

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

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

Oath of Public Officers – Newly Appointed Members

Mr. Gerald Nappi – replacement of unexpired term to end 12/31/2016

The oath of office was administered prior to the start of the meeting.

Completeness Review – Informal Review of Application:

App.#4-14: Berkeley Heights Realty, Inc. (Enrite Service Station), 525

Springfield Ave.,

Block 611, Lot 7 (HB-3 Zone)

Proposed expansion of station to include fueling canopy and operator kiosk for service station use. The proposed changes would require variances and waivers of certain design standards. The applicant had appeared before the Board in 2013 (App.#26-13: Ilya Shlakman), and a Certificate of Prior Nonconforming Status of the gasoline service station and repair garage was granted by the Board of Adjustment.

Steven Schaffer, attorney for applicant, stated that the applicant's property is the Enrite gas station located at the corner of Plainfield Avenue and Springfield Avenue. The applicant will submit a site plan for the proposed canopy and kiosk. The applicant previously received a non-conforming certification as a gas station and automotive repair shop as well as approval for the tanks and signs. Several site improvements have been made at the request of the Township including replacement of sidewalks, replacement of tanks, installation of pavers, a new fence, a new roof and power washing and painting of the building.

Mr. Sullivan arrived (7:35).

Mr. Schaffer advised that for the public hearing a notice will be provided including the variances required and testimony will be provided as to the reasons the canopy and kiosk are required.

Mike Tobia, Planner, stated that the only change to the plan is the insertion of the canopy and kiosk. Everything else will remain the same. He has met with Mike Mistretta and revised the plan using traditional architectural materials. Mr. Tobia presented a rendering showing the existing service building and street with the proposed canopy and kiosk inserted. The rendering shows the proposed beige canopy with a pitched roof, columns with brick and stucco and lighting in the roof. The kiosk will also contain some stucco and it will just be a place for workers to stay and be warm and there will be no retail sales. On the rendering the colored stripes have been removed from the building. The free standing sign that was approved last year will contain three prices instead of two so the numbers will be smaller. What is there now is a dimmed version and it can be dimmed even more since the brightness is adjustable. He has also met with the beautification committee to exchange ideas.

Mr. Mistretta stated that there were a number of variances listed in his review letter. He recommended that the applicant modify and update the application as needed to be consistent with the new drawing.

Mr. Schaffer noted that the plans that were submitted showed signage on the canopy and that is no longer proposed. There will be no signage on the canopy.

Mr. Bernstein advised that the completeness of the application will be deferred to the hearing of the Board on February 12, 2015.

Applications for Review:

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

The applicant was granted approval earlier this year for changes to the exterior elevations of an existing commercial building and for roof signs. The resolution of approval required that all lettering on the signs be black. The applicant is now requesting that this condition be modified to allow colors for the lettering on the halo-lit sign for eMedical Offices, an urgent care facility. (DD Zone)

David Bendush, attorney for the applicant, stated that the applicant is requesting modification of the approval as to the color of the signs for the eMedical facility.

Jory Schwartz, architect, was sworn and stated that the approval was for all black lettering on signs that will be back lit. Visibility is important for eMedical and they are requesting that color be permitted since it is important for people to be able to find it. The beautification committee provided a memo stating that they agree with the merit of the change in the application. The applicant will meet the conditions of approval stated by Mr. Mistretta.

David Calabrese, Senior Vice President of New Business Development for Emergency Medical, parent company of eMedical, was sworn and stated that they operate six urgent care centers in New Jersey and Pennsylvania and eMedical is their flagship center. Their marketing plan includes expansion throughout the state and building that brand. The market for this type of center has changed dramatically and they cannot rely just on patients who know where they are located. The color scheme that is proposed is the same as what is used in other centers and consistent with advertising materials.

Mike Mistretta, Township Planner, was sworn, and stated that he has been communicating with the applicant on this issue since the day after they received approval. The applicant has been very agreeable and cooperative and has brought the property into conformance with the Township design standards. The applicant has agreed that the letters will be lit using LED soft white light as recommended by the Township. All other conditions of the approval resolution will remain intact.

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. Boyer, with respect to Application #25-14: 369 Springfield Avenue Associates, LLC, 369 Springfield Ave., Bl.208, L. 21 to approve modification of the previous approval of the application, 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. Boyer, Mr. Siburn, Mr. Sullivan, and Mr. Delia voting in favor.

