

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Conference and Regular Meeting

August 11, 2016

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

Adoption of Minutes

July 14, 2016 Regular Meeting

A motion was made by Mr. Mustacchi, seconded by Mr. Boyer, and carried 8-0 to adopt the minutes of the July 14, 2016 Conference and Regular Meeting as presented.

Informal Review / Update:

App.#12-15: Anco Environmental Services, Inc., 40 Russo Place, Bl.1901, L. 40

Anco Environmental Services, Inc. ("Anco") is a company involved in oil tank removal and installation and also operates as a clean-up contractor. The property is also used for vehicle and equipment repair and as a storage yard for equipment. The fuel oil that is removed is retained in a tanker truck at 40 Russo Place and then sold. A company related to Anco is engaged in the cleaning and servicing of oil burners. The owner of the property was cited for noncompliance of Section 17.1.1 – "Use of land without receiving all required permits of approval." A zoning permit was not issued for the current use. The

applicant is requesting approval to continue to operate its business – which is not an approved use – and would like to obtain all variances needed (including relief from Sections 17.1.1 “Prohibitions,” Section 6.3.6A “Permitted Principal Uses,” Section 6.3.6B “Permitted Accessory Uses,” Section 6.1.1B “Schedule of General Regulations,” Section 6.4.3A.6 “Nuisance Factors,” Section 6.4.3B.26., and Section 6.4.3B.48.) There are also accessory structures – such as fuel tanks – on the property that do not comply with the required setbacks and/or permitted accessory uses. (LI-Zone)

August Santore, attorney for the applicant, provided an update to the Board. Mr. Santore stated that the applicant and its professionals met with the DEP at the site two weeks ago. There is a difference of opinion with regard to whether the water on the property is man-made or natural.

Mr. Sullivan suggested that the applicant check the records at town hall to see if there is anything relating to the issue and also to consult with the Township Planner, Michael Mistretta.

Mr. Santore stated that the applicant would grant an extension of the time for the Board to act on this application. He will advise the Board on September 22 if there is anything further to report.

Informal Review of New Application:

App.#14-16:Dorothy Gallic, 10 Ralph Place, Block 2703, Lot 5 (R-20 Zone)

There are two single family residences on a single residential lot which is not allowed in Berkeley Heights. The applicant is seeking a determination that the use of the property is a valid, prior nonconforming use. Therefore the applicant is requesting the issuance of a certificate certifying that the use existed before the adoption of the ordinance which rendered the use nonconforming. In the alternative, a use variance is sought.

David Singer, attorney for the applicant, stated that the applicant purchased the property in 1985 and no one ever advised her that there was a non-conforming use. The use of the property for two homes has been the same for the last 30 years. The applicant is asking for a certificate of non-conformity for the existing non-conforming use or in the alternative a use variance.

Mr. Bernstein advised that the fact that something is used in a certain way does not mean that it is legal and he does not know of any town at the present time that allows two houses on one lot. Since the initial ordinance was adopted in 1935 the applicant would have to prove that the use existed prior

to that time or seek a use variance. Mr. Bernstein further stated that additional information is required for completion of the application and a survey is needed.

Mr. Silver stated that the applicant is trying to find the survey.

Discussion took place with respect to what information the Board will need in order to hear the application including, site plans, parking information, driveway details. The application will be scheduled for completeness hearing after the applicant provides the necessary information.

Applications for Review:

App.#12-16: Iuri Oganezov, 238 Washington Street, Block 205, Lot 7 (R-10 Zone)

Proposed second story addition over the existing first story and new deck attached to the rear of the house. The addition would be an upwards expansion over the existing nonconforming first floor; as a result, the expansion will encroach into the required principal setbacks. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because 1) the principal front yard setback is less than the required 30'; 2) both side yard setbacks are less than required by ordinance and 3) combined side yards are less than the 30' required; 4) the maximum building coverage allowed is 20% while the existing coverage number is 29.16% and 30.16% is proposed; 5) the proposed deck does not conform to the 12' side yard requirement. Relief is also needed from Section 6.3.10 "Residential Garage Construction," item C. Nonconforming issues are lot area; lot width; principal front, side and combined side yard setbacks; building coverage, other coverage and total lot coverage.

Mr. Siburn recused himself from this application.

Iuri Oganezov, applicant was sworn.

Erwin Bustamante, designer, was sworn, gave his educational and professional background and was accepted as an expert witness.

Mr. Bustamante presented Exhibit A-1 – site plan, and Exhibit A-2 – photographs, and gave an overview of the project. Mr. Bustamante stated that the proposal is a second floor addition over an existing first floor. Variances are required for lot area, lot width, front yard setback, side yard setback and

maximum lot coverage. The proposed second floor will follow the footprint of the first floor and will be an expansion of a pre-existing non-conforming condition. The proposed second floor addition will be 1,484 square feet consisting of four bedrooms. There is an attached deck also proposed. The addition will add curb appeal to the home and will blend into the rest of the neighborhood.

In response to a question from the Board with regard to the variance being requested for no garage, Mr. Busamante stated that there is no room for a garage and putting one in would increase the non-conforming conditions on the property. There is a 140 square foot driveway proposed. The impervious coverage is being reduced by the removal of the parking lot in the backyard.

It was suggested to the applicant that he consider moving the study to the second floor and providing a garage on the first floor.

Mr. Busamante stated that providing a garage would mean the redesign of the first floor. The applicant wants to keep this as simple as possible and part of the basement would have to be filled in to provide a slab for the garage.

Mr. Oganezov stated that he intends to sell the house after the renovation and it will cost much more money to put in the garage. There is no way he would be able to afford to add the garage.

In response to questions regarding the driveway easement with the property on the left side, Mr. Bustamante stated that the next door neighbor will have the right to use 100% of the driveway. There will be two parking spaces in the front of the applicant's property for the homeowner's use.

With respect to the driveway easement, it was noted that the easement would be transferred to the next owner of the property, will be subject to Mr. Bernstein's approval and will have to be recorded.

Further discussion took place regarding the lack of a garage. It was suggested that the applicant consider putting a detached garage in the backyard. It was noted that this is a large house without a garage and there is no overnight parking permitted on the street.

Mr. Oganezov stated that he does not see any way that he could afford to add the garage.

Open to Public

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

Dave Siburn, 234 Washington Street, was sworn and stated that there was a party driveway between the houses when he purchased his house. He currently has a 10 x 12 car patch in the backyard. The applicant's house has been vacant for 7-8 years. He would like to put a garage in the back of his property but it is impossible. He is in favor of adding a garage to the proposed house but it would require filling in the basement and moving the pipes and furnace and would change the configuration of the house. Mr. Siburn explained how the parking and driveway access presently exist on his and the neighbor's properties and stated the opinion that the proposal will be an improvement over a vacant house.

Discussion took place regarding the application and it was the consensus of the Board that the application should not be approved without a garage. It was suggested that the applicant consider the Board's suggestions with respect to the garage or carry the hearing to a future date and discuss revision of the plans with his architect.

Mr. Oganezov stated that there is no way he could afford to put in the garage so he would prefer that the Board vote on the application.

A motion was made by Mr. Miller, seconded by Mr. Mustacchi, with respect to App#12-16: Iuri Oganezov, 238 Washington Street, Block 205, Lot 7 (R-10 Zone) to deny the application. The Board's action with regard to the application 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 of denial and none opposed.

Adjournment:

A motion was made by Mr. Boyer, seconded by Mr. Nappi, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:00 PM.

Regina Giardina, Secretary Pro Tem