

# MINUTES

## BOARD OF ADJUSTMENT

### TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular and Conference Meeting

May 8, 2014

The Regular and 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.

#### **Roll Call:**

Members present were Mr. Bussiculo, Mr. Miller, Mr. Siburn, Mr. Sullivan, Mr. Henry and Mr. Delia. Mr. Boyer and Mr. Smith were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

#### **App.#4-14: Berkeley Heights Realty, Inc., 525 Springfield Ave., Bl. 611, L. 7 (HB-3 Zone)**

Proposed canopy, kiosk on the pump island for service station use, addition to the approved pole sign, and three signs on the canopy structure. The applicant appeared before the Board in 2013 (App.#26-12: Ilya Shlakman) to obtain the necessary approvals. A Certificate of Prior Nonconforming Status of the gasoline service station and repair garage was granted by the Board of Adjustment.

Mr. Bussiculo announced that this application has been carried to May 22, 2014 with no further notice required.

#### **Informal Review of New Application:**

#### **App.#16-14: Rosemary Sica & Jill Steidel, 106 Baker Avenue, Block 903, Lot 12 (R-15 Zone)**

Proposed in-ground pool with a stamped concrete patio surround result in exceeding the maximum "other" and "total" lot coverage limits. As a result, relief is needed from Section 6.1.1B "Schedule of General Regulations."  
Nonconforming issues are lot depth; existing fence along southeast side property line is located off of the subject property, and existing shed location is 1.5 feet

from the rear property line, where 10' is required. Also Variance Case No. 13-03 established a principal front-yard setback of 25', a rear-yard setback of 34' and building coverage of 16.3%. A new house was constructed as a result of the variance approval.

Rosemary Sica and Jill Steidel were present and stated that they want to put a swimming pool in their yard which will result in coverage over what is allowed.

It was noted that the applicants' lot is undersized and variances were granted to build the existing house on the lot. One of the Board's concerns will be drainage.

Mr. Sullivan stated that the street was reconstructed about seven years ago, storm water inlets were installed and the street was widened.

In response to questions from the Board, the applicants stated that there is a storm sewer in front of the house and a retaining wall on one side of the house. There are condos behind the property and they have a view of them through their fence. There will be drainage installed behind the retaining wall that will be hooked up to the underground drainage pipe. The patio area will not be too large and will only have room for four chairs and a table. The applicants were not aware that the existing shed should be 10' off the property line rather than 2'. The existing fence is an automatic locking fence.

It was noted that the dimensions on the survey and the application do not match. The applicants will check them and make corrections.

The application was deemed complete and scheduled for hearing on May 22, 2014. The applicant was instructed to bring photographs of the property and send out notices which should include the variance needed for the shed.

**Application for Review:**

**App.#14-14 Connell East LLC and Connell Corporate Center I, LLC, 50 Connell Drive, Block 4501, Lot 25 and 100 Connell Drive, Block 4301, Lot 1.02 (OR-B Zone)**

In Board of Adjustment Case No. 18-11, Connell East LLC and Connell Corporate Center I, LLC (collectively, "Applicant") received preliminary and final site plan approval and a use variance for the installation of solar panels, solar canopies and associated facilities at the L'Oreal Building within Connell Corporate Park which is located at 50 Connell Drive on property designated as Lot 25, Block 4501 by way of a written Resolution adopted by the Board on

October 13, 2011 (“Resolution). A condition of the site plan approval was the maintenance of plantings in the islands under the solar canopies. The Applicant is now requesting that the conditions under the Resolution requiring the installation and maintenance of shrubs under the solar canopies be waived as attempts to grow shrubs under the solar canopies have been unsuccessful. (Applicant is not seeking to waive the requirements that trees be maintained around the Property.)

Mark Decker, General Counsel of Connell Company, was present for the applicant.

Discussion took place regarding the problems that have been encountered by Connell with the plantings under the solar panels. It was noted that the Environmental Commission had a question about the replanting of dead trees that was required pursuant to the Planning Board resolution. The Board feels that if there is an issue about compliance with the Planning Board approval that is beyond its jurisdiction and that issue should be directed to the Planning Board or the zoning officer.

Ronald Gaier, Senior Vice President of Connell Company, was sworn and stated that every year they audit the entire property and look for diseased and dead trees. Replanting takes place annually in September and to his knowledge they are in complete compliance with this Board’s requirements and the Planning Board’s requirements. When the solar area was built 81 trees were removed and replaced throughout the site.

