

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

September 11, 2014

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 and Mr. Sullivan. Mr. Boyer, Mr. Siburn, Mr. Henry, and Mr. Delia were absent. Mr. Daniel Bernstein, Board Attorney, and Mr. Michael Mistretta, Township Planner, were also present.

Applications for Review:

App.#11-14: 174 Snyder Ave. BH, LLC, 174 Snyder Avenue, Block 801, Lot 50 (R-15 Zone)

Seeking a d(1) use variance for a two-story residential dwelling built in 1910 and located in the R-15 single family zone which has been operating as a four-family home. The applicant and owner of the property would like to undertake interior improvements, most notably a relocation of the existing laundry facilities from the interior living area on the second floor to the attic area above the second floor units. Other changes include new exterior windows and removal of the existing Bilco door. The existing shed and garbage enclosure will be relocated to comply with the setback requirements or removed entirely. Relief is also needed from Section 8.1.1B.1 "Expanding a nonconforming use" due to the interior expansion into the existing attic space for use as a utility room. Existing nonconforming issues are principal use; principal front-yard setback; existing "other" coverage of 22.44%, which includes the 800 sq. ft. stone driveway (allowed: 10%); and existing shed (which encroaches into the rear-yard setback).

Mr. Bussiculo announced that the hearing of this application is carried to October 9, 2014 with no further notice required.

**App.#25-14: 369 Springfield Avenue Associates, LLC, 369 Springfield Ave.,
Bl.208, L.21**

Applicant is requesting approval of proposed changes to the exterior elevation of an existing one-story commercial building by adding a "mansard seam roof section" (approx.. 200' long x 14' high) with new lit signage. Relief is needed from Section 10.1.2A which requires Board approval of site plan; Section 5.9.6 which prohibits signs placed on the second or higher story, Article 5.11 which prohibits roof signs, Section 5.4.2DD3 because the proposed area of the signs exceeds the allowed 10% of the first-story wall surface. (DD-Zone)

Mr. Bernstein advised that since this applicant is an LLC they should be represented by an attorney. The Board has made exceptions in the past in non-complicated cases but this is not a non-complicated application. He suggested that the Board review the application for completeness only.

Jory Schwartz, representing the applicant, was sworn. Mr. Schwartz stated that he is not an architect but the person who signed the documents is a licensed architect in New Jersey. The applicant is requesting variances for the proposed addition to the façade of the existing building in conjunction with interior work to improve the visibility of the building and allow it to match the scale of the adjacent buildings. The applicant has been told that the existing urgent care facility is not easily seen. The applicant is putting a great deal of time and money into creating a state of the art facility and it is important that people be able to find it. The variances being requested are for the purpose of making the building more appropriate.

Mr. Schwartz presented Exhibits A-1, A-2, A-3 and A-4 - photographs showing the existing building and conditions, photographs showing other buildings in the immediate area that have a roof similar to what is being proposed, and a series of architectural renderings to show the proposed new structure. Mr. Schwartz noted that Walgreens has a one story structure that looks like a two story structure and it is important for the applicant to have the signage up high so it can be seen. He does not believe the signage will be a distraction.

Michael Mistretta, Township Planner, was sworn. Mr. Mistretta stated that except for the Primrose School building all the examples shown by the applicant were done prior to establishment of the downtown design standards. With respect to the Primrose structure, there were a number of meetings held for that application and the applicant did an extensive study of the design standards as required by the Board.

Mr. Mistretta noted that as stated in his report, it is his position that this application should be considered incomplete until the applicant addresses the report and the downtown design standards checklist. The applicant has stated that they believe the proposal conforms to the design standards and meets the objectives of the standards and he would disagree. He would recommend that the Board declare the application incomplete until the plans are revised and submitted by a licensed New Jersey architect. Mr. Mistretta noted that under the ordinance the combined area of all signs may not exceed 10% of the first story wall, which in this case would be 202 square feet. The applicant is proposing signage of 788.2 square feet and in addition signs are not permitted at the elevation proposed.

Mr. Schwartz stated that the requested information has been provided but he does not know if it has been reviewed. The applicant was initially provided with the incorrect application and checklist. They did not ignore the downtown design standards and it was their expectation that they would be discussed with the Board when they made their presentation. The proposed renovation is to an existing building and the applicant is trying to do this in a cost effective way. This is an urgent care facility, not a business, and there are people who may come for the first time and need to be able to see the facility. The applicant is willing to adjust the size of the signage and will consult with the Township Planner on that issue.

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 and carried by unanimous vote to declare Application #25-14: 369 Springfield Avenue Associates, LLC, 369 Springfield Ave. incomplete as submitted. The application was carried to the Regular Meeting of the Board on October 9, 2014 with no further notice required.

