

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

September 22, 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. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Bernstein, Board Attorney, was present.

Informal Review/Update:

App.#12-15: Anco Environmental Services, Inc., 40 Russo Place, BI.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.

August Santore, attorney for the applicant, advised that the applicant is waiting for a determination by the DEP as to whether the property is greater than 50 acres and whether the ditch is man-made. Mr. Annis is scheduled to meet with the engineer tomorrow to discuss the topographic conditions. It may be a few months before the DEP makes a determination and the applicant has been providing information to Mr. Mistretta as it becomes available.

Mr. Annis stated that they are dealing with two branches of the DEP on land use and wetlands. They are both involved in the determination of what type of application this will be considered. A full study is needed in order to provide the additional information to the DEP.

The applicant will return with a further update on November 10, 2016.

Adoption of Minutes

September 8, 2016 Regular Meeting

A motion was made by Mr. Nappi, seconded by Mr. Mustacchi, and carried by unanimous voice vote to adopt the minutes of the September 8, 2016 Regular Meeting as presented.

Applications for Review:

CARRIED FROM JULY 14, 2016:

App.#13-16: Jeffrey Gold, 15 Overhill Way, Block 3505, Lot 8 (R-20 Zone)

Proposed new portico (approx. 8' x 6' in size) to be constructed over existing front porch. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for insufficient front yard setback. (Required setback: 50'; existing: 40.4'; proposed: 40.4')

Jeffrey Gold was sworn and stated that they are seeking to put a portico over the existing front steps and that violates the front yard setback. They want the portico for aesthetic and safety reasons. Water hits the steps and they become icy and the steps require frequent repair. The existing garage has a 40' setback and the portico will not be any closer. They are also planning to put stone on the front of the house that will add 2" but there will be no expansion past the garage.

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. Smith, with respect to App#13-16: Jeffrey Gold, 15 Overhill Way, Block 3505, Lot 8 (R-20 Zone) to approve the application with requested variances, subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 7-0 with Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

Mr. Sullivan arrived at the meeting 7:55 p.m.

App.#16-16: Joe Milmoie, 101 Twin Falls Road, Block 4501, Lot 18 (R-20 Zone)

Proposed construction of second-story addition, new one-story addition, and new covered front porch requires relief from Section 6.1.1B "Schedule of General Regulations" for insufficient front, side and combined side yard setbacks. Nonconforming issues include lot area, lot width, principal front, side and combined side yard setbacks.

Joseph Milmoie and Carolyn Milmoie were sworn and stated that they are requesting a variance to renovate their home. The proposal is to expand the existing cape cod house, turn the breezeway into livable space and put on a front porch. A variance is needed for front yard setback which will be an expansion of an existing non-conforming condition.

In response to questions, Mr. Milmoie stated that they are renovating the exterior of the house to make it more attractive and the porch will not be screened.

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. Miller, seconded by Mr. Delia, with respect to App#16-16: Joe Milmoie, 101 Twin Falls Road, Block 4501, Lot 18 (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 roll call vote was 7-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Siburn, Mr. Smith, Mr. Delia and Mr. Nappi voting in favor and none opposed.

App.#15-16: Thomas and Barbara Pugliese, 6 Debbie Pl., Bl. 2402, L. 2.01 (R-15 Zone)

Relief is sought from the provisions of Articles 3.1 & 6.1, Sections 3.1.7A and B and 6.1.1.B. of the Zoning Ordinance so as to permit the installation of an in-ground swimming pool. The applicants are seeking side and rear yard setback variances for a sitting wall and pool walkway surround. Variances are also requested for exceeding the allowable "other" coverage limit of 10% and the "total coverage" limit of 25%. Nonconforming issues are existing "other" and "total lot coverage."

William Anastasio, attorney for the applicants, stated that Mr. Pugliese and his wife are seeking to put a swimming pool in their backyard. The pool will be located within the setback and a walkway around the pool is planned. The proposal will be 11% over on coverage. The property slopes significantly and there is a 3½ to 4' difference in height of the property from left to right. The applicant wishes to straighten that out by leveling the property.

Mr. Sullivan noted that there was a subdivision on this property in 2007 when a lot of 40,000 square feet was divided in half. The existing house on the property was demolished and a new home built. The driveway as built is larger than what was approved.

Thomas Pugliese was sworn and stated that they made the driveway larger because they were having difficulty pulling out.

Bill Hollows, engineer, was sworn and accepted as an expert witness. Mr. Hollows stated that he prepared a grading plan for the building permit. The house footprint is the same and the driveway is a little different. A shed has been removed from the plan.

Mr. Anastasio stated that he has discussed the coverage issues with the township engineering department. The applicant is willing to bring the driveway back to the size originally approved. Unintentional errors were made but the applicant is willing to do whatever is necessary to bring the property into compliance.

