

## MINUTES

### BOARD OF ADJUSTMENT

### TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

May 26, 2016

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. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Boyer was absent. Mr. Bernstein, Board Attorney, was present.

#### Adoption of Minutes

May 12, 2016 Conference Meeting

A motion was made by Mr. Smith, seconded by Mr. Siburn, and carried 7-0-1 (Abstain-Mr. Sullivan) to adopt the minutes of the May 12, 2016 Conference Meeting as presented.

#### Applications for Review:

##### App.#7-16: Robert Nichols, 33 Holly Glen Lane So., Block 3504, Lot 36

Proposed second-story addition over the existing two-car garage. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because the existing house has a front yard setback of 42.43 ft. (vs. 50 ft. required), and the front yard setback for the proposed addition will be the same (42.43 ft.). Relief is also needed from Section 8.1.1B.1: "No nonconforming single family dwelling and no single family dwelling on a nonconforming lot may be enlarged, extended or increased unless said enlargement by itself conforms with all requirements of the Zoning Ordinance..." The only other nonconforming issue is lot area. (R-20 Zone)

Robert Nichols, was sworn and stated that he wants to put a master bedroom over the existing garage and needs a variance for a front yard setback of 42.43' where 50' is required. There will be no change in the footprint of the house.

**Open to Public**

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

Discussion took place regarding the recommendations of the Environmental Committee and Mr. Nichols agreed to install a rain garden or rain barrel on the property.

A motion was made by Mr. Mustacchi, seconded by Mr. Nappi, with respect to App.#7-16: Robert Nichols, 33 Holly Glen Lane South, Block 3504, Lot 36 (R-20 Zone) to approve the application with requested variances, 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. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

**App.#6-16: Palma Quelly, 206 Sawmill Drive West, Block 1101, Lot 8 (R-15 Zone)**

Proposed principal addition to expand the existing one-car garage into a two-car garage and a new second-story addition to create a new bedroom and bathroom. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because the addition will encroach into the side yard setback. The lot width is a nonconforming issue.

Joanne Decerce, daughter of the applicant, was sworn and stated that they want to add a second garage next to the existing one-car garage and a bedroom and bathroom above the existing garage. A variance is needed for side yard setback of 7' where 12' is required. The addition will not be higher than the existing home. Ms. Decerce presented Exhibits A-1, A-2 and A-3 – photographs of the applicant's house and the neighbor's house showing the two windows on the second story of the applicant's house that will be removed with the addition, the neighbor's house with no windows on that side, the location of the proposed new garage and the vegetation.

In response to questions from the Board, Ms. Decerce stated that nothing will be added to the driveway, the house will have a new roof, new gutters and

hardy plank siding and professional landscapers will be hired to do the landscaping.

**Open to Public**

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

Changshi Zhou, 212 Saw Mill Drive West, was sworn and stated that he lives next door and objects to the granting of the variance since it violates the zoning code that requires a minimum of 12'. He further stated that granting this variance will cause his property to be overcrowded, will violate the privacy of his house and will create a fire hazard. He also believes that if this variance is allowed it will set a bad precedent and will cause a detriment to the public good and impairment of the purposes of the zoning ordinance. Mr. Zhou presented Exhibits O-1 and O-2 - google maps showing the property line and the neighborhood.

Shyue Ko, 199 Saw Mill Drive West, was sworn and stated that she has lived there for 35 years, she would be uncomfortable about the granting of the variance and feels that her property will be affected by shortening the distance from the property line to the building.

Mark Cain, 52 Riceman Road, was sworn and stated that he lives behind the applicant's house. He is not concerned about the setback but is concerned about drainage and the effect of an additional structure on the drainage. He requested that the engineering department take a look at the proposal and consider that aspect of the application to make sure they are not causing additional water problems.

Mr. Sullivan advised that there is a storm water management plan required if the application is approved although it is not the applicant's responsibility to solve water problems in the area.

Pam Quelly, applicant, was sworn and stated that she is the original owner of the house. This addition should have been done years ago when the house was purchased. She also stated that her late husband served in the military.

Ms. Decerce stated that the setbacks were set 50 years ago and Berkeley Heights has changed a lot since then and there have been a lot of big houses built on small properties. They are not adding any more driveway and not making the drainage worse. There is a water problem in the neighborhood

and she has spent a lot of time and money correcting the problem on her property and it is now dry.

Mr. Bernstein advised that the Board does not consider the details of the drainage plan but only provides that the approval is subject to review and approval of the drainage plan by the Township Engineer.

Mr. Zhou said he respects Mrs. Quelly's husband's military service. However, the purpose of the ordinance is to protect their rights and this would be a violation of their property rights.

In response to further questions from the Board, Mrs. Decerce stated that the access to the second story will be through a door that will take the place of the existing wall and window, the air conditioning units will be placed on the other side of the house or in the backyard and they will provide evergreens of about 4' to provide privacy for the neighbor.

