

# MINUTES

## BOARD OF ADJUSTMENT

### TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

April 9, 2015

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

#### Informal Review of Submitted Applications:

##### App.#7-15: Thomas Shallcross, 245 Spring Ridge Dr., Bl. 2107, L. 1 (R-15 Zone)

Proposed storage shed to be placed on property would be 192 square feet (16' x 12' x 12' high) and therefore does not adhere to Section 6.3.1.B.4 of the Municipal Land Use Procedures Ordinance which limits shed size to 100 square feet.

Thomas Shallcross was present and stated that he wants to put a 12' x 16' (192 square feet) shed in his backyard. The required setbacks are 10' and this would meet those requirements but the size exceeds what is permitted. The property is on the lowest point in the area so all the water flows into his yard and there is a storm water inlet.

In response to questions from the Board, Mr. Shallcross stated that he needs a large shed because he has a lot of bikes and equipment that he needs to store. He has an existing two-car garage in which he presently parks two cars.

The applicant was asked to stake out the location of the proposed shed and take photos of the location and what the neighbors will be looking at.

The application was deemed complete and scheduled for hearing on April 23, 2015 with required notice to be sent.

**App.#8-15: Meghan & Robert Calichman, 5 Harrison Dr., Bl. 1815, L.15 (R-15 Zone)**

Proposed renovations to an existing single-family house on a corner lot containing two principal fronts. The renovations include new one car garage addition, new second story addition over existing house, alterations to first floor living space of the ranch style house, new deck, raising of the first story wall height from 8' to 9' and modifications and relocation of the existing driveway opening from Snyder Avenue to Harrison Drive. Relief is needed from Section 6.1.1B "Schedule of General Regulations" due to insufficient principal front yard setback and Section 8.1.1B which prohibits enlarging, extending or increasing nonconforming buildings. The principal front yard setback from the Harrison Drive front yard is an existing, nonconforming condition.

Meghan Calichman was present and stated that the house that she and her husband purchased is a ranch house and they are proposing to make it a colonial. The existing house is already non-conforming so this would be an expansion of a pre-existing, non-conforming condition with respect to the front porch which has a setback of 45.1'. She met with the Township Engineer and he approved moving the driveway off of Snyder and on to Harrison so the existing street cut on Snyder Avenue will be changed and curbing will be required on Snyder.

The application was deemed complete and scheduled for hearing on April 23, 2015 with required notice to be sent.

**App.#4-15: Nagoya Group, LLC, 538 Springfield Ave., Bl. 612, Lots 3 & 7 (DD-Zone)**

Proposed renovation and enlargement of the second floor bar. The use of the space as a nightclub is not permitted under Section 6.3.2A "Permitted Principal Uses" of the Municipal Land Use Procedures Ordinance.

August Santore, attorney for the applicant, stated that there was a band that performed at the restaurant and that caused the zoning officer to call it a nightclub. The current bar is square with 28 seats. They are proposing the same amount of seating upstairs but overall there will be a two seat reduction in the

entire restaurant. The zoning officer has advised that having the second bar upstairs is a change in use and that under the ordinance an improvement costing more than \$10,000 requires a site plan approval. The applicant is seeking a waiver of the site plan requirement. There was previously a small service bar upstairs with table seating and that was all previously approved. There have been no complaints about parking.

Discussion took place regarding the overflow parking in the NJ transit parking lot and the difference between a restaurant and a nightclub.

Mr. Santore further stated that he would compare this to Delicious Heights. The applicant is proposing the same use but is just changing the physical look of the bar. There will be the same food, the same service and the music and entertainment will not be continued.

The application was deemed complete and scheduled for hearing on April 23, 2015 with required notice to be sent.

**Application for Review:**

**--CARRIED FROM FEBRUARY 26, 2015, WITHOUT FURTHER NOTICE:  
App.#11-14: 174 Snyder Ave.BH,LLC, 174 Snyder Ave., 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).

