

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

October 22, 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. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Smith and Mr. Siburn were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Applications for Review:

App.#22-15: Lillian Court Assoc.LLC, Mountain Avenue, Block 3303, Lot 12 (R-20 Zone)

Proposed construction of a new single family house on this vacant lot. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for insufficient side yard and combined side yard setbacks. In addition, "other coverage" would be approximately 15% (compared with the 10% maximum "other coverage" allowed).

Dan Reichard, Managing Member of Lillian Court Assoc. LLC, was sworn and stated that the proposed lot has some pre-existing conditions for which variances are being sought. The proposed side yard setbacks will be 12' and 18' for a total side yard of 30'. The nearest home is 250' away. The previously proposed driveway has been eliminated.

Mr. Reichard presented Exhibit A-1 – new revised plan that eliminates the previously proposed circular driveway. Mr. Reichard further stated that a rear yard setback variance is needed. The applicant's intent is to take a vacant

unusable lot and turn it into a single family residence. Mr. Reichard presented Exhibit A-2 – elevations of a two story classic colonial house.

In response to questions from the Board, Mr. Reichard stated that the proposed house will be smaller than other new houses in the area. The house will be about 2,000 – 2,200 square feet and will probably sell for about \$500,000.

Open to Public

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

Avtar Phull, owner of the adjacent property, was sworn and stated that this is the first time he has been made aware of this proposal. He said the dwelling that is proposed is substantially smaller compared to other houses in the neighborhood. Everyone in the neighborhood was under the assumption that it would not be developed since it was a smaller property and now development of the property will impact the current view of the neighbors. Mr. Phull asked how close they are permitted to build to a gas line. Mr. Phull further stated that his house is set back about 300' and he has three bedrooms and a front room downstairs that will face this new house.

Mr. Reichard stated that the gas line is on the PSE&G property and there is no gas line easement on the property.

It was suggested that plantings be required that will buffer Mr. Phull's house and that Mr. Phull have some input as to what kind of trees are planted.

Mr. Reichard said he would be happy to meet with the neighbor to discuss the plantings.

A motion was made by Mr. Boyer, seconded by Mr. Miller, with respect to App.#22-15: Lillian Court Assoc.LLC, Mountain Avenue, Block 3303, Lot 12 (R-20 Zone) 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 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi voting in favor and none opposed.

App.#23-15: Georgene Granholm, 49 Shadow Lane, Block 504, Lot 64 (R-15 Zone)

Application for hot tub on an existing deck. Relief is needed from Section 3.1.8. "Decks" of the Municipal Land Use Procedures Ordinance which prohibits hot tubs from being located on any exterior deck. Nonconforming issues are lot area, lot width, principal front yard setback, other lot coverage, total lot coverage, existing shed size and existing shed accessory setbacks.

Georgene Granholm was sworn and stated that she is requesting a variance to put a hot tub on a wooden platform that is over a concrete patio. The hot tub cannot be put on the lawn in the backyard because of the severe flooding problems on the property. Mrs. Granholm presented Exhibits A-1 through A-8 – photos showing the backyard, the decking over the concrete patio, the boardwalk that was built because of the flooding, the severity of the flooding following a minor storm, the tree that had to be cut down because of the flooding, and her shed and her neighbor's shed.

Mrs. Granholm stated that she is permanently disabled and retired and she does not have insurance that would cover going to a facility for water therapy. Her doctor recommended the hot tub and they put it in not knowing that they needed a permit to put it on the platform. She was told that she did not need a permit but then was advised that it was a violation since it was placed on the wood. The wooden platform has been there for 25 years and was not just put there for the hot tub.

Discussion took place regarding the three different surveys provided and the concern about moving forward without a proper survey.

Mrs. Granholm stated that she would be amenable to also requesting a variance for the driveway located less than 5' from the property line. In response to questions from the Board, Mrs. Granholm stated that the 140 square foot shed on the property has existed there for over 25 years. She would also request a variance for the shed. She stated that nothing has changed in her backyard for 25 years except now for the portable hot tub.

Open to Public

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

David Bendush, attorney for Licienne Sodano, 55 Shadow Lane, asked if Mrs. Granholm recalled testifying before the Board when her neighbor applied for a variance for a shed on their property and to objecting to their seeking to put up a shed. He also asked if Mrs. Granholm objected to the fence between the two properties and her neighbor's shed because she thought it was unsightly and devalued her property.