CARRIED FROM OCTOBER 23, 2014, WITHOUT FURTHER NOTICE:

App.#21-14: 65 Heights LLC / Kwak, 65 Park Avenue, Block 608, Lot 8 (R-10 Zone)

Applicant is proposing to renovate and make alterations to a 3-family dwelling which is located in an area zoned for single-family homes. As required in order to proceed with the project, the Applicant is seeking an appeal/interpretation from the Zoning Board of Adjustment that its current use is and has been a valid conforming three family dwelling.

Jay Delaney, attorney representing the applicant, stated that the applicant is seeking ratification of the three family use that has been existing for decades. At the previous hearing testimony was given by Chris Kwak, who is the owner with his father. The applicant submitted Exhibits A-1 through A-6 including copies of township records, DCA certificates and correspondence evidencing the use as a three family home. The applicant was to interview a former neighbor as to the use but unfortunately that person passed away. Mr. Kwak has talked to Vito Mondelli, a former resident of the house, who will testify as to his knowledge of the property.

In response to a question from the Board, Mr. Kwak stated that he is working on obtaining an updated survey of the property and he believes there is an easement that relates to the encroachment of the garage on the neighboring property.

Vito Mondelli, 182 Springfiled Avenue, Berkeley Heights, was sworn and stated that he spoke to Mr. Kwak about 65 Park Avenue. He has lived in Berkeley Heights all his life, since 1931. The property was owned by George Freda before Mr. Kwak purchased it and it has always been a three family. Mr. Mondelli stated that his family moved there between 1935 and 1940 and lived on the second floor. The Percillo family lived on the 1st floor and George Freda had a shed in the backyard and a room on the third floor. He remembers that he lived there when he made his first communion. His friend, Joe Cerulli also lived in the house at one time. He never went up to the third floor and his family moved out of the

house when he was 12 or 15. He visited the house after they moved because he visited his friend who lived there.

Mr. Bernstein suggested that the applicant obtain the new survey and meet with Mr. Mistretta to complete the site plan.

Mr. Kwak stated that he wants to clean the property up and improve the community.

Mike Mistretta, Township Planner, was sworn and advised the applicant what to show on the site plan, including existing conditions and proposed improvements. He also noted that the issues raised by the Township Engineer should be taken into consideration and the new survey and easement agreement with the neighbor should be provided.

Charles Heydt, Planner, was sworn, gave his educational and professional background and was accepted as an expert witness. Mr. Heydt stated that the site contains a three story residential home with a detached garage and driveway from Park Avenue deep into the lot. There are a number of shrubs along the street and some windows on the house have been boarded. He reviewed the municipal tax records and the property was listed as a three family home dating back to 1999. He also reviewed the zoning ordinance and the history of the ordinance that was adopted in 1937. Based on the testimony and the information he received the three family use was existing prior to 1937. He is comfortable that this application meets the proof requirements as to use. The house is still a three family and the applicant purchased it in 1983 with the assumption that it is a three family home. The applicant has been paying taxes as a three family home since 1983.

Mr. Bernstein noted that the fact that the property was taxed as a three family home doesn't mean that it is properly zoned and the tax assessor does not determine the legality of the use.

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.

The public hearing of the application was carried to February 26, 2014 with new notice required. The applicant agreed to an extension through that date.

Adoption of Resolutions:

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)

A motion was made by Mr. Delia, seconded by Mr. Sullivan, to adopt the above Resolution. The voice vote was unanimous with Mr. Miller, Mr. Sullivan 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)

A motion was made by Mr. Sullivan, seconded by Mr. Siburn, to adopt the above Resolution. The voice vote was unanimous with Mr. Miller, Mr. Siburn, Mr. Sullivan 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)

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. Siburn, Mr. Sullivan and Mr. Delia voting in favor.

Adoption of Minutes

November 13, 2014 Conference and Regular Meeting

A motion was made by Mr. Siburn, seconded by Mr. Boyer, and carried by unanimous voice vote to adopt the minutes of the November 13, 2014 Conference and Regular Meeting as amended.

Adjournment:

A motion was made by Mr. Sullivan, seconded by Mr. Boyer, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:15 PM.

Regina Giardina, Secretary Pro Tem