Mr. Gaier stated that the solar project was constructed with a passive irrigation system to collect water with the hope that it would drain down and water the plants. Shortly after construction they noticed that the plants were not getting irrigated and that rainstorms were flooding the island and then icing occurred. The system was redesigned and the plantings under the canopies were replanted. With the second planting it was evident that plants were not surviving and a third planting also did not grow. Then they tried ornamental grass and that did not survive. After spending close to \$150,000 they have concluded that the system just does not work. They do not believe it makes sense to replant every year so the applicant is asking for a variance. The applicant suggests putting wood chips in place of plantings.

Discussion took place regarding the applicant’s efforts to plant the area under the canopies. It was noted that the applicant has not provided any expert testimony regarding whether anything will grow.

Mr. Decker stated that cars are parked there during the day and they totally block the view of any shrubbery that would be there.

Mr. Gaier presented Exhibits A-1 – A-3 - photographs taken in the parking lot adjacent to the solar panels. The purpose of the shrubs was to soften the view of the parking lot. The structure and cars block the view of the plantings for the majority of the day and do not serve any purpose. Mr. Gaier further stated that the solar panels have been very successful and provide over 50% of the buildings' usage.

### **Open to Public**

The hearing was opened to the public for questions or comments regarding Mr. Gaier's testimony and 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. Delia, seconded by Mr. Henry, to approve Application #14-14 Connell East LLC and Connell Corporate Center I, LLC, 50 Connell Drive, Block 4501, Lot 25 and 100 Connell Drive, Block 4301, Lot 1.02 (OR-B Zone) to waive the condition under resolution of approval of Application 18-11 requiring maintenance of plantings in the islands under the solar canopies, subject to the condition that the applicant will maintain the area in an attractive manner, and further 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 5-1 with Mr. Bussiculo, Mr. Siburn, Mr. Sullivan, Mr. Henry and Mr. Delia voting in favor and Mr. Miller voting against.

Mr. Miller stated that while he understands the problem of growing things in the shade there are numerous things that do grow in the shade as suggested by Harbor Consultants and the Environmental Commission. The applicant has not provided any expert testimony that nothing will grow here.

### **Adoption of Resolutions:**

#### **App.#12-14: Michaela K. Quinlan, 86 Orion Road, Block 3401, Lot 16 (R-20 Zone)**

Seeking to replace an existing, 112 square ft. shed (8' x 14' x 10' high) with a new 140 square ft. shed. The larger shed would be for storage of specific items. Relief is needed from Section 6.3.1B.4. of the Land Use Ordinance which limits sheds to 100 square ft. in size.

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

**App. #13-14: Michael & Sylvia Deo, 63 Old Farm Road, Block 3002, Lot 15 (R-20 Zone)**

Relief is needed from Article 6.1, Section 6.1.1B "Schedule of General Regulations" because the existing outdoor fireplace, raised patio and seating wall encroach into the accessory side yard setback (required: 12', existing: 7.3'). In addition, the applicants are requesting removal of Condition #5 of the Resolution of Approval for Application #11-09 which stated that the "area over the garage shall be limited to storage and not used as a living space." The homeowners had been before the Board in 2009 to apply for variances needed to construct additions to their single-family residence.

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

**App.#15-14: Stephen Croneberger, 42 Hamilton Terrace, Block 2004, Lot 6 (R-15 Zone)**

Proposed 3-car garage with loft area above and raised deck type area between the proposed garage and existing house. The lot is a corner lot with frontage on Hamilton Terrace, Burgmiller Avenue (an unimproved municipal 50' road right-of-way) and Wardle Avenue (unimproved). Relief is needed from Section 6.1.1B, "Schedule of General Regulations," because the garage will encroach into the front-yard setback on Burgmiller Avenue (required: 50'; existing: 70'; proposed: 34.25'). Nonconforming issues are existing principal front yard setback from Hamilton Terrace, existing shed location (located over the property line into Burgmiller Avenue) and existing shed size of 160 sq. ft. compared with 100 sq. ft. allowed.

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

**Adoption of Minutes**

March 13, 2014

April 24, 2014

A motion was made by Mr. Siburn, seconded by Mr. Miller, and carried by unanimous voice vote to adopt the minutes of the March 13, 2014 Regular Meeting and the April 24, 2014 regular meeting as presented.

**Adjournment:**

A motion was made by Mr. Siburn, seconded by Mr. Henry, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 8:15 PM.

Regina Giardina, Secretary Pro Tem