Joseph Murray, attorney for the applicant, presented Antonio Santorella, principal of the applicant.

Mr. Bernstein advised that this is a bifurcated application. The applicant previously submitted an application for a certification of use and now they are seeking a use variance for a four-family home.

Antonio Santorella, principal of the applicant, was sworn and stated that he is the owner of the property. He and his wife purchased the property in February 2013 from Dora Pagano. They were interested in purchasing a multi-family home for purposes of income in case he lost his job. He heard about the property in Berkeley Heights and went to see it, looked at the apartments and met some of the tenants. At that time, there was a man living in one apartment, Ms. Pagano in one apartment, a woman and young child in one apartment and there was one vacant apartment. It was a short sale with some issues regarding the oil tank and some remediation needed. His intent was to take this property which was in bad shape and improve it. A purchase contract was entered into in December 2012. On the second page of the contract the Seller states that the use as a four family home does not violate any municipal laws. As far as he knows there were no efforts by his attorney to undertake an analysis of whether or not the use of the site was permitted. There was certification from the Fire Department that they did an inspection for carbon monoxide and smoke detectors. The house was listed with the real estate agent as a four family, the Seller said it was a four family, and the Fire Department said it was a four family. The New Jersey Division of Consumer Affairs had it listed as a four family house. The purchase price was \$352,595 and title was taken by the LLC that was set up. They started to undertake renovations after the closing and a professional architect designed four upgraded units that would meet the existing building code. When the architect completed the plans he came to the town and worked with the Township officials. Then the plans were given to the contractor who applied for the necessary permits. At that time the zoning officer, Mr. Bocko, denied the application because of a use variance and indicated that the four family use was not permitted. The previous application filed with the Board was for an expansion of a pre-existing non-conforming use and certification that the use was a pre-existing non-conforming use. That application was denied so now they are seeking a use variance to legalize the usage of the structure as a four family residence. If this application is denied he would have no option since restructuring of the home as a one family home or a home with two or three units would not work from a financial perspective. He has been paying for taxes, insurance, utilities and maintenance on the property since February 2013. If this application is approved for the use variance it is his intention to undertake the work that was detailed by the architect and financing for that purpose is lined up.

It was suggested that the exhibits presented in the application for certification of use be re-used for this application. Mr. Santorella presented Exhibit A-1 – photographs showing the interior of the property in poor condition.

In response to questions, Mr. Santorella stated that he and his wife would eventually like to live in one of the units when their children, aged 13 and 14, are grown. They also own a four-family home in Union, a two-family home in Millburn and a two-family home in Summit.

Michael Tobia, Planner, was sworn and accepted as an expert witness. Mr. Tobia stated that he has been working with Mr. Santorella for about a year and has done many site inspections, taken photographs, reviewed the zoning and the Master Plan, testified at the previous application and reviewed the proposed use variance and case law.

Mr. Tobia presented the following Exhibits, some of which were also used in the previous application:

Exhibit A-3 - photo of the house showing all windows that have been replaced and that there were four gas meters, four mail boxes, multiple satellite and cable connections, and no front door or garage.

Exhibit A-5 - photo of the house from Snyder Avenue.

Exhibit A-4 – photo of the back of the building showing access to the apartments. There is no indication that this was ever a single family home.

Exhibit A-6 - photo showing parking spaces on the site.

Exhibit A-2 – photo of the front view of the house showing the shared driveway, location of another house behind the applicant's house, and the 5' front yard setback from Snyder Avenue.

Exhibit A-7 – google earth photo showing the house on Snyder Avenue.

Mr. Tobia stated that this is a neglected property. It needs new plumbing, new electrical; it floods, it has been vandalized and the paint is peeling on the walls. Each unit is now two-bedroom and the applicant wants to convert them into one-bedroom units. They are not requesting site plan approval since nothing is changing outside. With respect to the driveway, the applicant will do whatever the Board requires.

