

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

November 10, 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. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Bernstein, Board Attorney, was present.

Adoption of Minutes

October 27, 2016 Regular Meeting

A motion was made by Mr. Boyer, seconded by Mr. Sylvester, and carried by unanimous voice vote to adopt the minutes of the October 27, 2016 Regular Meeting as presented.

Adoption of Resolutions:

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.

A motion was made by Mr. Miller, seconded by Mr. Delia, to adopt the above Resolution. The roll call vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, 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.

A motion was made by Mr. Miller, seconded by Mr. Delia, to adopt the above Resolution. The roll call vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, 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.

A motion was made by Mr. Boyer, seconded by Mr. Miller, to adopt the above Resolution. The roll call vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, 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.

A motion was made by Mr. Delia, seconded by Mr. Mustacchi, to adopt the above Resolution. The roll call vote was unanimous with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

Informal Review / Update:

App.#12-15: Anco Environmental Services, Inc., 40 Russo Pl., Bl. 1901, L. 40 (LI-Zone)

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.

The applicant was not present. Mr. Bernstein will contact the applicant's attorney, August Santore, to determine the status of the application.

Informal Review of 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 he believes the applicant has now submitted everything the Board asked for. The applicant was instructed to contact the tax assessor regarding this property.

The application was deemed complete and scheduled for hearing on February 23, 2017 with appropriate notice to be sent.

Applications for Review:

App.#20-16: Matthew E. Burton, 60 Grandview Ave., Block 602, Lot 2.03 (R-10 Zone)

Applicant is proposing to expand an existing deck. Relief is needed from Section 3.1.8. "Decks" of the Municipal Land Use Procedures Ordinance because a deck must be offset from the rear property line a distance of 25,' provided it is not over 4' in height. The proposed deck extension will be 19' off of the rear property line.

The application was carried to the meeting scheduled on December 1, 2016 with proper notice to be sent.

App.#21-16: Thomas Altomare, 36 Ferndale Drive, Block 801, Lot 4 (R-15 Zone)

Proposed in-ground pool with pool surround, paver patio, shed, and fence. Relief is needed from Section 6.1.1B. "Schedule of General Regulations" because "other" coverage would increase to 18.02% compared with 10% allowed. Also, "total lot coverage" would increase to 25.04% (compared with 25% allowed). The proposed fence would be 6' high while Section 3.1.3 allows a maximum height of 5'. An existing shed (8' x 12') will be relocated.

Thomas Altomare, applicant, was sworn.

Jay Katz, representative of Anthony Sylvan Pools, was sworn and stated that the property is an odd shape. Mr. Katz indicated where the pool will be located and stated that the proposed 6' fence will be reduced to 5'. The size of the pool has been adjusted to decrease the coverage to 24.1% where 25% is permitted. The application forms will be corrected and a revised plan will be submitted.

Mr. Altomare presented Exhibits A-1, A-2 and A-3 – photographs of the rear of the property showing views from the house and the deck. Mr. Altomare stated that the existing shed will be relocated towards the back of the property and will be within the required setbacks. The pool equipment will be stored on the side of the house.

Open to Public

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

Ann Cranshaw was sworn and stated that she would have no objection to the application as long as the fence is 5' rather than 6'. In response to a question from the Board, Ms. Cranshaw stated that her property does have pooling water when it rains.

Discussion took place regarding drainage and the applicant was advised that a drainage plan would be required on a project of this size. That issue will be a condition of approval to be addressed between the Township Engineer and the engineer for the pool company.

Discussion took place regarding the lighting around the pool and the hours of operation that will be addressed in the resolution of approval.

A motion was made by Mr. Boyer, seconded by Mr. Smith, with respect to App.#21-16: Thomas Altomare, 36 Ferndale Drive, Block 801, Lot 4 (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. Smith, Mr. Delia, Mr. Sylvester and Mr. Mustacchi voting in favor and none opposed.

Application for Review:

CARRIED FROM SEPTEMBER 8, 2016:

App.#2-16: Wireless EDGE Towers, LLC & Co-Applicant: New York SMSA Limited Partnership (d/b/a Verizon Wireless), 175 Watchung Blvd., Bl. 4903, L. 36 (OL-Zone)

Wireless EDGE is the tower company that won the Board of Education's bid to place a monopole and compound on the high school property and is appearing before the Board of Adjustment for approval of the monopole and the placement of Verizon's antennas at a centerline height of 124' on the monopole. Verizon will also place its related equipment at the base of the pole. Wireless telecommunications antennas are not permitted in the OL-Zone; therefore, the Applicant is seeking use variance and a height variance. The Applicant is also seeking preliminary and final site plan approval.

Robert Simon, attorney representing property owners including Michael Azarian, Peter Gilson and John Karnash, stated that at the last hearing he presented testimony of Hank Menkes, radio frequency engineer, and this evening he will present testimony of a Planner.

Jessica Caldwell, Professional Planner, was sworn, gave her educational and professional background and was accepted as an expert witness. Ms. Caldwell stated that she has reviewed the application materials, the ordinance, the Master Plan, minutes, transcripts of the previous testimony and the applicant's reports. She visited the area where the cell tower is to be constructed.

