

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

November 13, 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. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry and Mr. Delia. Mr. Boyer was absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Adoption of Resolutions:

App.#27-14: The County of Union, The Union County Improvement Authority (UCIA) and Center Management Group LLC, 40 Watchung Way, Block 4002, Lot 15, Block 3401, Lot 50, Block 3303, Lots 1.01 and 1.04 (OL-Zone)

Request to continue existing services at Runnells Specialized Hospital with private operator contrary to OL Zone which requires a "governmental use."

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

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, including 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, Section 5.11.4 which prohibits roof signs, and Section 5.11.10 which prohibits any sign not specifically permitted by Ordinance. (DD-Zone)

Mr. Bernstein noted that there was lengthy discussion during the hearing with regard to the color of the lettering and it was determined that the lettering would be black. The applicant has been advised that if they want to change the color they will have to come back to the Board.

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

App.#28-14: Edward Koch, 170 Killarney Drive, Block 3505, Lot 35 (R-20 Zone)

Proposed in-ground pool with an at grade surrounding paver patio, waterfall feature and a raised patio (15' x 15' x 4' high) at the exit slider doors from the rear of the house. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because 1) the accessory rear yard setback is proposed to be less than the required 15' and 2) the proposed side yard setback is less than the required 12'. Also, the proposed "other" and "total" lot coverages will exceed the maximum permitted coverages of 10% and 25%, respectively. The at grade pool surround will be constructed with a permeable paver system and was therefore not counted in the calculation of "other" coverage. Nonconforming issues are lot depth, lot area, principal front yard setback and existing building coverage.

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

Applications for Review:

App.#29-14 : Jonell Associates Development, 247 Washington Street, Block 206, Lot 6

Applicant is seeking to demolish an existing single family house and construct a new single family house on the lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because both side yard setbacks are less than the required 12 ft. (The proposed principal side yard setbacks are 11.2 ft. on the east side and 11.3 ft. on the west side.) As a result, the proposed total combined principal side yard setbacks are 22.5 ft., less than the required 30 ft.

for combined side yards. Relief is also needed from Section 11.1.7A which requires a minimum distance of 5 ft. between a driveway and a lot line. The proposed driveway location is 2.5 ft. off the side property line. Also, nonconforming issues are lot area and lot width. (R-10 Zone)

Mr. Siburn recused himself from the hearing of this application since he resides within 200' of the property.

Paul Weeks, attorney for the applicant, stated that the two main issues in this application involve the side yard setback and total combined setbacks.

Nicholas Ciraco, principal of Jonell, was sworn and stated that he wants to demolish the existing building on the 50' lot and construct a proposed building that does not meet all required setbacks but will be a great improvement over what is there now.

Mr. Ciraco presented Exhibits A-1 through A-3 – photographs of the property showing the front of the property with the existing home that will be demolished, the west side of the property showing the distance from the property line to the neighbor's property, and the east side of the property showing the driveway with detached garage in the back. The driveway is 87' and the new driveway will be 32' leading to the front facing attached garage. He further presented Exhibit A-4 – photograph of the front yard with a parked vehicle showing how close the existing house is to the street. The existing front yard setback is 16' and the proposed setback with the new house will be 32' where 30' is required. Mr. Ciraco also presented Exhibit A-5 - photograph of the existing house, Exhibit A-6 - photograph from inside the existing house showing a trapdoor leading to the basement, and Exhibits A-7 through A-10 – photographs of the existing homes to the left, right and across the street.

In response to questions from the Board, Mr. Ciraco stated that the basement of the proposed house will have an 8' ceiling, the square footage of the proposed house is 1,000 square feet on the first floor and 1,166 on the second floor. The footprint is almost the same and they are not using the existing foundation. The existing lot coverage is 44%, the proposed will be 26.1% and 30% is permitted. One tree will be removed and the proposed house will match the neighborhood.

Open to Public

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

A motion was made by Mr. Smith, seconded by Mr. Sullivan, with respect to Application #29-14: Jonell Associates Development, 247 Washington Street, Block 206, Lot 6 to approve the application with variances, subject to the conditions as discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Miller, Mr. Smith, Mr. Sullivan, Mr. Henry and Mr. Delia voting in favor.

App.#30-14: Laurence & Lori Wagman, 40 Old Farm Road, Block 2801, Lot 62.02

Proposed installation of an inground pool, covered deck, outdoor kitchen on new patio and pool surround patio. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because 1) building coverage will exceed the maximum 15% allowed in the R-20 Zone; 2) other coverage will exceed the 10% allowed, and 3) total lot coverage will exceed the 25% allowed. (R-20 Zone)

Alex Bol, architect, was sworn and accepted as an expert witness.