Mr. Tobia further stated that the house is located in a mixed use area that contains a shopping center, Reheis, a four unit townhouse development, professional office, Walgreens, TD Bank and only one single family home. The Master Plan suggests that there should be more multi-family homes in this district. The applicant is not seeking any bulk variances and every standard is met except for front yard setback and impervious coverage which is slightly over. The applicant is seeking a use variance to continue this use as a four-family home that has been in existence since 1910.

Mr. Tobia presented evidence as to the positive and negative criteria and stated the opinion that the positive criteria have been satisfied and the goals of the Master Plan and Municipal Land Use Law have been met. If this application is approved there will be no negative impact, there will not be a substantial detriment to the public good and approval will not impair the intent of the zoning ordinance. He stated that the interior of the building will undergo substantial renovation including full plumbing, electrical, doors, window replacements and new HVAC. The units will remain at the same square footage but will have only one bedroom rather than two.

In response to questions, Mr. Tobia stated that the positive criteria would be the same with two or three units, the current flooding problems will be taken care of with a sump pump, new gutters and leaders and new pipes in the basement. Mr. Santorella added that a French drain will also be put in the basement.

Mr. Mistretta noted that the units will be about 640 square feet and they will be very small, very long, narrow apartments, the proposed parking design will not provide good ingress and egress to Snyder Avenue and there is no parking in the rear.

Mr. Tobia stated that he advised the applicant not to make parking lot improvements since that would require site plan approval. The applicant is willing to pave the parking lot. Mr. Tobia indicated on Exhibit A-2 where the parking would be located.

Mr. Mistretta presented Exhibit BA-1 – survey showing parking.

Mr. Mistretta expressed concern about improvements being made in the basement in view of the problem with flooding.

Mr. Santorella stated that the flooding problem results from the faulty sump pump that will be replaced.

Discussion took place regarding the status of the COAH regulations. It was noted that if the application is approved that issue would have to be taken up with the Township Attorney.

### **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 and the hearing was closed to the public.

Mr. Murray summarized the application and stated that there is a need for this type of housing in the town and in his opinion the applicant has met the positive and negative criteria for the granting of a use variance.

Mr. Santorella stated that this is his work as he is not otherwise employed. He will make the property beautiful and a benefit to the town.

### Board Comments

Mr. Sullivan stated the opinion that two units would be better.

Mr. Siburn agreed.

Mr. Miller stated that even a two family house still breaks the zoning. He understands the financial loss but it was lack of due diligence on the part of the original attorney.

A motion was made by Mr. Boyer, seconded by Mr. Sylvester, to approve Appl. #11-14: 174 Snyder Ave.BH,LLC, 174 Snyder Ave., Block 801, Lot 50 (R-15 Zone) for a use variance for use as a four-family home with variances, the Board's findings to be set forth in a Resolution of Memorialization to be adopted by the Board. The motion was defeated by a roll call vote of 2-5 with Mr. Boyer and Mr. Sylvester voting in favor and Mr. Sullivan, Mr. Miller, Mr. Smith, Mr. Siburn and Mr. Delia opposed.

A motion was made by Mr. Smith, seconded by Mr. Delia, to approve Appl. #11-14: 174 Snyder Ave.BH,LLC, 174 Snyder Ave., Block 801, Lot 50 (R-15 Zone) for a use variance for use as a three family home with variances, subject to the conditions as discussed, including removal of parking in front on the Snyder Avenue side, improvement of that existing parking area, location of parking in the rear of the house, and configuration of the three units with two one-bedroom

units on one side of the house and a two-bedroom townhouse type unit on the other side of the house, and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The motion was approved by a roll call vote of 5-2 with Mr. Sullivan, Mr. Boyer, Mr. Smith, Mr. Delia and Mr. Sylvester voting in favor and Mr. Miller and Mr. Siburn opposed.

