

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference Meeting

April 11, 2013

The Conference 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.

Mr. Berstein administered the oath of office to Mrs. Granholm prior to the meeting.

Roll Call:

Members present were Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Minkoff, Mr. Siburn, Mr. Sullivan (7:35) and Mrs. Granholm. Mr. Delia was absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Adoption of Resolutions:

App. #5-13: Brian Radano, 120 River Bend Road, Block 1006, Lot 13 (R-15 Zone)

Mr. Radano has submitted revised plans for the proposed storage room per the Board's motion of approval on March 28, 2013. As a result of the width of the storage room being reduced from 8' to 6', the slope of the roof will be altered. Mr. Radano will be at the meeting to answer questions about the revised plan. The proposed storage room (lean-to structure), 20.5' x 6' x 9.5' high, will be attached to the house. Relief is needed from Section 6.1.1B, "Schedule of General Regulations" and Section 8.1.1B, "Nonconforming Buildings and Uses."

Mrs. Radano was present and stated that they want to change the pitch of the roof to 8 ½' instead of 7 ½' since they have made the structure narrower by 2'.

Discussion took place and the proposed changes were incorporated into the Resolution.

A motion was made by Mr. Siburn, seconded by Mr. Miller, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Minkoff and Mr. Siburn voting in favor.

App. #3-13: Lou & Mary Mastria, 94 Briarwood Drive East, Block 803, Lot 14 (R-15 Zone)

Proposed deck on a corner lot does not conform to the principal front yard setback requirement of 50' (existing: 25.90'; proposed: 30.45'). The deck will be attached to the principal dwelling along the Ridgewood Place street front. Relief is needed from Section 6.1.1B, "Schedule of General Regulations" and Section 8.1.1B, "Expanding a nonconforming structure is prohibited." A patio made of pavers will also be added (which will not increase impervious coverage).

A motion was made by Mr. Miller, seconded by Mr. Smith, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Minkoff and Mr. Siburn voting in favor.

Mr. Sullivan arrived at the meeting (7:35).

Informal Review of New Applications:

App. #4-13: Wayne & Linda Parisi, 63 Bristol Court, Block 1503, Lot 39 (R-15 Zone)

Proposed 6' high fence does not conform to the 5' height restriction. (The 6' height for the section of fence adjacent to NJ Transit Corporation property is permitted; however, the remaining sections of fence do not conform to Section 3.1.3 "Fences and Walls.") In addition, a proposed residential storage shed (15.6' x 15.6' x 14.3' high) totaling 243 sq. ft. exceeds the 100 sq. ft. maximum allowed. Relief is needed from Section 6.3.1B.4 "Permitted Accessory Uses."

Wayne Parisi stated that he recently developed two building lots on Bristol Court and moved into one of the homes. He was able to put a 6' fence up along the railroad tracks and is asking for relief in order to put a 6' fence around the entire backyard. The rear of his property abuts property on Richland. Mr. Parisi asked

if he would be permitted to have a 6' fence without a variance if the fence is located 6' from the property line and that was confirmed. He was also advised that the proposed shed is much larger than what is allowed by ordinance and that may be a problem.

The application was deemed complete and scheduled for hearing on April 25, 2013. The applicant was instructed to send out the required notice and to bring photographs of the property to the hearing.

App. #6-13: Patrick & Rosemarie Henry, 107 Hillside Ave., Block 2506, Lot 16 (R-15 Zone)

Proposed one-story principal addition plus in-ground pool with large paver patio surround to include an outdoor kitchen result in accessory and total lot coverage limits being exceeded. The driveway, which is not being changed, is an existing nonconforming condition due to its 24' width (maximum allowed 18').

Patrick Henry stated that he is proposing an addition to his house and a rework of the backyard which will include a pool. As a result they will be slightly over on coverage. The addition will be approximately 560 square feet and it will change the footprint of the house.

Joe Franchino, contractor for landscaping and the pool stated that the paver patio was counted as pervious but the pool was included in the calculation of the impervious coverage.

In response to questions from the Board, Mr. Henry and Mr. Franchino stated that the boulders shown on the plan are about 2-3', there are no variances needed for side yard setback, the pool meets the zoning ordinance criteria, the concrete walkway in the front will be replaced with pavers and there is an existing fence and plantings between the applicant's property and the neighbor in the rear.