Lori LeBec-Wagman, applicant, was sworn.

Mr. Bol stated that the applicants wants to improve their existing home and some variances are required. Currently the applicants have a deck across the back of the house but they have very limited use of it because it is in the sun all day and the deck has deteriorated. The proposal is to demolish the existing deck and replace it with a covered porch. The existing deck is 658 square feet and the covered porch will be 308 square feet. The porch will put the property slightly over on coverage so a variance is needed. The porch will be further away from the neighbors than the deck is; it will be completely open, just covered, and not enclosed. The porch will be completely behind the house and not visible from the street and it will not impinge on the neighbors in any way.

Ms. LeBec-Wagman stated that right now it is very hot on the deck and the deck is not usable.

Mr. Bol presented Exhibit A-1 – photographs of the property showing the rear of the residence and the existing deck, the proposed location of the pool, view of the neighbor's home, the neighbor's yard and the property line with fence. The property is completely fenced with a 5' aluminum black fence. A variance is also required for impervious coverage since under the ordinance all patio areas are counted as 100% impervious even if they are done with pavers. Mr. Bol presented Exhibit A-2 - information regarding the permeable pavers that are

being used and noted that if the pavers were deducted the coverage would be below what is allowed.

In response to questions from the Board, Mr. Bol stated that the boulders will not be used for a waterfall, drainage will be treated with a dry well, the existing hot tub will be removed and the applicant would not object to a requirement that trees that might be damaged during construction will be replaced.

Open to Public

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

A motion was made by Mr. Delia, seconded by Mr. Sullivan, with respect to Application #30-14: Laurence & Lori Wagman, 40 Old Farm Road, Block 2801, Lot 62.02 to approve the application with variances, subject to the conditions as discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry and Mr. Delia voting in favor.

App.#31-14: Heritage Manor Homes LLC, 154 Hillside Avenue, Block 2402, Lot 42

Proposed single family dwelling to be constructed after demolition of existing dwelling on the lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" due to 1) a proposed principal building front yard setback that is less than the required 50 ft; 2) building coverage that exceeds the 15% maximum allowed in the R-15 Zone; and 3) total lot coverage that exceeds the maximum 25% allowed. The lot area is a nonconforming issue. (R-15 Zone)

Richard Cohen, attorney for the applicant, stated that the applicant proposes to demolish the existing home on the property and construct a new single-family dwelling, and variances are needed for building coverage and impervious coverage.

Richard Bower, Managing Member of Heritage Manor Homes LLC, applicant, was sworn and stated that he lives six houses away from the proposed property. Mr. Bower presented Exhibit A-1 - series of photographs showing the property, the current house, views of the house, the shed to be removed and the interior of the house showing the poor condition it is in, and Exhibit A-2 – photographs

showing the house across the street, houses to the right and left and behind and photos of other houses in the neighborhood that have been recently built.

Mr. Bower stated that the minimum rear yard setback is an existing non-conformity and the new house will comply. The proposed house will be a two story colonial with a two car garage and vinyl siding. The driveway is being moved from the right side to the left side in order to keep two oak trees.

In response to questions from the Board, Mr. Bower stated that there is no Belgian block curb on the street now, the leaders will be connected to the dry well, the front yard setback will be the same in order to keep it in line with the other houses, and the existing shed will be removed. He has no problem with the suggestions made by the zoning officer and he will comply with them. Mr. Bower further stated that the height of the proposed house will be within the ordinance, the fence will not be removed, no trees will be removed and the sidewalks will be redone. The existing house will be taken down including the foundation and excess soil will be removed from the site.

Open to Public

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

Harry Hunter, 162 Hillside Avenue, was sworn and stated that he is not opposed to the new house and welcomes it as an improvement to the neighborhood. He is concerned about water and the disruption of the existing ground. He is also concerned about the landscaping and wants to make sure it is cleaned up and noted that there was a mice problem in the neighborhood the last time a new house was built.

Mr. Bernstein advised there will be a condition in the resolution of approval that requires the applicant to file a drainage plan with the Township Engineer. He will also include a note that the Township Engineer will contact Mr. Hunter as to the drainage plan.

Mr. Bower said he will have someone look at the landscaping and he will work with the neighbors. He will also have an exterminator look at the property.

