

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

October 27, 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. Siburn, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Bernstein, Board Attorney, was present.

Adoption of Minutes

October 13, 2016 Conference Meeting

A motion was made by Mr. Boyer, seconded by Mr. Nappi, and carried by unanimous voice vote to adopt the minutes of the October 13, 2016 Conference Meeting as presented.

Applications for Review:

App.#18-16: Richard D. Arnold, 132 Fairview Avenue, Block 905, Lot 3 (R-15 Zone)

Proposed construction of an asphalt surface area to be used as a basketball ½ court. Relief is needed from Section 6.1.1B of the Zoning Ordinance because "other" coverage will reach 15.94%. (Maximum "other" coverage allowed: 10%; existing: 11.05%; proposed: 15.94%.) Nonconforming issues are driveway too close to the property line and those variances approved in variance resolution Case No. 17-91.

Richard Arnold was sworn and stated that he wants to add a paved area behind his garage for a basketball court and a variance is needed for other coverage. In the original application it was indicated that the area would be 30' x 35' but now it has been reduced to 28' x 30'. The proposed basketball court will be located behind the garage and will not be visible to the neighbors or from the street. The drainage will continue to be taken care of by an existing rock swale and there will be no drainage impact on the neighbors. Mr. Arnold presented Exhibit A-1 – photograph of the backyard with red caution tape showing the area where the basketball court will be located.

In response to questions from the Board, Mr. Arnold stated that the existing trampoline and shed will be removed and there will be no lighting for the basketball court.

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#18-16: Richard D. Arnold, 132 Fairview Avenue, Block 905, Lot 3 (R-15 Zone) to approve the application with requested variances, subject to the conditions discussed and 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. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

App.#19-16: Faiq Fazal, 185 Chaucer Drive, Block 1002, Lot 21 (R-15 Zone)

The applicant is proposing to remove the existing greenhouse room (approx. 11' x 20') and replace it with a larger, one-story addition (approx. 16' x 20'). The existing "building coverage" of 15.08% marginally exceeds the 15% allowed. The proposed addition would increase this number to 15.79%. Other existing, nonconforming issues for this property include lot area, lot width, and driveway too close to side property line.

Faiq Fazal was sworn and introduced Nisar Naqui, contractor, who was also sworn. Mr. Fazal stated that he is replacing an existing greenhouse with a one bedroom addition and a variance is needed for increase in coverage. Mr. Fazal presented Exhibit A-1 – photograph of the house from a distance, and Exhibit A-2 – photograph of the house close up. Mr. Fazal stated that

replacing the greenhouse with a bedroom will improve the appearance of the house.

Discussion took place regarding a discrepancy in the dimensions shown on the plans and Mr. Fazal stated that he will correct the plans and provide copies to the Board office.

In response to questions from the Board regarding use of the addition as a bedroom and not as a separate apartment, Mr. Fazal explained the changes he is proposing to make to the existing master bedroom to combine two existing rooms, making this addition the third bedroom. Mr. Fazal stated that there will be no food preparation area or separate exterior entrance and the house will remain as a single family home. He does not believe there will be any tree removal needed.

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. Mustacchi, seconded by Mr. Miller, with respect to App#19-16: Faiq Fazal, 185 Chaucer Drive, Block 1002, Lot 21 (R-15 Zone) to approve the application with requested variances, subject to the conditions discussed and 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. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

App.#17-16: Joseph & Licienne Sodano, 55 Shadow Lane, Bl. 504, L. 65 (R-15 Zone)

Proposed installation of an 8' x 8' x 10' high residential storage shed which does not comply with the required side yard setback of 10'. Existing, nonconforming issues for this property are lot area, lot width, and principal front-yard setback.

David Bendush, attorney for the applicant, stated that there is a change to the application based on discussion with counsel for the next door neighbor. Mr. Bendush presented Exhibit A-1 – plan showing the revised location of the shed. The proposed 8' x 8' shed is proposed to be 4' off the property line and the change would move it back toward the river in a northerly direction so it

would be 17' back from the gate that is even with the back of the structure of the house. This will put it in a position where it is shielded by trees. It will no longer be visible to anyone.

Joseph Sodano, applicant, was sworn and stated that the plan has been changed to move the shed. It will still be on the elevated portion of the yard where it will not flood. Underneath the shed will be stone and rain water will be able to pass through the stones. This is the best location because of flooding. He has had a shed for two years in the present location and prefers to move it from that location. In its present location it blocks the patio and in the winter snow and ice accumulates and does not melt because there is no sun. If the shed is moved to the new location they will be able to better utilize their property and the backyard. If the shed were put anywhere else on the property they would have problems with flooding. Mr. Sodano presented Exhibits A-2 and A-3 – photographs of the backyard showing where the shed would be located. Mr. Sodano further stated that there is an existing bush that will block visibility from the street and he agreed to plant one more bush to increase the screening.