It was noted that the driveway is not conforming and should be included in the notice.

The application was deemed complete and scheduled for hearing on April 25, 2013. The applicant was instructed to send out the required notice, to bring photographs of the property to the hearing and to provide details of the proposed addition and the outdoor kitchen.

App. #7-13: Paul & Julianne Giammattei, 46 Mercier Place, Block 3003, Lot 1 (R-20 Zone)

Proposed sunroom (12' x 16') does not comply with the principal front-yard setback for Mercier Place, as this lot is a corner lot with additional frontage on Old Farm Road. (Required setback: 50'; existing: 30.4'; proposed: 40'.) The existing carport and shed will be removed and a new mudroom and garage will be constructed.

Paul Giamattei stated that he is proposing to tear down the existing one car garage, carport and shed and put in a two car garage and sunroom. The proposed setback on the garage side is 49' where 50' is required.

In response to questions from the Board, Mr. Giamattei stated that the sunroom is not proposed to be placed at the back of the house because of the layout of the rooms inside the house and the addition will be consistent with the existing style of the house.

Thomas Hofmann, architect, stated that there will be a storage area above the garage.

The application was deemed complete and scheduled for hearing on April 25, 2013. The applicant was instructed to send out the required notice, to bring photographs of the property and details of the indoor layout of the house to the hearing.

App. #8-13: Richard Ham, 28 Forest Avenue, Block 504, Lot 37 (R-15 Zone)

Expansion of a nonconforming single-family dwelling does not comply with front-yard setback requirements. In addition, building coverage and total lot coverage ratios are exceeded. The existing, nonconforming conditions are lot area, lot width, principal front-yard setback, side-yard setbacks, building coverage and total lot coverage. Also, the existing driveway is less than the required 5' from the lot line.

Richard Ham stated that he wants to construct an addition on his house to enlarge one of the bedrooms and expand the existing front porch and cover it with a roof. The proposed addition will be in the front of the house and will not be closer to the neighbors on the sides.

In response to questions from the Board, Mr. Ham stated that behind the house there is a wooded area and he has an architect but he has not yet drawn up plans.

The application was scheduled for hearing on May 9, 2013. The applicant was instructed to provide architectural drawings and elevations and to correct the errors in dimensions on the application. He was also told to send out the appropriate notice, including the driveway, bring plans to the hearing and photographs of what the neighbors will see.

It was further noted that the fence in the back of the property is 6' from the property line and suggested that the applicant take back his property. It was also recommended that the applicant correct the location of his driveway which is 6" over the property line.

Application for Review and Adoption of Resolution:

CARRIED FROM MARCH 28, 2013:

App. #18-12: Jack Silverman Realty & Mortgage Co., LLC (as successor in interest to original applicant, Berkley Realty Partners 244, LLC), 240-264 Springfield Avenue, Block 801, Lots 23 & 24 (R-15 & HB2 Zones) Seeking variances and site plan approval for a children's daycare facility and multi-tenant building, both facing Springfield Avenue. Approval for a prior plan had been granted in a Resolution dated July 22, 2010.

Discussion took place regarding whether or not to proceed since only four members of the Board present were eligible to vote and if an additional variance is required five votes would be needed. Fred Zelle, attorney for the applicant, stated that the applicant is not seeking an additional variance, just an interpretation as to certain types of restaurants being permitted. The Resolution presently states that no restaurants are permitted and the applicant is seeking a modification of the Resolution to allow for the type of restaurant that is not prohibited by the ordinance. In addition the applicant is requesting a change in the Resolution to allow non-medical professional offices, such as for a lawyer, insurance agency, real estate office. The type of restaurant that the applicant would like to have permitted would be an upscale restaurant, frozen dessert or bakery shop. The applicant intends to fully comply with the parking requirements.

Jack Silverman, who was previously sworn, stated that they have not leased any of the retail space yet. The applicant wants to have latitude for renting the spaces but whoever they rent to, they will adhere to the parking requirements. They have no intent to come back for a variance for parking.

