, pavilion, and the shed in the backyard.
  - D. Impervious coverage where 60% is allowable, 49.4% existed prior to the construction of the pavilion, 53.6% is existing with the pavilion, and 73.7% is proposed with the dwelling, pavilion, sheds, walkways, and driveway, all of which existed prior to the application being filed.
  - E. Construction of a non-permitted accessory structure in the front yard.
  - F. Front yard coverage where 50% is the maximum allowable, 22.3% is existing, and 58.2% is proposed with the addition of the pavilion and other existing improvements.
  - G. Bulk variance relief for the construction of an outdoor pavilion with cooking facilities, including chimney, entertainment features, television, heating and a bar with seating, a non-permitted accessory use.
8. A fence to afford the Alacans privacy blocks neighbor's light and air and view and is, in fact, on the neighbor's property.
9. The construction of the accessory use in the front yard without a zoning permit does not create a hardship, the shape or size of the property is not unusual, the suggested engineering improvements to the property suggested do not make a meaningful difference. Granting of these variances would be disruptive to the master plan of the Borough, the visual landscape of the neighborhood, and the neighbors' rights to the quiet enjoyment of their property.

**WHEREFORE**, the following variances are hereby denied:

- A. Front yard setback where 20 feet is required, and 3.6 feet is existing or proposed.
- B. Rear yard setback where 3 feet is required, and 2.5 feet is proposed.
- C. Building coverage where a 40% maximum is allowed, 37.8% was existing prior to the construction of the pavilion, 42% is existing with the pavilion, and 43.44% is proposed with the dwelling, pavilion, and the shed in the backyard.
- D. Impervious coverage where 60% is allowable, 49.4% existed prior to the construction of the pavilion, and 73.7% is proposed with the dwelling, pavilion, sheds, walkways, and driveway.
- E. Front yard coverage where 50% is the maximum allowable, 22.3% is existing, and 58.2% is proposed with the addition of the pavilion and other improvements.
- F. Zoning approval for the construction of non-permitted accessory use, the pavilion within the front yard setback is hereby denied.

**RESOLUTION: 2024-06**

**MOVED BY:**

**SECONDED BY:**

**ADOPTED BY THE FOLLOWING VOTES:**

**AYES:**

**NAYS:**

**ABSTAIN:**

The above resolution was denied by the Planning Board of the Borough of Lake Como at its Regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 2024. I do hereby certify that the foregoing is a true and correct copy of Planning Board Resolution No. 2024-06.

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**CHAIRMAN, Joseph Cavaluzzi**