Mr. Bendush stated that the Sodanos and their neighbors have reached agreement to have a survey done at the applicant's expense to verify whether the fence is on the property line or on the neighbors' property. If the survey shows impingement the applicant will have the fence moved to within the property line. Mr. Bendush also stated that the applicant has agreed to dismiss the pending matter in Superior Court against the neighbors and the Board.

Open to Public

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

Thomas Granholm was sworn and stated that he will not be in New Jersey when the survey is done and asked how he can be assured that the property is properly marked.

Mr. Sullivan advised that permanent pins will be placed at the property and the survey will be filed with the Township Engineer. Mr. Granholm will be able to obtain a copy of the survey.

Mr. Bernstein reviewed the conditions for approval of the application as discussed.

A motion was made by Mr. Boyer, seconded by Mr. Siburn, with respect to App#17-16: Joseph & Licienne Sodano, 55 Shadow Lane, Bl. 504, L. 65 (R-15 Zone) to approve the application with requested variances, subject to the conditions discussed and 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. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

App.#23-16: Giovanni's Bistro, LLC, 449 Springfield Ave., Block 212, Lot 7.01 (DD-Zone)

Proposed free-standing ground sign requires relief from Section 5.4.2.2. of the Municipal Land Use Procedures Ordinance because said sign is only permitted for office or shopping plazas, and the applicant is a restaurant which does not qualify under the ordinance. Applicant also seeks such other and further relief as may be requested or otherwise required at the time of the hearing along with any requests for design waivers or exceptions from the Township requirements that may be necessary or requested by the applicant.

August Santore, attorney for the applicant, stated that the applicant is seeking approval for a free standing sign.

Robert Tokash, owner of the restaurant, stated that the property is adjacent to the Investors Savings Bank. Mr. Tokash presented Exhibits A-1 through A-4 - photographs showing the proposed location for the sign. There is a sign now on the front of the building above the main window and the only way a motorist can see it is to slow down. They want to be able to attract new customers to the restaurant and need this sign to generate business. They proposed to put the sign in the landscaped area approximately 5' off the property line. Mr. Tokash further stated that there was a sign in this location previously and there was never a problem or complaint with regard to sight issues.

In response to questions from the Board, Mr. Tokash stated that the signs will be lit from the ground. There will not be any glare from the lights and the lights will be turned off about a half hour after the restaurant closes.

Mr. Santore noted that they have received the report of the Beautification Committee. The Committee would prefer to have the sign on the building which is not what the applicant is looking for and would not achieve their purpose.

Laura Kostovich, sign contractor, was sworn and stated that she discussed the proposed sign with Mr. Bocko and he reviewed everything. The sign will meet

the ordinance but the only problem is matching the historic colors. The proposed sign is a duplicate of what is on the building. The sign as proposed meets the current standards and is consistent with other signs she has done in town.

Discussion took place and it was noted that the new township requirements include gooseneck lighting and the Board needs to be assured that the sign being proposed is in accord with the new ordinance. The Board members also expressed concern about safety and how this would be monitored if there were a change of user of the property.

Ms. Kostovich stated the opinion that gooseneck lighting works on a building sign but not a ground sign. Mr. Santore suggested that the approval include language that a proposed change in use of the sign would require submission to the zoning officer.

It was suggested that any new sign would have to be reviewed by the zoning officer and police safety officer.

In response to questions from the Board, Mr. Tokash stated that they obtained approval for the existing sign over the window. The sandwich sign that is being used only states when they are open for lunch and dinner and is not intended to be a permanent sign. If the free standing sign is approved they will probably no longer use the sandwich sign. The lighting for the sign will be soft, not bright.

Further discussion took place regarding the new ordinance requirements. Ms. Kostovich stated that she read the ordinance and does not see anything that is inconsistent with the ordinance. Mr. Bocko did not mention any discrepancies in his denial letter. In her opinion the proposed sign complies with the ordinance.

Open to Public

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

Nadine Tokash was sworn and stated the opinion that Mr. Bocko would have said he had a problem with the sign if it did not comply with the ordinance. They are also concerned about safety and they need this sign for the success of the business.

Mr. Bernstein reviewed the conditions of approval that were discussed.

A motion was made by Mr. Siburn, seconded by Mr. Nappi, with respect to App#23-16: Giovanni's Bistro, LLC, 449 Springfield Ave., Block 212, Lot 7.01 (DD-Zone) to approve the application with requested variances, subject to the conditions discussed and 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. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

Adjournment:

A motion was made by Mr. Mustacchi, 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