A motion was made by Mr. Delia, seconded by Mr. Miller, with respect to App.#6-16: Palma Quelly, 206 Sawmill Drive West, Block 1101, Lot 8 (R-15 Zone) to approve the application with requested variances, 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. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

**App.#9-16: Doug Reinstein, 64 Hampton Drive, Block 3204, Lot 10 (R-20 Zone)**

Proposed principal addition to expand the existing one-car garage into a two-car garage and an 8' x 26' one-story addition to the rear portion of the house. The driveway would be expanded to accommodate the new garage. Relief is needed from Section 6.1.1B "Schedule of General Regulations" which requires a principal front yard setback of 50 ft. where 43.1 ft. is existing and 43 ft. is proposed; combined side yard setbacks required are 30 ft. where 40.6 ft. are existing and 28.2 ft. are proposed; required rear yard setback required is 40 ft. where 42 ft. is existing and 32 ft. is proposed. A variance is also required for exceeding the maximum permitted building coverage of 15%, other coverage of 10%, and total lot coverage of 25%. Nonconforming issues are lot area, lot depth and accessory setbacks for existing shed – side and rear.

Douglas Reinstein, applicant, was sworn. Carol Hewitt, architect, was sworn and accepted as an expert witness.

Ms. Hewitt presented Exhibit A-1 - photos of the shed and its location. She stated that to move the shed will be difficult because of underground electric cable. Mr. Reinstein stated that the shed was there when he purchased the house and he put in the electric cable.

Ms. Hewitt distributed copies of the revised survey. She stated that the applicant is requesting several variances, most of which are for pre-existing conditions. Variances are required for lot size, side yard setback, front yard setback, combined side yard setbacks, rear yard setback, building coverage, total lot coverage, other coverage and setback for the shed.

The proposal is to add a second car garage 12' x 20.5' and a storage area of 27' x 6'5" behind the garages. The storage is needed since the house is on a slab and there is very little attic space and no basement. There will be no heat in the storage area. The second garage will be 253 square feet and the storage area will be 183 square feet. There will be a 266 square foot expansion of the driveway to permit access to the new garage.

Ms. Hewitt further stated that the applicant will comply with the recommendations of the Environmental Commission and is proposing to build a rain garden behind the addition. The hardship of the property is the undersized lot with an access problem. The benefit of the proposal will be parking and storage and there will be no detriment to the neighborhood.

Discussion took place with regard to the location of the shed. Mr. Reinstein stated that there is nothing behind the shed except the neighbor's yard. In response to a suggestion from members of the Board that the shed be moved, Mr. Reinstein stated that he does not want to pay for the expense of having it moved. The Board members expressed their opinions with regard to the location of the shed and how that would affect their vote.

### **Open to Public**

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

A motion was made by Mr. Smith, seconded by Mr. Siburn, with respect to App.#9-16: Doug Reinstein, 64 Hampton Drive, Block 3204, Lot 10 (R-20 Zone) to approve the application with requested variances, 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 5-2 with Mr. Sullivan, Mr. Smith, Mr. Siburn, Mr. Nappi and Mr. Mustacchi voting in favor and Mr. Miller and Mr. Delia opposed.

**App.#3-16: Ruggero Scavina, Lenox & Rosehill Avenues, Block 401, Lots 3, 4, 5, 6 & 7**

The applicant is seeking a determination under N.J.S.A. 40:55D-68 that the use of the property as a nursery (i.e. plant or horticulture business) is a valid, prior nonconforming use. The applicant is therefore applying for the issuance of a certificate certifying that the use existed before the adoption of the ordinance which rendered the use nonconforming. (R-15 Zone)

Mr. Sullivan recused himself from this application.

Mr. Bernstein advised that the application deals with a nursery that was located on the applicant's property. A complaint was received and the tenant vacated. The applicant is seeking a determination that the nursery is a prior non-conforming use. Since the zoning ordinance was adopted in 1937 there are not too many people around who remember what went on at the property. The applicant has also applied for a use variance. The Board has to make two decisions – is it a prior non-conforming use and what is the scope of the nursery? There is a question as to whether the non-conforming use would include storage of heavy equipment.

August Santore, attorney for the applicant, was present.

Donna Petterson, Easton, Pennsylvania, was sworn and stated that she is the daughter of Mr. Baldwin who owned the nursery originally. Her father owned the landscaping business for a number of years and the previous owner was Vic Johannson. He passed away and it was purchased by Dytro and Anna Melnyk who owned it prior to her father. Her father worked for them and purchased the nursery from them in 1979. Her family maintained the nursery and ran it as a landscaping, garden center and florist until 1997. Over the years her father had people interested in the property which contained three building lots but she was not privy to anything that he did. Her brother and his wife continued the business until the present owner purchased it. The equipment stored on the property included dump trucks, pickup trucks, loaders, a trailer and equipment that was used for patio construction. The business operation was in the front house basement office. After her father died she and her brother put in two greenhouses and continued the use for a wholesale/retail nursery yard and landscaping business.

Ms. Petterson presented Exhibits A-4, A-5 and A-6 – photographs of the house, the greenhouses and a truck. The photos were taken in December 1996 and show the operations on the property. She recalls that she and her brother had the opportunity to buy the greenhouses and spoke to someone in town about conditions for having the greenhouses.

