

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

July 11, 2013

The Conference and 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, Mr. Minkoff, Mr. Siburn, Mr. Sullivan (7:40) and Mr. Delia. Mr. Boyer and Mrs. Granholm were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Informal Review of New Applications:

App. #16-13: Michael Hayes, 314 Washington Street, Block 208, Lot 17 (R-10 Zone)

Proposed new, detached garage (24' x 28' x 20' high) will replace the existing (20' x 20' x 13' high) detached garage. A second-story work shop area is proposed to be built in the new garage and used for a hobby of wood working. In addition, an existing shed (8' x 12' x 10' high) will be relocated. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for exceeding "Other Coverage."

Michael Hayes said he is proposing to replace the existing two car garage with a new two car garage. The existing garage is 20' x 20' and the proposed new garage will be a 24' x 28' with wood frame and vinyl siding to match the house. He wants to have a bigger garage to have more space for tools in addition to the cars. He has reduced the second floor area that he originally wanted to use as a workshop and will only be using it for storage space. The driveway width will remain unchanged but it will be 4' shorter. The shed will be moved over slightly from where it is now to line it up with the back of the garage. The proposed

garage was reviewed by the zoning officer and he said there was no problem with setbacks. The Environmental Commission has recommended that the driveway be replaced with porous material and he would be willing to do that if required.

It was noted that the coverage allowed is 30% and the applicant is at 22.23%. The Board would be reluctant to impose a condition for porous asphalt because of the cost.

Mr. Hayes stated that although the cost is apparently the same he would prefer to have the standard asphalt driveway. He has moved the stairs outside so he can use the space in the garage and the second floor will be only 6' wide, not enough space for anything except storage.

It was suggested that Mr. Hayes consider pull down stairs instead of stairs outside.

The application was deemed complete and scheduled for hearing on August 8, 2013. The applicant was instructed to send out the required notice.

Mr. Sullivan arrived at the meeting (7:40).

Applications for Review:

App. #15-13: Alexander & Yelena Mishkevich, 80 Hillcrest Ave., Bl. 1714, Lot 16 (R-15 Zone)

Proposed principal addition consisting of attached two-car garage, new front entry and new deck which is partially covered with a roof structure. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for front-yard setback, principal rear yard setback, building coverage and total lot coverage. Additional relief is required from Section 8.1.1B1.&2. which prohibits expansion of a nonconforming structure and Section 3.1.8."Decks" due to deck height.

Alex Mishkevich was sworn and stated that he is proposing to build a two car garage on top of the existing driveway. He is also proposing to build a deck on the back of the house and a new front entry.

Mr. Mishkevich presented Exhibits A-1 through A-5 – photographs showing the view of the house from Plainfield Avenue, the back area where the deck will be, vegetation in the back that provides screening for the deck, the back of the property from the neighbor's house, the front of the property looking toward the

main entrance, the approach to the existing driveway from Hillcrest, and the back of the house showing the fence dividing his property from the neighbor's property.

In response to questions from the Board, Mr. Mishkevich stated that the deck will not be visible from Hillcrest. He indicated the location of the stairs for the deck, stated that the future driveway will be in the same place, and that he proposes to bring the garage forward to preserve the lawn area behind the garage.

Discussion took place and it was noted that if a car is parked in the driveway it will be in the right of way.

Mr. Mishkevich presented Exhibit A-6 - photo of the driveway showing where the proposed garage will be located.

In response to questions from the Board, Mr. Mishkevich stated that the existing concrete patio is approximately 170 square feet which was included in the calculation of impervious coverage. He does not proposed to remove the concrete pad but is planning to replace the walkway to the patio with pavers. He could remove the patio and replace it with pavers but that would involve additional expense and the removal of the fence that is anchored in the concrete. Mr. Mishkevich presented Exhibit A-7 – photo showing the existing driveway, the walkway and the step to the back patio. The purpose of the proposed gazebo on the deck is for shade. He intends to have his grill with propane tank on the deck.