--CARRIED FROM AUGUST 14, 2014, WITHOUT FURTHER NOTICE:

App.#24-14: Berkeley Square, L.L.C., 240-264 Springfield Ave., Bl. 801, Lots 23 & 24

Proposed amendment of the previous site plan and land use approval to include 2 reserved off-street parking spaces and request an off-street parking variance for 1 space. Applicant requests approval of the amendment to the site plan, variance relief from the standards regulating: 1) maximum other coverage; 2) the

number, location, size and design of off-street parking spaces where 1 additional space is needed and where 2 reserved spaces are proposed near Springfield Avenue in the front of the building; and 3) the permitted uses in the R-15 zone where residential uses are permitted and the pre-school, its access, off-street parking and other uses accessory to the non-permitted or conditionally permitted pre-school and retail stores are proposed; together with all other relief in the form of variances, interpretations, appeals, waivers or exceptions in the strict application of the provisions of the Land Use Procedures Ordinance, and other relief, which may arise during the course of the hearings in this application, necessary to realize the development as set forth more specifically in the application for development on file, as may be amended, including during the application, and available for inspection in connection herewith.

Mr. Bussicula announced that the Board will hear the applicant's testimony but no vote will be taken since there are not enough members of the Board present for a vote.

James Webber, attorney for the applicant, stated that this application involves three parking spaces that are proposed to address the deficiency in parking on the site by the creation of two reserved parking spaces on the site and one offsite that would be available in the event that the Township decides they are needed.

Brian Silbert, Managing member of Berkeley Square LLC, was sworn and stated that the applicant will comply with the recommendations of the Environmental Commission. They want to lease unit #2 to a general retail use and they would agree to a condition that there would be no food or beverage use at that unit. The applicant would agree that the trigger for improvement of the parking spaces would be a determination by the Township Planner or the Zoning Officer that the spaces are needed.

Michael Mistretta, Township Planner, was sworn and stated that the site plan already on file and approved should be consulted as to the construction details of the parking spaces. For example, that would include the addition of two lights if the banked spaces are added.

Discussion took place with regard to the free standing sign that has been put up in front of the school. Mr. Mistretta stated that the sign was on the approved site plan.

John Rocker, principal of Berkeley Square LLC, was sworn and stated that there is a monument sign on the site plan. He discussed the temporary Primrose sign with the Zoning Officer and he suggested that it be put up. Mr. Silbert stated that

there is only one business open and this sign was put up temporarily. When other tenants move in the approved sign will be constructed. Mr. Webber stated that the applicant will change the sign to conform to the ordinance.

Hal Simoff, traffic engineer, was sworn and accepted as an expert witness. Mr. Simoff stated that he has been working on this application since its inception. He is familiar with the parking requirements and the statistics that were presented. He has reviewed the parking analysis and the peak hours for parking on the site. The peak hours for the retail use are on Saturday when the Primrose School is closed so there are 39 more spaces available to serve the retail use on Saturday. He believes the variance can be granted without any detriment. In response to a question regarding enrollment, Mr. Simoff advised that the school is licensed for 175 and there are presently 80 students enrolled.

Open to Public

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

Jeffrey Pocar, attorney representing Marcello Cavallero, owner of the adjacent property, Marcello's restaurant, stated the opinion that when the two parking spaces are built it will disrupt parking and create a mess. He suggested that the parking spaces be constructed now. His client is concerned about people coming and parking in his lot when it the applicant's lot is full.

Mr. Bussicula noted that the Board does not have any jurisdiction over illegal parking. The Environmental Commission asked for the spaces to be left as grass rather than paving now. Mr. Mistretta stated that all improvements have been constructed except for the landscaping.

Mr. Webber stated that if the spaces are required to be installed the work can be done over a weekend.

Mr. Pocar stated that his client would like to see the parking constructed now so he does not have people parking in his lot that will have to be towed.

David Carlbach, Planner, was sworn and accepted as an expert witness. Mr. Carlbach stated that he has reviewed the application and prepared a report on the planning analysis. He reviewed his report with respect to number of parking spaces, continuation of the variances and waivers previously approved as part of the original application and traffic analysis. He believes this application advances the purposes of the municipal land use law and that the variance can

be granted without substantial detriment to the public good. The site will function exactly as it would as part of the original approval with no change in the site circulation pattern. The benefits outweigh the detriments and there is sufficient reason for granting the variance.

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.

Mr. Bernstein advised that the application should be carried to the meeting on October 9, 2014. He will prepare a resolution for Board review. Additional members of the Board will listen to the taped testimony and if there is a minimum of five members present on October 9 the Board will vote on the application and the resolution.

The application was carried to October 9, 2014 with no further notice required on the motion of Mr. Miller, seconded by Mr. Smith and carried by unanimous vote.

Adoption of Minutes

June 26, 2014 Regular Meeting

July 24, 2014 Special Meeting

August 14, 2014 Regular Meeting

August 28, 2014 Special Meeting

A motion was made by Mr. Miller, seconded by Mr. Sullivan, and carried by unanimous voice vote to adopt the minutes of the June 26, 2014 Regular Meeting and the July 24, 2014 Special Meeting as presented.

The Minutes of the August 14, 2014 Regular Meeting and the August 28, 2014 Special Meeting were tabled.

Adjournment:

A motion was made by Mr. Smith, seconded by Mr. Miller, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:26 PM.

Regina Giardina, Secretary Pro Tem