Mr. Hunter asked what the square footage of the proposed house will be, what materials will be used on the exterior, and whether any equipment will be located on the side of the proposed house adjacent to his property.

Mr. Bower advised that the square footage of the proposed house is a total of 3,900 with 1,864 on the first floor, the exterior will be vinyl siding or hardy plank, and he will speak to Mr. Hunter before the installation of any equipment outside.

A motion was made by Mr. Smith, seconded by Mr. Siburn, with respect to Application #31-14: Heritage Manor Homes LLC, 154 Hillside Avenue, Block 2402, Lot 42 to approve the application with variances, subject to the conditions as discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan, Mr. Henry and Mr. Delia voting in favor.

--CARRIED FROM OCTOBER 23, 2014, WITHOUT FURTHER NOTICE:

App.#26-14: Ramesh & Sheela Raman, Kuntz Avenue, Block 301, Lot 18

Proposed construction of a single-family dwelling located on a vacant corner lot fronting Kuntz Avenue and Camptown Drive. Relief is needed from Section 6.1.1B "Schedule of General Regulations" due to an insufficient rear yard setback and "other" coverage which exceeds the maximum allowed. Variances are also needed for a) the proposed driveway which would be 3.5 ft. off of the side property line (required: 5 ft. according to Section 11.1.7A); b) a proposed boardwalk along the driveway, which would be an accessory structure that is prohibited in the front yard by Section 3.1.1B.4. The plan indicates that the boardwalk would be constructed immediately adjacent to or on the shared side property line with Bl. 301, L. 19; c) the "Building Overhang" depicted on the plans as a carport which is a prohibited use as per Section 6.3.1E.1; d) not adhering to Section 6.3.10A. Residential Garage Construction because an enclosed garage is not proposed; e) constructing the driveway with stone material while a paved driveway is required by ordinance; f) non-conforming lot width. (R-15 Zone)

Ramesh Raman, applicant, previously sworn, stated that notice was sent out on the height variance. The maximum building height allowed is 30' and the proposed house might exceed that.

Davis Fantina, project engineer, previously sworn, stated that the applicant received feedback last month from the Board and the neighbors and went back to see if the project can be brought closer in compliance. The plan has been revised to include a garage so a carport is no longer necessary. In addition, the driveway will be paved rather than gravel. A drainage plan has been put together to keep water on the property, the existing wetlands will be used as a natural detention basin and they will also put in rain barrels at the corners of the property.

Mr. Raman stated that given the fact that the house is located on piles, the amount of rain water would be the same with or without the house. They are not changing the grade on the property and there will be no adverse impact from rain water to anyone around the property.

Mr. Raman further stated that because the house will be on piles, the height will be approximately 33' which exceeds the 30' permitted.

Mr. Bernstein advised that the Board would like to see architectural elevations in order to see exactly what is being proposed. With regard to drainage, the Township Engineer has suggested that an engineer from Harbor Consultants, Mr. Vinegra, review the drainage plan. This would require additional escrows but in view of the significant public interest it would not be inappropriate to have the engineer review the plans.

Mr. Fantina said he would like to have the opportunity to meet with Mr. Vinegra.

Mike Mistretta, Board Planner, stated that he would estimate the cost of the engineer's review to be about \$1,000.

Mr. Raman said he will supply the same information to Mr. Vinegra that was provided to the DEP.

With respect to the report of the Environmental Commission, Mr. Fantina stated that the property is not exactly a flag lot, all of the lots in this area are substandard, Mr. Raman did offer the property for sale but no one was interested, and the property is not in a recharge area.

Mr. Bernstein asked that documentation of the attempt to sell the property be provided to the Board.

With respect to the proposed walkway and how a person would get from the parking area to the house, Mr. Raman stated that it would probably be by steps but that has not been designed yet.

Open to Public

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

Loretta Thornton, 50 Camptown Drive, was sworn and stated that she often walks the dog near this property and noted that there is tremendous amount of water there. She is concerned about the water. With the walkway and house on piles it sounds like beachfront property and that is not the type of home that fits the neighborhood. The neighborhood has colonials, ranches and bi-levels. There is nothing on that street like this and this will change the whole look of the street.

Lorraine Lake, 43 Kuntz Avenue, was sworn and read a statement prepared by her husband, Timothy Lake, who testified at the earlier meeting. Mr. Lake's statement included comments regarding the variances being requested, the impact on neighboring properties, setbacks, the garage and car port issue and the height of the proposed house. The proposed home will greatly impact privacy on their property and Mr. and Mrs. Lake urge the Board not to grant the requested variances.

