

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

April 23, 2015

The 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. Nappi, Mr. Delia and Mr. Sylvester. Mr. Siburn and Mr. Henry were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

--CARRIED FROM APRIL 9, 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 the applicant, advised that the applicant is requesting that the hearing be carried to May 28, 2015 and has granted an extension to May 31, 2015.

The hearing of Application #4-14 was carried to May 28, 2015 with no further notice required.

Reorientation of Swimming Pool without new nonconformities

App.#3-15: George Devanney, 59 Cornell Avenue, Bl. 1710, L. 3 (R-15 Zone)

The application for an inground pool with paver patio surround was approved at the Board of Adjustment meeting on February 26, 2015. The approval was memorialized by resolution which was adopted on March 12, 2015.

George Devanney was sworn and stated that he obtained an approval for a pool in February and wants to change the orientation of the pool. There will be no change in the impervious coverage, no change in setbacks and no change in the drainage plan.

Mr. Bernstein stated that Mr. Bocko could have approved this but thought it best for the applicant to come before the Board and explain the change.

Mr. Devanney stated that the reorientation of the pool will eliminate the setback variance on Yale Drive.

Mr. Bernstein noted that the second plan will be substituted for the original plan and will now be the approved plan.

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. Delia, with respect to App. #3-15: George Devanney, 59 Cornell Avenue, Bl. 1710, L. 3 (R-15 Zone) to approve the reorientation of the previously approved pool and substitution of the plan, 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 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor and none opposed.

Applications for Review:

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 sworn and stated that a variance is needed for the front porch on the house, which is a ranch style home that is being changed to a colonial. The impervious coverage meets the requirements and the drainage plan has been submitted to the Zoning Officer and Township Engineer. The driveway is being moved from Snyder Avenue to Harrison Avenue and they are adding a second garage. The front yard setback is an existing non-conforming condition.

In response to questions, Mrs. Calichman stated that the only change in the front yard is the porch. The garage is being located on an area that used to be a patio and the garage will be one story. This will be a single family home, the height of the home will be 27' and there is an existing basement.

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. Miller, seconded by Mr. Sylvester, with respect to App.#8-15: Meghan & Robert Calichman, 5 Harrison Dr., Bl. 1815, L.15 (R-15 Zone) to approve the application with variance, 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 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor and none opposed.

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 sworn and stated that he needs a variance for the size of the proposed shed on his property which is 12 x 16, 192 square feet.

Mr. Shallcross presented Exhibits A-1 and A-2 – photographs of the rear of his property where the shed will be located and the view of his neighbors' homes. He noted that the neighbor to the right has a pool on the other side of the fence shown in the photo.

In response to questions, Mr. Shallcross stated that the location of the shed meets the side yard and rear yard setback requirements. The shed in his neighbor's yard is approximately 10' x 10'. The other fence shown on the plan is a chicken wire fence that separates the two properties. The purpose of the large shed is for storage for his bikes and lawn equipment. The garage will be used for parking of the family's two cars. No trees will be removed.

Following discussion Mr. Shallcross agreed to reduce the size of the shed to 144 square feet and to relocate it 5' more from each of the property lines to create 15' setbacks.

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 App.#7-15: Thomas Shallcross, 245 Spring Ridge Dr., Bl. 2107, L. 1 (R-15 Zone) to approve the application subject to the conditions discussed including size of the shed not to exceed 144 square feet with a minimum of 15' setbacks, 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 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor and none opposed.

--CARRIED FROM FEBRUARY 26, 2015, WITHOUT FURTHER NOTICE:

App. #32-14: Ronnie & Emilie Nieves, 25 Liberty Avenue, Block 2004, Lot 2
At the public hearing of this application on January 22, 2015, the Board voiced concerns about the significant impervious coverage ratios. As a result, many changes were made to the original plans, including elimination of the proposed breezeway, removal of the detached garage with a new garage to be attached to the house, changing the wrap-around porch to a front porch, etc. Revised plans

were submitted to the Board Office ten days prior to the April 23 public hearing date. (R-15 Zone)

Emilie Nieves and Ronnie Nieves, applicants, were sworn. Mr. Nieves stated that based on the Board's suggestions the house has been redesigned and reduced in size.