**--CARRIED FROM MARCH 26, 2015, WITHOUT FURTHER NOTICE:**

**App.#4-14: Berkeley Heights Realty, Inc., (Enrite gas station), 525**

**Springfield Ave., Block 611, Lot 7 (HB-3 Zone)**

Application for preliminary and final site plan approval with variances for a canopy over the gas station pumps and a kiosk as added accessory structures to the site. The applicant appeared before the Board in 2013 (App.#26-12: 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 this is a continuation of the February 12 presentation. Since that date the applicant has reduced the size of the canopy from 48' x 44' to 44' x 42' and it has been located 12' from Springfield Avenue. The applicant has also agreed to change the previously approved LED sign to a manually changed traditional sign.

Michael Tobia, Planner, previously sworn, stated that the setback from Springfield Avenue was 10' and now it is 12', the setback from Plainfield Avenue was 28' and now it is 30', and the square footage of the canopy was 2,112 and now it is 1,848.

Michael Mistretta, Township Planner, previously sworn, noted that the original plan showed 30' from Plainfield.

Michael Glicksman, lighting expert, previously sworn, reviewed the lighting design of the canopy and discussed what the applicant has done to make it have the least lighting possible and still be functional. Mr. Glicksman stated that normally four drive lanes would have lighting over each aisle but one row has been eliminated to bring the lighting down. Mr. Glicksman presented Exhibit A-3 – lighting plan. He stated that the lighting is being spread more evenly and it is 50% of the brightness of a typical canopy. They could not do less without making it unsafe.

In response to questions from the Board, Mr. Glicksman stated that the existing floodlights will be removed and gooseneck lights will be added to the building to

light the pathway. He did not do any studies of other facilities along Springfield Avenue as to the level of wattage or foot candles.

### **Open to Public**

The hearing was opened to the public for comments or questions regarding Mr. Glicksman's testimony. There were no members of the public who had comments or questions and the hearing was closed to the public.

Mr. Tobia presented Exhibit A-4 – list of conditions of approval should the Board act favorably, including the following: all canopy lights will be shut off at 10 p.m., post-development light inspection by Mr. Mistretta, addition of five gooseneck lights to the front of the façade, color of the canopy roof will match the existing roof on the service station building, a wall-mounted street lamp will be added to the Plainfield Avenue façade, 4 shutters will be added to the Plainfield Avenue façade, wall sign will be removed from the front façade and replaced with carved wood sign not to be internally lit, two existing 450 watt flood lights on the southeast corner will be removed, applicant will agree to paint the building any historical color selected by the Downtown Beautification Committee, and the applicant will provide as-built survey post construction.

Mr. Mistretta discussed safety considerations on the lighting. He said he would be reluctant to require less lighting than is considered safe. Mr. Tobia stated that the applicant will cooperate in any way he can with post development inspections.

Mr. Tobia presented Exhibit A-5 – new rendering that includes the latest improvements to the plan. The roof of the canopy will match the roof of the service station building and the LED price sign will be removed and replaced with a manual sign. He also presented Exhibit A-6 – sample of the numbers for the sign.

Ilya Shlakman, one of the owners of applicant, previously sworn, stated that the new sign will have four bulbs and a dimmer.

### **Open to Public**

The hearing was opened to the public for comments or questions regarding Mr. Tobia's testimony.

Julie Lloyd, Downtown Beautification Committee, previously sworn, stated that the Committee wants Enrite to succeed but feel that the current plan is not

acceptable. Ms. Lloyd stated that there are currently no gas stations in town with a canopy and this would set a precedent. The Committee feels that the canopy is very large and very high and it will block the view on this major intersection in the downtown area and make the intersection look very crowded. The Committee has been working to create a small town main street and this does not fit in. If the Board decides to approve this application the canopy should be smaller, the sign on the building should be replaced with a carved wood sign, the pylon street sign should not be allowed, the columns need to be thicker, the chain link fence should be removed and replaced with a decorative fence, the roof line should be changed to a more traditional style and the roof should be charcoal grey. Ms. Lloyd presented Exhibit BC-1 – Beautification Committee list of recommendations.