Victor Guidetti, 55 Kuntz Avenue, who was previously sworn, stated that his major concern is that this area has turned into a swamp and it is wet all the time. Mr. Guidetti presented Exhibits G-1 through G-5 – photographs taken by him and his wife over the years showing what has gone on at this property over the years - when the ditch was filled in about five years ago, what it looks like today, in 1999 following hurricane Floyd, in March 2011 after the ditch had been filled in, following Hurricane Irene, and the part of the ditch that remains after the fill-in. Mr. Guidetti stated that the ditch was filled in by the applicant.

Mr. Raman stated that the ditch is man-made and connects the wetlands to the brook. The ditch currently receives water from the neighbor's basement pump. The amount of dirt was insignificant and it was done with an engineering consultant.

The hearing of Application #26-14: Ramesh & Sheela Raman, Kuntz Avenue, Block 301, Lot 18 was carried to January 8, 2015 with no further notice required. The applicant agreed to extend the time for the Board to act on this application until the end of January.

--CARRIED FROM OCTOBER 9, 2014, WITHOUT FURTHER NOTICE:

App.#11-14: 174 Snyder Ave. BH, LLC, 174 Snyder Avenue, Block 801, Lot 50

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). (R-15 Zone)

Joseph Murray, attorney for applicant, stated that the applicant is seeking an interpretation that this is a pre-existing non-conforming use.

Robert Edgar, Berkeley Heights Tax Assessor, was sworn and stated that he has held the position of Tax Assessor since 2009. He also acts as Tax Assessor in Kinnelon since 2001. He has undertaken a search of the Berkeley Heights records and found property record cards that give a description of the property and information on when it was inspected and when it was re-evaluated. The last re-evaluation was done in 1998 and there was one prior to that in 1982. The record cards state that it was a four family residence. Mr. Edgar presented Exhibit A-8 - Tax Assessor record cards from 1982 and 1998.

In response to questions from Mr. Murray, Mr. Edgar testified that the room count on the record cards is as follows: first floor – 2 living rooms, 2 kitchens, 2 bathrooms and 4 bedrooms; second floor – same. The record card listed the year built as 1910 and the effective age of 30 years. The name of the owner on the 1982 card was Anna Pagano.

Mr. Murray presented Exhibit A-9 - photographs of the interior of the building, and asked Mr. Edgar to testify as to the photographs.

Mr. Edgar stated that the photos depict four gas meters for the four apartments. They also show four kitchens and bedrooms in apartments 1 and 2. Based on the photos of four kitchens he would presume that there would be four separate apartments. There has not been a re-evaluation since 1998 so there are no newer records on the property. He presumes that every year taxes are billed and paid on the property. Mr. Edgar further stated that as Tax Assessor he does not determine whether a use is legal or not.

In response to further questions from Mr. Murray, Mr. Edgar stated that there are other multi-family houses in the municipality. The record card indicates that the property is located in the R-15 zone. The sales history on the records indicate that members of the Pagano family owned the property since 1945. Exhibit A-10 – Deed from 1958 that references acquisition of the property in 1945 was presented.

Mr. Bernstein asked if there is anything in the Tax Assessor records that indicates that the inspector spoke to the zoning officer in order to ascertain whether or not the house is a legal four-family.

Mr. Edgar replied that there is nothing in the records with respect to whether it is a legal four-family home.

Open to Public

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

Allen Brunt was sworn and stated that he lives on the property behind this house. There were always members of the Pagano family living in the house and there was always more than one apartment. He was only inside once and does not know how many apartments are in the building.

Weiping Deng was sworn and stated that when she moved into her home there were members of the Pagano family living in different apartments. She asked if it made any difference if there were four separate families or just members of the same family.

Mr. Edgar said he did not know who occupies the house, only that there are four mailboxes out front.

The hearing of Application #11-14: 174 Snyder Ave. BH, LLC, 174 Snyder Avenue, Block 801, Lot 50 was carried to January 22, 2015 with no further notice required. The applicant agreed to extend the time for the Board to act on this application until the end of January.

Adoption of Minutes

October 23, 2014 Regular Meeting

A motion was made by Mr. Siburn, seconded by Mr. Smith, and carried by unanimous voice vote to adopt the minutes of the October 23, 2014 Regular Meeting as presented.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Sullivan, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:40 PM.

Regina Giardina, Secretary Pro Tem