Albert Anikwe, architect, was sworn, gave his background and experience and was accepted as an expert witness.

Mr. Anikwe stated that the breezeway has been eliminated and the garage will now be attached to the house. The side yard setback by the garage is now 20', the rear setback is now 34' and the front setback from Liberty is increasing from 17.1' to 19.5'. The house has been reconfigured and made smaller. The deck in the back has been eliminated.

Mr. Anikwe described the proposed house and stated that the basement will be unfinished with a utility room. The first floor will have the garage, entrance from the front, covered porch, foyer, living room, dining room, kitchen, family room and pantry and breakfast area. The second floor will have bedrooms, hallway, laundry room and the open foyer from the first floor. The attic will be for storage only with no living space. The height of the house will be less than 30' and the existing house is about 22-23' in height.

In response to questions from the Board, Mr. Anikwe stated that the driveway will remain in generally the same location but the size will be reduced so that the impervious coverage will be less. The curb cut will remain. A portion of the existing concrete slab on the property will be covered by the garage and about 1/3 of the slab will remain.

Discussion took place regarding the amount of impervious coverage. Mr. Anikwe was unsure as to the percentage and Mr. Sullivan noted that the Board would need a definite number for the impervious coverage in order to consider granting approval.

The applicant was instructed to meet with the architect and have a new plan prepared that would include the plan for the driveway and patio and provide a definite number for the impervious coverage.

The hearing was carried to the May 28, 2015 meeting of the Board with no further notice required.

**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 applicant, stated that this is an application for proposed renovations to the second floor of the restaurant.

Ricky Luo, manager of Nagoya Group, LLC, was sworn. Mr. Luo stated that he is the owner of the restaurant and purchased it in 2011. The restaurant has a liquor license and as part of the process of obtaining the liquor license the entire facility was approved. He purchased a new bar and equipment for the second floor and filed an application to install the bar upstairs. Mr. Bocko thought he was operating a nightclub but that was a misunderstanding. There is no intention to operate a nightclub and once he was notified that there was a problem with having a musician they have not had any music in the restaurant. There is no dance floor in the restaurant on either floor. They did have a musician but did not know there was any restriction against music. There have never been any complaints from the police department or customers about parking or anything else.

In response to a question with regard to lighting, Mr. Luo said they do not intend to continue using the light projection system that lit up the back of the building. Mr. Santore stated that the applicant will accept a condition of approval with regard to the lighting.

Mr. Bernstein stated that if the Board were to approve this application there would be a restriction as to a single musician, no dance floor, no advertising of music and no DJs.

Robert Coletta, architect, was sworn, gave his background and qualifications and was accepted as an expert witness. Mr. Coletta presented Exhibits A-1 and A-2 – photographs of the existing seating and table arrangements and bar for upstairs and downstairs. There will be seating for 76 – 65 inside and 11 outside on the patio area. Mr. Coletta compared the existing plan and the proposed plan and explained the changes. He indicated the proposed location of the 28 seat bar upstairs. Mr. Coletta further stated that there is a two seat reduction in seating in the entire restaurant, the restaurant meets all codes for capacity and seating and pre-existing approved fire exits remain. The maximum capacity is 159 and they are at 152.

Mr. Santore reviewed the definition of nightclub which includes a dance floor. He stated that the applicant never had any intent to have a nightclub but would like to have a single musician or house music at times. The purpose of the reconfiguration is to have a more efficient operation and there will be no change in the footprint.

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. Nappi, with respect to App. #4-15: Nagoya Group, LLC, 538 Springfield Ave., Bl. 612, Lots 3 & 7 (DD-Zone) to approve the application subject to the conditions 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 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Nappi, Mr. Delia and Mr. Sylvester voting in favor and none opposed.

Adoption of Minutes

April 9, 2015 Conference and Regular Meeting

The Minutes were tabled.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Boyer, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:20 PM.

Regina Giardina, Secretary Pro Tem