Discussion took place regarding the proposed deck and gazebo and the view from the street.

Open to Public

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

Barbara Mulcahy and Jim Mulcahy, 533 Plainfield Avenue, were sworn and stated that they have some comments and concerns about the application. Their side yard faces the front of the applicant's property.

Mr. Mulcahy presented Exhibit O-1 – survey, and Exhibits O-2 through O-9 - photographs of their property and views of the applicant's property. Mr. Mulcahy said his house is on a corner lot with the front door facing Plainfield Avenue. The

applicant's property is an existing substantially non-conforming lot with five variances and that was known at the time of purchase. This application requires an additional five variances for proposed non-conforming conditions which would mean a total of 10 variances for non-conforming conditions. He is concerned that approving this application as submitted would establish a new standard for other non-conforming lots. The town has zoning requirements for uniformity and public safety and he believes this application would create a public safety and fire hazard. He is concerned about the safety of the public walkway and the potential for fire with the garage being located under a canopy of trees. He believes that if a fire were to start in that garage it would envelope the canopy and cross over the property line to his property.

Mr. Mulcahy further stated that kids walk and ride bikes on the public walkway and having the garage and driveway so close would be a safety issue. He is not concerned about the deck or portico but he is concerned about the garage.

Discussion took place regarding the location of the driveway and garage. It was suggested that the garage be made a little bit narrower to meet the side yard setback and then moved back about 5' to make the driveway 20' long. It was also suggested that the concrete patio be replaced with pavers in order to decrease the impervious coverage.

With regard to the proposed gazebo on the deck, concern was expressed that it not be made into a three season room. There will be no screening, windows or heat permitted and there will be a requirement that it not be enclosed.

Mrs. Mulcahy stated that the deck and gazebo will be visible from her property. Mr. Mulcahy stated that they do have an objection to the height of the deck.

It was suggested that the applicant consult with an architect with regard to the suggested changes to the application and come back to a future meeting with a plan that has accurate measurements and dimensions.

The application was carried to the Regular Meeting of the Board on September 26, 2013 with no further notice required. The applicant granted an extension of the time for action by the Board.

App. #10-13: Firestone, 292 Springfield Avenue, Block 801, Lot 27 (HB-2 Zone)

Addition of lean-to roof attached to the rear of the existing building. Relief is needed from: Section 6.1.1B, "Schedule of General Regulations" because the roof addition does not conform to the principal rear-yard setback requirements and Section 10.6.3D.4 which sets forth buffering requirements.

Mr. Bussiculo noted that a memo has been received from the fire official stating that the property has passed inspection.

Paul Wigg-Maxwell, attorney for the applicant, distributed new applications. Mr. Wigg-Maxwell stated that with regard to the Board's concern about the oil storage barrels, he has found an EPA regulation and believes what is being done by Firestone meets that regulation. At least twice a month a service company comes and the oil drums are sealed, removed and replaced with new drums. It is a requirement that they always be sealed and that will be followed.

Mr. Wigg-Maxwell further stated that there was a question regarding the flood plain and he has determined that there is no concern about the flood plain for this property.

Mr. Bernstein noted that he received a call from the zoning officer who said there was a trailer parked under the overhang today.

Mr. Wigg-Maxwell said he does not think it is possible for a truck to get under there and that must have been a storage container, not a trailer. With regard to the Board's concerns about temporary advertising, he will speak to the manager regarding the appropriate manner to obtain approval.

A motion was made by Mr. Miller, seconded by Mr. Delia, to approve Application #10-13: Firestone, 292 Springfield Avenue, Block 801, Lot 27 (HB-2 Zone), including site plan waiver and requested variance, subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

App. #14-13: The Lusardi Group, 50 Industrial Road, Block 1301, Lot 14.01 (LI Zone)

Applicant is seeking conditional use approval to park its tractor trailer moving trucks overnight at the rear of the property. Since all conditions of the conditional use will not be met, Zoning Board approval is required. (Tractor trailers are not allowed under Section 7.1.5.K.7. of the ordinance.) The applicant is also proposing to create a parking area in the front yard for staff and customers which is not permitted in the LI Zone. The new parking area would result in “other coverage” and “combined coverage” limits being exceeded. Finally, the application includes a free-standing sign in the front yard (not permitted as per Section 5.4.3.).