Mr. Schaffer stated that the downtown design standards do not prohibit awnings and canopies but contemplate them. He quoted the section from the standards that states that awnings and canopies will be used to complement the building. He further stated that the size of the canopy is required because there are four aisles of cars. The applicant has reduced the size so that one of those aisles is not covered. This canopy is much more colonial and fitting in with the standards than the Chase bank. The applicant has met with Mr. Mistretta and gone to great expense to design a unique canopy with a colonial feel and it is the applicant's opinion that this canopy makes this site look better. The applicant would disagree with the statement that the canopy is too big. They appreciate the function of the downtown design committee as guardian of the community but the applicant should be not discriminated against. Each application is considered on its own and there are no precedents set. Approval of this canopy does not mean that other gas stations will have canopies.

Mr. Mistretta stated this canopy would basically serve the same purpose as the canopies for the banks and pharmacy. The difference is the location in the front yard.

### **Open to Public**

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

Charles Santore, 195 Lincoln Road, was sworn and stated that he agrees with the Beautification Committee that the structure is too high and he does understand that it cannot be reduced because you have to get trucks in there. There was a lot of time spent on lighting but he thinks the overall structure is too much on Springfield Avenue. The canopy is much higher than the height of the

building. The canopy is 21' and the building is 17' high. This is really big and he questions whether the neighborhood needs it and who will benefit except the people who are pumping gas. In his opinion the canopy will overshadow the street and will be an eyesore. The Board is going to get complaints from people in town and this could drop real estate values in the area. He thinks the improvement of the building is nice but he does not like the canopy. This is an accessory structure in the front of the building. Mr. Santore further stated that the gas station has been a hit and miss for the last 25 years with three or four operators and he asked who will maintain the structure if they leave.

In response to questions, Mr. Santore stated that he is involved in construction and his opinions are based on his experience in construction. From Lincoln Street he does have a view of other buildings on Springfield Avenue.

Mr. Schaffer stated that he does not agree that this is a massive structure. The ordinance permits 36' height so he does not think this structure will cause a problem. There are canopies all over town and this is going to be the nicest one. He does not know of any others that have a colonial look and since the 1990s most gas stations have been built with canopies. From an aesthetic point of view he thinks the site looks bad now and this will make it look better. The applicant has made significant effort to meet the downtown standards.

The hearing of this application was carried to April 23, 2015 with no further notice required. Mr. Sullivan advised that public comments will be continued followed by Mr. Schaffer's summation. Mr. Schaffer advised that the applicant would grant an extension through April 23, 2015.

**Adoption of Resolutions:**

**App.#6-15: Brian Vincent, 253 Emerson Lane, Block 2801, Lot 68 (R-20 Zone)**

Applicant is proposing to widen the existing driveway and install a residential storage shed on the lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because the maximum "Other" Coverage and Total Lot Coverage ratios are exceeded and the location of the shed would not comply with the accessory building rear yard and side yard setback requirements. There are also many nonconforming issues which were addressed in a previous resolution of approval granted by the Board of Adjustment in 2005 when the house was built.

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

**App.#5-15: Rominnella Associates LLC, 27 Washington Ave, BI.1802, L.2  
(R-15 Zone)**

Applicant is proposing to demolish the existing single family dwelling and construct a new single family house on the lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because the front yard setback will be less than the 50 ft. required, and the rear yard setback will be less than the 40 ft. required. Lot depth is a nonconforming issue.

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

**Adoption of Minutes**

March 26, 2015 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 March 26, 2015 Regular Meeting as presented.

**Adjournment:**

A motion was made by Mr. Siburn, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:22 PM.

Regina Giardina, Secretary Pro Tem