Mrs. Granholm stated that the issue of the fence being on her property existed at the time she purchased her house and continued to be an issue for the past 25 years. When her neighbor put a shed on the property line it was located on the side of the house and not in the backyard.

Mr. Bendush raised questions with regard to the notice for the hot tub variance and whether the notice included the variances for the driveway and shed.

Mrs. Granholm stated that Mr. Bocko wrote the notice for her and included everything that needed to be in it.

Mr. Bendush asked about the condition of Mrs. Granholm's shed, whether it is in good condition or if it is unsightly due to the flood damage and if it adversely affects her property value. He also asked if Mrs. Granholm believed that the same standards should apply to her shed as were applied to the Sodano's shed.

Licienne Sodano, 55 Shadow Lane, was sworn and stated that she has lived next door to Mr. and Mrs. Granholm for 26 years. The shed was built on their property about 21 years ago and the wood decking was installed over the concrete patio sometime after 1992. Mrs. Sodano stated that her property also suffered a similar hardship with flooding and also had flooding inside their house. She believes that if the proposed hot tub needs to be emptied that will cause a flooding problem on her property. She is also concerned about the impact on her property of noise from the hot tub. She and her husband were held to the letter of the law when they sought a variance for their shed, they were told to move the shed and they also replaced and moved the fence. They believe the same standards should be applied to this applicant.

Anabela Oliveria, 43 Shadow Lane, was sworn and stated that she is a lot closer than the other neighbors to the Granholm property. She has not had a problem with noise from the hot tub and she does not think noise will be an issue. She also has no problem with the location of the shed or the driveway.

Mr. Bendush stated that it is clear that there are differences of opinion between the neighbors but also clear that Mrs. Granholm thought a non-conforming

application by her neighbor would affect her property value. His client objects to her neighbor being allowed to put up a shed in a non-conforming location while her request to do the same was denied. Mr. Bendush also stated that the applicant should be required to submit an accurate survey of the property.

Mrs. Granholm stated that she is handicapped and does not have insurance that would cover going to an outside facility for water therapy. The use of the hot tub will not create any impact on the neighbors and because of the flooding issue there is no other place on the property to put it. The shed is in good condition and does not affect the neighbors.

A motion was made by Mr. Nappi, seconded by Mr. Miller, with respect to App.#23-15: Georgene Granholm, 49 Shadow Lane, Block 504, Lot 64 (R-15 Zone) 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 5-2 with Mr. Miller, Mr. Boyer, Mr. Nappi, Mr. Delia, Mr. Sylvester voting in favor and Mr. Sullivan and Mr. Mustacchi opposed.

App.#9-15: 569 Springfield Avenue, LLC, 569 Springfield Ave., Bl. 610, L. 8 (HB-3 Zone)

The applicant appeared before the Board earlier this year but put the application on hold to develop a revised plan. The new proposal is for preliminary and final site plan approval of 7 residential 2-story townhouse units, split between two buildings. (The existing single family dwelling will be demolished.) Relief is needed from Section 6.3.3(A)(4)(c) relating to an increase in density and Section 11.1.2B relating to parking spaces (14 spaces proposed compared with 16 required). A bulk variance under Section 6.1.1B is also needed due to insufficient rear yard setback (of the rear set of townhomes).

August Santore, attorney for applicant, stated that the proposed development of the property has been revised.

Robert Coletta, architect, was sworn and accepted as an expert witness. Mr. Coletta presented Exhibits A-1 through A-3 – photo boards showing the front elevations, the back of the proposed buildings and the driveway, and Exhibit A-4 – photos of the courtyard and the two buildings.

Michael Tobia, Planner, was sworn and accepted as an expert witness. Mr. Tobia stated that the applicant presented a plan to the Board for eight rental apartments that required a use variance. The Board was not receptive to that plan and the applicant has now changed the plan completely. What is now being

proposed is a seven unit townhouse complex. This is permitted use and requires some variances and site plan approval. The property is located on Springfield Avenue next to the Hacienda Restaurant. On the property is a building set back from the street that is a dilapidated home at the end of its useful life. The house and the existing garage are to be demolished and there is a shed that will be removed. The proposal is to redevelop the entire site for a seven unit townhouse layout. The existing driveway will be kept and two buildings will be built on the site. The rear building will contain four units and the front building will have three units and there will be a courtyard down the middle of the site. Each unit will have a one bay garage and one driveway so each unit will have two spaces in total. There will be a retaining wall in the front of the property and a fence across the rear property line to provide privacy to the neighbors on Washington Street. There will also be landscaping around the site. The units are targeted at empty nesters and young professionals. They will be two bedroom units that will range in size from 1,750 to 1,900 square feet. The estimated sale price is \$500,000. There will be a trash enclosure in the rear and new paver sidewalk on Springfield Avenue. They will rely on three on-street parking spaces in front of the property to provide visitor parking.