Michael Mistretta, Township Planner, was sworn and accepted as an expert witness. Mr. Mistretta reviewed his letter dated June 24, 2013 with regard to this application. The variances reviewed included conditional use, increase in other coverage because of the proposed parking lot in front of the building (70% coverage allowed and 86.3% proposed), variance for location of parking lot in front yard and size of the parking spaces required for commercial vehicle parking. He stated that in his opinion the plans are sufficient for the Board to consider the variances requested by the applicant. The applicant should separately deal with the site plan issues including grading, lighting and drainage.

Mr. Bussiculo stated that he looked at the property and agrees that there is sufficient buffering. Mr. Miller said he was concerned about overflow of lighting but he drove into the parking lot and did not see a problem.

Roger Mehner, attorney representing the applicant, and William Hollows, engineer, were present.

Donald Lusardi, partner and president of Lusardi Group, the owner of the building, was sworn, and stated that they have two types of trucks. There will be 10-13 24' box trucks and about 6 48'-51' tractor trailers.

Mr. Mistretta stated that there are 21 truck parking spaces in the back and 20 parking spaces up against the building which will be more than sufficient area for truck parking.

Mr. Lusardi stated that they have not added trucks in the past few years. If the company grows it would be at another building. He does not anticipate more than a few more trucks at this location. The hours of operation are 7 a.m. to 5 p.m. Drivers come in at 7 and leave between 7 and 8 and come back at different hours – the latest at 6-7.

Discussion took place regarding the operating hours and it was noted that there should be no warming up of trucks or idling before 7:00 a.m.

In response to questions from the Board, Mr. Lusardi stated that the parking in front of the building is intended for employees and customers. Parking in the back would create a safety issue for employees who would have to walk through the warehouse after parking in the back. Mr. Mehner stated that the existing trees in the front will remain and the applicant will provide full details of the landscaping on the site plan.

Mr. Mistretta stated that he has no problem with the use variance and the front yard parking provided that the applicant does landscaping and lighting. He believes some of the remaining items of concern in his report will be eliminated when the site plan details are provided. He further noted that the Board will need to see the details on the proposed sign as part of the site plan review.

A motion was made by Mr. Delia, seconded by Mr. Minkoff, to approve Application #14-13: The Lusardi Group, 50 Industrial Road, Block 1301, Lot 14.01 (LI Zone), including variances for front yard parking and conditional use for parking of trailer trucks overnight in the rear of the property, subject to the conditions discussed and standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The approval is further subject to additional conditions of approval of the site plan application. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Minkoff, Mr. Siburn, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

The site plan application was carried, with no further notice required, to September 26, 2013 on the motion of Mr. Siburn, seconded by Mr. Smith and carried 7-0. The applicant granted an extension of the Board's time to act on the application.

Adoption of Resolutions:

App. #13-13: Mr. and Mrs. Dean Nasto, 14 Robbins Ave., Block 901, Lot 1 (R-15 Zone)

Proposed entrance portico requires relief from Section 6.1.1B, "Schedule of General Regulations" because it would encroach into the front-yard setback. As a result of the principal structure being elevated per Flood Plain Relief, the existing deck will increase in height and therefore require relief from Section

3.1.8, "Decks" which limits deck height to 4' in sections of a deck between the 40' rear-yard setback and the 30' setback allowed for decks.

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

Approval of Minutes

June 27, 2013 Regular Meeting

A motion was made by Mr. Siburn, seconded by Mr. Miller, and carried by unanimous voice vote to adopt the minutes of the June 27, 2013 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 10:18 PM.

Regina Giardina, Secretary Pro Tem