Ms. Caldwell stated that she believes that the Board of Education's decision to go to Verizon for assistance with the service gap prompted a different type of application and less investigation into alternative sites and technology. The proposed cell tower would require variances for oil tank storage and height over 50'. She believes there will be an adverse effect on the neighborhood and the health, safety and welfare of the community. She does not believe that alternatives have been looked at and she stated that the intent of the ordinance is that there be a higher level of scrutiny. Ms. Caldwell noted the requirements of the ordinance that all towers and related equipment should be located on property owned by the Township and that Township Council review is required for an application not on Township property. She said the application should not have been submitted to the Board of Adjustment without the required review of the Township Council.

Ms. Caldwell reviewed the requirements of the ordinance with regard to cell towers and discussed the issues of whether or not the property is owned by the Township, height of the tower and multiple users of the tower. She noted that there has not been any proof provided that there is no available capacity on existing towers and no proof that the gap cannot be addressed by other towers. She further stated that screening and buffering is required and none is proposed. Ms. Caldwell expressed the opinion that an antenna on the school building would have less impact on the property. She also stated that the result of approval of the application would be two principal structures and two principal uses on the property and nothing has been submitted in support of such a variance.

Ms. Caldwell stated that in her opinion the landscaping proposed is not adequate to meet the definition of screening that would mitigate the visual impact on the neighbors. The testimony of the radio frequency expert explored other alternative technology that could create the same coverage without the intrusion of a cell tower. There has also not been any review of other properties that may be more appropriate for location of the cell tower to address the capacity issue for the school without creating such a large impact on the neighborhood.

Ms. Caldwell further stated that there has been testimony by Mr. Menkes as to alternative technology that was not considered by the applicant. She noted that the carrier would be allowed to raise the height by 10% or 13' without approval. She does not believe the applicant has met the burden of proof that the proposed site is the most appropriate and has not shown that there will be no detriment to the public good, zoning or the Master Plan. The requested variances cannot be granted without detriment to the public good. Ms. Caldwell said she believes the application should be denied in view of the procedural error of the applicant not first going to the Township Council for approval.

Open to Public

The hearing was opened to the public for questions with regard to Ms. Caldwell's testimony.

In response to questions from members of the public including Ed Vergara and Russ Hovland, Ms. Caldwell stated that the applicant is required to show that there is a need and that the location is appropriate. She does not believe the applicant has done that.

In response to questions from Ms. Fairweather, Ms. Caldwell stated that she reviewed some photographs submitted by adjacent property owners, she does not think a landline telephone company would need a variance and the applicant has not shown sufficient need for a cell tower.

Mr. Simon objected to questions raised by Ms. Fairweather as to the rights of an FCC licensed carrier.

In response to questions from Mr. Simon, Ms. Caldwell said she did not read the testimony of the police department and she has not seen any testimony as to whether the antenna on top of the building would be adequate to provide for emergency services.

Open to Public

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

John DiPasquale, Chief of Police, was sworn and discussed the need for sufficient cell service and radio service at the area of the high school and the existing unreliable coverage issues there. The Police Department is looking forward to having this issue addressed. He does not have an opinion on how

the service should be provided, but just wanted to testify as to the need for reliable service in that area.

Members of the public including Guangtao Li, Michael Burke, Gail Moodie, Han Wu, Chao Zhu, Xin Dai, Jill Collins, Haibo Zhang, Ed Vergara, Bridget O'Brien, Dmitriy Agafonov, Xinyang Shen, Russ Hovland, made comments and asked questions as follows:

- The location of the tower and visibility will result in emotional and psychological impact on the neighbors.
- The tower will forever alter the character of the neighborhood and will be an eyesore.
- There was no attempt by the Board of Education to address this with the public and no alternatives were explored.
- Students signed a petition in opposition to the tower.
- Concern about health issues and effect on property values.
- Board should act to keep Berkeley Heights beautiful and think carefully before approving the application.
- Concern about the process and the fact that alternative sites and technology were not considered.
- Is the tower really needed to address the safety concerns at the high school?
- View of the tower will negatively affect the neighborhood.
- The Board should consider alternative sites in view of the concerns about the health and safety of the students.
- Is a cell tower the best way to address the concerns about reliable communication services?
- What are the qualifications of the people making the decision regarding the site and type of technology to be used?
- The Board should consider other viable solutions to the coverage issue.

Members of the public including Bill Pencek, Ed Gallitelli and Sean Manns made comments as follows:

- There have been situations in the past where children were injured and emergency response was delayed because of the lack of cell service in the high school area.
- The lack of service needs to be addressed for the safety of the students.
- The safety of the students outweighs concerns about property values.

The hearing of the application was carried to January 26, 2017 with no further notice required. Ms. Fairweather stated that the applicant will grant an extension through that date. Mr. Sullivan stated that the purpose of the meeting will be for summations by Ms. Fairweather and Mr. Simon, statement by the Township Planner, Michael Mistretta, and Board deliberation. The public portion of the hearing has been closed.

Mr. Bernstein and Mr. Mistretta will address the issue raised as to the requirement that the Township Council review this application prior to consideration by the Board of Adjustment.

Adjournment:

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

Regina Giardina, Secretary Pro Tem