Mr. Tobia further stated that the property is located in the HB zone which allows housing and business, including offices, banks, places of worship, single family homes and townhomes and retail and commercial uses. Townhouses are a permitted use in the zone. A variance is required for deficiency of unit width and for having seven units where six would be permitted. The rear yard setback is proposed to be 15' where 25' is required. The deficiency in unit width could be eliminated by larger buildings but the applicant is asking to build less rather than more. The underground detention facility will be located in the front yard which means that building 2 has to be pushed back further into the site. Mr. Tobia indicated on Exhibit A-3 what will be the view from Springfield Avenue and pointed out the mansard roofs that extend out about 1½ feet from the building and cause the rear setback to actually be 13½'.

Mr. Tobia stated the opinion that this application is extremely compliant with the HB3 zone. Putting up brand new townhouses and taking down an unsafe building is something that will promote the public good. The variances being requested are minor in nature and these will be attractive buildings. The homes to the rear off the property line are 54-63' away to the north and there will be buffering from that residential use.

Discussion took place regarding the width of the units. Mr. Tobia stated that the applicant is looking for smaller units to address market demand. The applicant

prefers seven smaller units rather than six larger units. If it was reduced to six units that would probably include three bedroom units which would increase the chances of having school aged children on the site.

In response to a question about parking, Mr. Tobia stated that 2.3 parking spaces per unit are required. The applicant is providing two spaces per unit and asks that the Board recognize that there are three on-street spaces.

Open to Public

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

Marie Scharmberg, 153 Washington Street, stated that she has hired a Planner, Scarlett Doyle, to ask questions on her behalf.

Scarlett Doyle, Planner, was sworn and accepted as an expert witness.

Ms. Doyle asked questions regarding the application checklist, room dimensions, compliance of the application with the Master Plan as to mansard roofs, amount of parking spaces required and to be provided, whether street parking should be considered as part of the parking requirement, height of the proposed retaining wall in the front of the property, height of the building which will be about 20' higher than the street and rear yard buffering.

Mr. Tobia stated that the application complies with the Master Plan except in minor respects, the parking provided on the site is 14 spaces plus 3 spaces on the street, the westerly edge of the retaining wall will have a maximum height of 7' and the height will taper off toward the rear to 3½', no height variance is being sought since both buildings comply with the height ordinance, and the rear yard buffer will exceed the requirements.

Jun Hu, 161 Washington Street, asked a question regarding the detention basin and was asked to wait for the testimony of the engineer who will address that issue.

Michael Mistretta, Township Planner, was sworn and accepted as an expert witness. Mr. Mistretta asked that the applicant provide a cross section of the site from Springfield Avenue through the retaining wall and parking lot.

The hearing the application was carried to November 12, 2015 with no further notice required.

Adoption of Resolutions:

App.#20-15: Urmalena & Neil Sternberg, 18 Hamilton Ave., Bl. 1103, Lot 4 (R-15 Zone)

Proposed standby generator (“accessory structure”) to be located in the side yard. Relief is needed from Section 6.1.1B “Schedule of General Regulations” because the proposed location of the generator is 8’ from the side property line whereby a side setback of 10’ is required. Since there are existing nonconforming “other” coverage and “total” coverage issues, the slight increase due to the generator results in variance requests for “other” and “total” lot coverage. Nonconforming issues are combined principal side yard setback, lot width, existing other coverage and existing total lot coverage.

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

Adoption of Minutes

October 8, 2015

A motion was made by Mr. Delia, seconded by Mr. Sylvester, and carried by unanimous voice vote to adopt the minutes of the October 8, 2015 Conference and Regular Meeting as presented.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:50 PM.

Regina Giardina, Secretary Pro Tem