Brian Silbert, who was previously sworn, stated that he has been in the shopping center business for 30 years, managing and leasing shopping centers. He also represents a number of publicly traded retailers in real estate matters throughout New Jersey. He knows what types of tenants would fit in and knows what issues will come up in trying to find tenants. His company has been hired to be the managing and leasing agent for the proposed center and he will be involved in securing tenants, negotiating leases and will manage the real estate after it is constructed. He is interested in securing the right tenant mix for a successful center. He is involved in the management of 6-8 other properties that include day care centers and there are no parking problems at any of those centers. The type of tenants he would recommend at this center would be a non-liquor based restaurant, ice cream or yogurt store, Gymboree, retail, financial planning, real estate or insurance office. They want to meet the Township standards but have latitude to market the property. Drive-up restaurants such as McDonald's or Burger King would not be considered for this location.

Mike Mistretta, who was previously sworn, stated that he is comfortable with the parking. There are a total of 69 spaces on the site. 39 spaces are dedicated to the school leaving 30 spaces for the retail space where only 21 are required. If they have one food establishment, one business office and one retail tenant that will work. He would support the testimony from Mr. Silbert and wants to encourage use of the courtyard and a condition in the resolution that provides the applicant with some flexibility.

In response to questions, Mr. Silbert stated that they will not lease to a restaurant that would take the entire building and they do not intend to have a food court with different food uses. The applicant would agree to a condition that the tenants will not be 100% food uses.

Mr. Zelle responded to a question regarding the existing Domino pizza shop on the property and stated that the application would prefer not to have them remain but is asking for an exemption because of a possible legal problem.

In response to questions regarding the parking agreement with the Board of Education, Mr. Silbert stated that when he initially spoke to the Superintendent and Business Administrator they were willing to allow overflow parking from the Primrose School but subsequently they had concerns about the arrangement due to the shooting incident in Connecticut. The applicant has had discussions with a few other property owners and expects to be able to meet the condition of the Resolution if and when overflow parking is needed.

Discussion took place and it was agreed that the applicant will meet the requirement for a written agreement with someone as to overflow parking and that agreement will be provided to the Board as a condition of obtaining building permits for the day care center.

Open to Public

The hearing was opened to the public for questions or comments regarding the application.

Alexander Bol, 251 Springfield Avenue, previously sworn, stated that he supports this plan. He has been involved in this type of situation with restaurants and he thinks the applicant's plan is a good one, but 100% restaurants will not work.

Mr. Zellely requested that Mr. Bernstein's memo to the Board dated April 8 setting forth the parking requirements be made part of the record. The applicant fully understands that they need to comply with parking requirements.

Mr. Bernstein read the Resolution as revised and further discussion took place regarding the provisions of the Resolution. The revisions include a statement that occupancy in the retail building is limited to retail stores and other uses permitted by the ordinance but not convenience stores (e.g., 7-11, Quik Check, etc.). Tenant shall comply with parking requirements of the zoning ordinance.

Discussion took place regarding the wording as to restaurant uses. Mr. Zellely asked that the resolution reflect the testimony presented. Mr. Bernstein noted that this would amount to an interpretation of the zoning ordinance without public notice which would exceed the authority of the Board. Mr. Zellely stated that the ordinance is not clear as to permitted uses and in the future a different zoning officer might interpret the resolution differently.

Mr. Zellely stated that the applicant will apply for an interpretation hearing on the issue.

Mr. Bernstein read the revision to the Resolution relating to overflow parking providing that a lease or license shall be obtained for the Primrose school special event overflow parking prior to issuance of the building permit for the school.

A motion was made by Mr. Minkoff, seconded by Mr. Sullivan, to adopt the above Resolution as revised pursuant to the testimony and discussion presented. The

voice vote was unanimous with Mr. Bussiculo, Mr. Smith, Mr. Minkoff and Mr. Sullivan voting in favor.

Mr. Bernstein noted that Mr. Siburn will listen to the tape of the meeting that he missed and the Board will vote to re-adopt the resolution at the next meeting when five members will be eligible to vote.

Approval of Minutes

March 28, 2013 Regular Meeting

A motion was made by Mr. Sullivan, seconded by Mr. Boyer, and carried by unanimous voice vote to adopt the minutes of the March 28, 2013 Regular Meeting as presented.

Adjournment:

A motion was made by Mr. Boyer, seconded by Mr. Smith, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:45 PM.

Regina Giardina, Secretary Pro Tem