

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

January 24, 2013

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Bussiculo, Mr. Miller, Mr. Smith (7:37), Mr. Minkoff, Mr. Siburn, Mr. Sullivan and Mr. Delia. Mr. Boyer and Mrs. Granholm were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Applications for Review:

App. #24-12: Stephen & Kimberly Blancuzzi, 218 Princeton Avenue, Bl.1709, Lot 3

Approval for a proposed second-story addition and portico were granted by the Board of Adjustment on December 13, 2012. Homeowners are now requesting modification of this approval, which required that the shed be relocated from its current location to 40' off the rear property line due to the lot being a *through* lot. (The rear property abuts a paper street, Yale Avenue.) The request now being considered would modify the approval to retain the shed at its current location, which is 10' off the rear property line. (R-15 Zone)

Kimberly Blancuzzi, was sworn and stated that she obtained approval for a second story addition on December 13, 2012 and is now asking for a modification of that approval with regard to the location of the shed and the walkway of brick pavers. Mrs. Blancuzzi presented Exhibits A1 through A-7 – photographs showing the backyard, the location of the shed and the location of the shed if it is moved. Mrs. Blancuzzi stated that the resolution of approval stated that the walkway would be brick pavers and they want to do concrete.

Mr. Bernstein advised that the revision to concrete would increase accessory coverage by only .05% and if approved there should be a revised plan.

With regard to the location of the shed, Mrs. Blancuzzi stated that they do not believe it will look good if moved and they will not be able to see the swing set.

Discussion took place regarding the applicant's request and it was noted that the only issue involves the paper street if it was ever developed.

Open to Public

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Miller, seconded by Mr. Sullivan, to approve the modification of the approval of Application **#24-12: Stephen & Kimberly Blancuzzi, 218 Princeton Avenue, Block 1709, Lot 3**, to provide that the shed remain at its present location but will be moved if the paper street is ever developed and that the walkway will be constructed of concrete rather than brick pavers. New plans showing the location of the shed and the concrete walkway in place of brick pavers is to be submitted within 30 days after the adoption of the Resolution memorializing the approval, such Resolution to be adopted by the Board at a future meeting. The voice vote was 6-0 with Mr. Bussiculo, Mr. Miller, Mr. Minkoff, Mr. Siburn, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

App. #25-12: Bob & Cindy Cray, -- 50 Beech Avenue, Block 2301, Lot 10 (R-15 Zone)

Proposed one-story principal addition which results in Building Coverage and Total Lot Coverage limits being exceeded. (Building Coverage allowed: 15%; existing: 17.20%; proposed 19.23%. Total Lot Coverage allowed: 25%; existing: 27.34%; proposed: 34.0 %.) Pre-existing, nonconforming items are Lot Area, Lot Width, Principal Front-yard Setback, Side-yard Setback and Combined Side Yards.

Bob and Cindy Cray were sworn and stated that they are proposing to put an addition on the back of their one story house that will include a bedroom, bathroom and family room. Variances are required for lot size, side setbacks and front setback. They have seen the letter from the Environmental

Commission and their contractor has addressed the issue with the drainage plan. Mr. and Mrs. Cray presented Exhibits A-1 through A-4 - photographs showing the view of the neighbor's house in the back, the woods behind their house, the back of the house where the addition will be located by the garage, and the neighbors' properties to the left and right. With the addition the house will not be any closer to the neighbors and the entire house is going to be resided with vinyl siding.

Discussion took place regarding the dimensions and calculations on the application that are incorrect. Once corrected there may be fewer variances required and the drainage plan may not be needed. It was determined to carry the application and have the applicant meet with the zoning officer to correct the application.

The hearing of the application was carried to the Regular Meeting of the Board on February 28, 2013 with no further notice required on the motion of Mr. Siburn, seconded by Mr. Minkoff and carried by unanimous voice vote.

App. #26-12: Ilya Shlakman, 525 Springfield Avenue, Block 611, Lot 7 (HB-3 Zone)

Applying for a certificate pursuant to N.J.S.A. 40:55D-68 certifying that the gas station and the structures are a prior nonconforming use and structures.

Mr. Bernstein advised that this application is with regard to the gas station on the corner of Plainfield and Springfield. This has been a gas station since before the 1960's and the owner is proposing to sell the station. The buyer wants to confirm that it is a gas station. The applicant should provide proof that there was a gas station on the property before the township ordinance went into effect prohibiting such use and the applicant must also show that there has been no intent to abandon the gas station use. The purpose of this hearing is for the Board to determine that the gas station is a prior non-conforming use and the use has not been abandoned.

Mark Williams, attorney representing the applicant, stated that the applicant is the contract buyer of the property.