Discussion took place regarding the retaining wall that was constructed. It was noted that a wall in excess of 4' requires an engineering plan and needs to be

approved. Mr. Sullivan stated that the retaining wall must be addressed before the Board will consider a swimming pool. He suggested that the applicant contact the Township Engineer and consider the concerns of the neighbors.

Mr. Anastasio stated that the applicant is willing to reduce the height of the wall to 2'.

Discussion took place regarding the amount of coverage and it was noted that 36% is significant. Mr. Sullivan noted that there have been other applications approved where coverage of 28% or 29% was proposed.

Open to Public

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

David Rosenberg and Karen Rosenberg, 20 Fern Place, were sworn and expressed their concerns regarding the additional dirt put in the backyard after construction on the property and the retaining wall, which is 4' 11" in height and is located 6" from the property line. It is their understanding from the Township Engineer that the construction is not in compliance with the original design. They have complained for three years. The Township Engineer said that the retaining wall would solve the issue of additional run off onto their property but there has not been a substantial rainfall since the wall was built so it remains to be seen if that is the case.

Kevin Garcia, 24 Fern Place, was sworn and expressed his concerns with the drainage. There is considerable run off now and he is concerned about the addition of a pool. The proposal is for a 6' dry well but he would prefer to see overflow out to the street. There was enough fill brought to the property that should have required inspection by the Township Engineer.

Mr. Anastasio stated that the applicant will address these issues with the Township Engineer. The applicant has stated that he did not bring any fill in and the retaining wall was built to address the run off issue.

The hearing of this application was carried to December 1, 2016 with no further notice required. Mr. Anastasio stated that the applicant would agree to an extension of the time for the Board to act on the application.

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

Application for site plan approval of a nursery and landscape business with associated bulk variances. A use variance for the nursery and landscape business was approved on May 26, 2016 and memorialized in a resolution which was adopted on June 23, 2016. The applicant is seeking variances for 1) insufficient front yard setback on Lenox Avenue, 2) exceeding the 25% maximum total coverage allowed, 3) exceeding the 10% maximum “other coverage” allowed, and 4) insufficient setback for accessory structures on Lenox Avenue. The applicant is also seeking such other and further relief or variances as may be requested or otherwise required at the time of the hearing along with any design waivers or exceptions from the Township requirements that may be necessary or requested by the applicant. (R-15 Zone)

August Santore, attorney for the applicant, stated that this is a continuation of the matter that dealt with use.

Mr. Bernstein advised that this was approved by the Board as a prior non-conforming use subject to site plan approval. Mr. Mistretta has reviewed the site plan prepared by Mr. Gazzale.

Nicholas Scavina, son of the applicant, was sworn and discussed the existing conditions on the site. Mr. Scavina stated that the proposal is to have 10 bins on the site filled with mulch, top soil and other materials. Equipment on the site will include two backhoes and one or two bobcats for loading and unloading. The vehicles on the site will include six pick-up trucks, six trailers and four dump trucks. The landscape equipment will be stored in the trailers and there will also be a small storage shed. Employees will park their vehicles by the office trailer.

In response to questions from the Board, Mr. Scavina said the site is one-half mile from the Passaic River and the business will be a retail and wholesale operation.

Mr. Scavina indicated on the plan the location of the parking and stated that there are no plans for signage at this time. The dwelling on Springfield Avenue is owned by his mother and is rented. The dwelling has nothing to do with the application and there is a 5' fence that separates the two lots. The hours of operation will be 8 a.m. to 6 p.m., Monday thru Saturday and 9 a.m. to 3 p.m. on Sundays. There is no existing security lighting on the site. There has been no discussion of including a snow removal business. In the winter

they will sell Christmas trees and firewood. There will be no storage of leaves or grass clippings on the site. There will be no service or maintenance of vehicles performed on the site and no fuel storage.

Mr. Mistretta stated that all the details as to the bins and equipment should be included on the plans and information should be provided as to the view from the residential properties. He would also prefer 4' high bins.

Discussion took place with regard to the buffering required between the commercial use and the residential use.

Mr. Santore stated that the applicant would like to have 6' high bins and discussion took place regarding 6' versus 4' bins.

Robert Gazzale, engineer, was sworn and accepted as an expert witness. Mr. Gazzale discussed the proposed plantings on the site to provide screening. It was suggested that hollies be used rather than arborvitae.

Mr. Mistretta discussed the waivers being requested by the applicant including improvements to Lenox and Rosehill Roads to municipal street standards. He would support that waiver but does not want to see an expansion of the commercial business.

In response to questions, Mr. Scavina stated that he initially plans to operate this business and will have 1-4 employees for the nursery.

Ruggerio Scavina, applicant, was sworn and stated that he wanted to withdraw his application.

Mr. Sullivan suggested that the applicant consider whether or not he wants to withdraw and plan to come back on December 1 with more details.

The application was carried to December 1, 2016 with no further notice required.

Adjournment:

A motion was made by Mr. Boyer, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:00 PM.

Regina Giardina, Secretary Pro Tem