**Open to Public**

The hearing was opened to the public for questions or comments with regard to Ms. Petterson's testimony. There were no members of the public who had comments or questions.

Kristin Auriema was sworn and stated that her ex-husband was the son of Mr. Baldwin. She remembers the nursery operation starting in 1991 through 2002. Ms. Auriema stated that everything Ms. Petterson stated about the previous owners is what she knew about them. The operation of the business included patio construction, florist, landscaping and the Christmas season was big.

**Open to Public**

The hearing was opened to the public for questions or comments with regard to Ms. Auriema's testimony. There were no members of the public who had comments or questions.

Mr. Santore stated that the applicant purchased the property in 2002.

Nicholas Scavina, Delaware, was sworn and stated that he is the son of the applicant who owns the property. The property was purchased in 2002 and since that time he has worked with his father in construction. His father moved to Delaware in 2005 and he managed the property until 2010 and he is familiar with everything at the site. He has prepared Exhibit A-1 – a booklet containing the history of the prior ownership and their ownership and the due diligence performed at the time of purchase. Information in the booklet includes advertisements for sale of the property, the sales contract, MLS listing and a letter from the Township indicating the pre-existing use as a nursery.

Mr. Scavina stated that the property has been used as a nursery since prior to 1954 and equipment was located at the property. There is a letter dated April 2009 from Ray Sullivan, zoning officer, advising that the property has a pre-existing non-conforming use as a nursery and that use can continue without a variance. When his father bought the property in 2002 he intended to operate the business. In 2002 through 2004 he cleaned up the property and sold Christmas trees. In 2004 Truesdale Nursery was there and until 2010 they operated as a retail operation and landscaping. From 2010 the tenant was

Gerard Landscaping and Nursery who operated a retail business. Gerard left the property and broke the lease because he was worried about the violation.

Mr. Scavina stated that his father wants to continue the operation of the nursery with retail sales to landscapers and members of the public.

Mr. Scavina presented Exhibit A-2 - survey of the property showing only one way in and out on Lenox Avenue. He described the buildings on the site and the nursery portion of the property, including greenhouses, trees, equipment and supplies.

**Open to Public**

The hearing was opened to the public for questions or comments with regard to Mr. Scavina's testimony. There were no members of the public who had comments or questions.

Ray Sullivan was sworn and stated that he is the former zoning officer of Berkeley Heights. In that capacity he wrote a notice of violation for this property that resulted from a 911 call and confusion as to the address of the property. He visited the property and identified another structure and the business being operated. He met with the Scavinas, information was provided to him, he met with the tax assessor and considered the decision made by the prior zoning officer. He supported the prior decision and that led to the April 2009 letter. He knew there was a business being operated on the property and that the Truesdale family operated at the property.

**Open to Public**

The hearing was opened to the public for questions or comments with regard to Ms. Sullivan's testimony. There were no members of the public who had comments or questions.

Mr. Bernstein suggested that the applicant provide a site plan in connection with the use variance so that it will be clear where things will be placed on the property. The Board can approve the use variance subject to the site plan being provided showing the actual uses and locations. The site plan will be reviewed by the Board's Planner.

Mr. Santore said the applicant does not have an objection to submitting a site plan. Mr. Santore presented Exhibit A-3 – tax records for the property.

Mr. Scavino indicated the location of the nursery operation and what would be located on that part of the property. They have no problem with providing a site plan and the intention is to use the entire property.

**Open to Public**

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

A motion was made by Mr. Siburn, seconded by Mr. Nappi, with respect to App #3-16: Ruggero Scavina, Lenox & Rosehill Avenues, Block 401, Lots 3, 4, 5, 6 & 7 to approve the application with use variance, subject to the submission of a site plan showing the specific use, intensity of use, type of equipment and type of retail sales, 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. Miller, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Mustacchi and Mr. Sylvester voting in favor and none opposed.

**Open to Public**

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

Michael Burke, 51 Sussex Road, asked if the Board would accept a petition with regard to the cell tower application. Mr. Burke stated that there are a large number of students from the high school who are concerned about the cell tower. The community is deeply concerned about the effect of the cell tower on the neighborhood.

Mr. Bernstein advised that the Board does not accept petitions. Anyone wishing to speak with regard to an application must attend the hearing. The members of the community and the students would be welcome to attend the hearing.

**Correspondence for Discussion:**

Memorandum dated May 17, 2016, from Ana Minkoff, Township Clerk, regarding the proposed ordinance revising and supplementing the Township Land Use Procedure Ordinances (Design Standards) set forth in Part 19. (The proposed ordinance was sent to the Board via email.)

Discussion took place regarding the proposed ordinance with respect to the design standards. It was noted that the Beautification Committee is not

mentioned in the ordinance and it was suggested that the Committee be mentioned as providing consultation to the applicants and to the Boards. It was also noted that there is a need for communication and cooperation between the Planning Board and the Board of Adjustment so that decisions can be more consistent.

**Adjournment:**

A motion was made by Mr. Siburn, seconded by Mr. Nappi, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:35 PM.

Regina Giardina, Secretary Pro Tem