Mr. Williams presented Exhibit A-1 – title search providing evidence that the property began being used as a gas station in 1932, and Exhibit A-2 – letter from the tax assessor showing such use. Mr. Williams stated that a gas station is a non-conforming use under the current township ordinance and as such the use cannot be intensified or expanded. Getty was the operator of the gas station and

they vacated in 2011. The intent is to restore the gas station to what it was and the applicant is not asking for any change.

John Amadeo, owner of the property, was sworn and stated that he has lived behind the gas station all his life since 1955. He has always known there was a gas station with a garage with bays where cars were fixed and gas was dispensed to cars. The tanks were always underground. He has owned the property since 1984 and the bays or pumps were never closed. His uncle owned the property before him and he inherited it. He has a photograph from the 1940s showing the gas station in operation. Mr. Amadeo presented Exhibits A3 and A-4 – photographs of the gas station.

August Santore, attorney, was sworn and noted that one of the photographs has a notation on the back that indicates the service garage was in operation for 20 years.

Mr. Williams presented Exhibit A-5 - lease extension and modification agreement dated November 2001 with Getty. The document provides for extension of the lease until June 30, 2006 with three five year extensions. The end of the first extension was June 30, 2011 and that is when it was cancelled. He also presented Exhibit A-6 – letter dated June 10, 2011 from Getty to Mr. Amadeo advising that they were not extending the lease and will remove their property. Getty owned the pumps and had the legal right under the lease to remove them. The removal of the pumps did not indicate an abandonment of the property by the owner.

Mr. Amadeo stated that the pumps had to be removed by Getty because of potential environmental liability. He had no control over the removal of Getty's property, Getty delayed the removal and it was not completed until about a year ago. It was his intention to continue the use as a gas station and tried to lease the property to another oil company through a realtor. There were no offers for lease so he decided to sell. There was never any intention to abandon the gas station use.

In response to questions from the Board, Mr. Amadeo stated that there was no body work done at the station and no sale of cars.

Joseph Tiboni, attorney, was sworn and stated that he represented Mr. Amadeo during 2011 when Getty terminated their lease. Mr. Amadeo contacted him in September 2011 because Getty did not clean up the property right away. He had to contact Getty and they dragged their feet until 2012. Mr. Amadeo wanted to

get another operator in to continue the gas station use. In May 2012 Getty took out the tanks and he encouraged Mr. Amadeo to get a realtor to try to lease it. Mr. Amadeo listed the property with Mr. Steelman. Initially the intent was to lease the property but then Mr. Amadeo decided to sell it. Mr. Tiboni further stated that Mr. Amadeo always intended the property to be used as a gas station. The delay was caused by Getty dragging their feet on the clean-up and the property is still subject to monitoring. There has not been a No Further Action letter issued and that would be the responsibility of Getty.

Robert Steelman, real estate broker, was sworn and stated that he is familiar with the property and knows Mr. Amadeo. The property was referred to him in February 2012. Mr. Steelman presented Exhibit A-7 - email to him regarding marketing of the property. The property was marketed as a gas station and the property was listed for sale in March 2012. Mr. Steelman discussed how he marketed the property through commercial leasing services including LoopNet and CoStar

Ilya Shlakman, applicant, was sworn and stated that he owns the Delta gas station in Stirling and saw the for rent sign on the subject property when he drove by. He negotiated the sale for about 2-3 months and then signed a contract.

Mr. Bernstein advised that the applicant has presented testimony as to the use of the property as a gas station since before 1937, as to Mr. Amadeo's intent to continue the use and as to the delay in Getty's clean-up of the property. There was no body work or sale of cars on the property, the gas station was open for normal business hours and there was no retail use. If the Board finds that the use as a gas station is a prior non-conforming use and was not abandoned the applicant should be required to submit a site plan.

Mr. Shlakman stated that he will be replacing the tanks and will use the existing frames for the signs. He will submit plans with everything according to code.

Discussion took place regarding what the applicant will need to do for the site plan application.

A motion was made by Mr. Delia, seconded by Mr. Smith, to confirm the Board's finding with respect to Application #26-12: Ilya Shlakman, 525 Springfield

Avenue, Block 611, Lot 7, that the gas station and structures are a prior non-conforming use that has not been abandoned, a Resolution memorializing the Board's findings to be adopted by the Board at a future meeting. The voice vote was 7-0 with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Minkoff, Mr. Siburn, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

The applicant will submit a site plan for review by the Board at the Regular Meeting on February 28, 2013.

Adoption of Minutes

December 17, 2012
January 10, 2013

A motion was made by Mr. Siburn, seconded by Mr. Minkoff, and carried by unanimous voice vote to adopt the minutes of the December 17, 2012 Special Meeting as presented.

A motion was made by Mr. Siburn, seconded by Mr. Minkoff, and carried by unanimous voice vote to adopt the minutes of the January 10, 2012 Reorganization/Conference/Regular Meeting as presented.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:21 PM.

Regina Giardina, Secretary Pro Tem