

**BOROUGH OF BERGENFIELD
ZONING BOARD OF ADJUSTMENT MEETING**

RE-ORGANIZATION MEETING

January 6, 2020

Mr. Shimmy Stein called the meeting to order at 8:01 PM.

PLEDGE OF ALLEGIANCE

Led by Shimmy Stein.

RE-APPOINTMENT/APPOINTMENT OF ZONING BOARD MEMBERS

Shimmy Stein
Amnon Wenger
Marc Friedman

ROLL CALL

Present: Shimmy Stein, Sara Berger, John Smith, Charles Steinel, Joel Nunez, Amnon Wenger, Marc Friedman, and Joel Berkowitz

Absent: Richard Morf

Also Present: Ron Mondello, Planning Board Attorney, Frank Rotonda, Planning Board Engineer, and Hilda Tavitian, Planning Board Clerk

Nomination of Chair:

Shimmy Stein

Motion by: Amnon Wenger

Second by: Sara Berger

All ayes.

Nomination of Vice-Chair:

Amnon Wenger

Motion by: Shimmy Stein

Second by: Sara Berger

4 ayes. 2 nays.

Nomination of Secretary:

Marc Friedman

Motion by: Shimmy Stein

Second by: Sara Berger

All ayes.

Nomination of Board Attorney:

Ron Mondello

Motion by: Shimmy Stein

Second by: Amnon Wenger

6 ayes. 1 nay.

Nomination of Board Engineer:

Pennonni Engineering

Motion by: Shimmy Stein

Second by: Sara Berger

5 ayes. 2 nays.

Nomination of Board Clerk:

Hilda Tavitian

Motion by: John Smith

Second by: Amnon Wenger

All ayes.

Accept By-Laws:

Board member Steinel stated there was an incident in which there was a storm, borough hall was closed and the meeting was cancelled. The applicants had to re-notice which is an inconvenience and an expense. People who are interested in the meeting will show up and see the notice posted that the meeting is cancelled. Board member Steinel stated he would like to put in place a reschedule date so that applicants who were supposed to be here and if we cancel on them, they are not re-noticing all over again. It should be adopted in the by-laws.

Board chairman Stein stated it's usually the month after and there is no need to re-notice. Mr. Stein stated if they have to cancel, they are automatically carried to the next month and a notice should be posted on the borough website and on the borough doors that all matters are scheduled for the next date.

Board attorney Ron Mondello stated the two applications were an anomaly. The one application was sent to the planning board when it should have been here and there was a question with the other application as to whether it was going to be scheduled for that particular meeting. Normally, if something is scheduled and the borough cancelled the meeting due to the snow, everything would be carried to the next month. There would be no need to re-notice. These two applications did not fit into that categorization. There was no way for the objectors to know when the meeting was going to be scheduled. Mr. Mondello stated the two particular applications that had to re-notice did not fall into that category.

Mr. Stein stated they are going to carry the by-laws to the next meeting. Mr. Mondello will send out email.

CORRESPONDENCE

Chairman Shimmy Stein stated he had received a letter from borough attorney John Schettino regarding the reorganization.

VERBAL COMMUNICATIONS

Any resident may comment or question any subject not on the agenda.

Mary Sullivan, inquired if the board has the 2019 annual report.

Board attorney Mondello stated he will have the report by the February meeting. Ms. Sullivan is referring to the Zoning Board's list of applications that came before the board, relief applicant sought, and whether application was approved or denied. It is sent to the governing body for their review.

UNFINISHED BUSINESS

1. Denial Resolution - Jacob & Liron Friedman
155 Sussex Rd
Build a new single-family dwelling

Motion By: John Smith
Second By: Sara Berger
All ayes.

2. Motion to Memorialize Resolution – Shanty, LLC
51 E. Main Street
Construct a 26 unit apartment building

Dean Stamos, attorney from Ferraro & Stamos, stated the matter was on for a while across several meetings. There was discussion regarding the affordable housing units. There was the question about the number and settled on the 15% allocation. The applicant agreed to a 3 bedroom apartment just to comply with the one requirement and the give the borough what was needed for the affordable housing component. The applicant would like the remaining units be in line with what the percentage of the units are. 80% of the whole building is single bedroom. The 3-bedroom unit is going to be 25% of the application. The applicant is requesting the remaining obligation be the single bedroom units and the very low income housing requirement be one of the single family units.

Board attorney Mondello stated there were some questions for the borough planner regarding the number of units and what the bedroom distributions be. The Zoning Board was looking for some guidance. Mr. Mondello stated he has the transcript dated June 3, 2019 from Mr. Lydon. He mentions the distribution should be a 1 three bedroom, 2 two bedroom, and a 1 one bedroom. Mr. Mondello stated the borough has entered into the affordable housing agreement with a superior court judge and a master who was assigned to the case. The law is clear and they should be following what the affordable housing agreement states. Mr. Mondello explained he incorporated the language into the resolution. The board needs to memorialize the resolution. Mr. Mondello stated his opinion is that the board should follow the borough's agreement with the superior court judge.

Board member John Smith stated the planner and the governing body are doing Monday morning quarterbacking. Mr. Smith explained the board requested numbers from the planner. The numbers the planner gave was from the Teaneck Board of Education. The planner was supposed to come back with the numbers for Bergenfield. The board attorney and the borough attorney sent emails and called him to appear before the zoning board. He refused to attend our meetings or sent someone in his place. Mr. Smith stated the planner should have come to a meeting and explained the numbers to the board. The planner inquired if the zoning board had already approved the application after he had already made an agreement with the courts. The numbers made by the court do not comply with Bergenfield's numbers. The board had agreed to 15% affordable housing, not the distribution of the units. Mr. Smith stated the distribution of the fair housing should be left up to the developer and the builder. Mr. Shanahan stated he should not be punished, as this is going on for too long and he is a long time resident. Mr. Smith stated they are here to take care of the residents, not the county or the state. Mr. Smith also stated he had asked the planner to ask the judge to come to a meeting and explain why someone from Bergenfield can't apply for the low rental.

Mr. Mondello clarified that it is not the number that is in question, it's the bedroom count. Mr. Mondello stated one of the units has to be very low income. It doesn't have to be the 3 bedroom unit.

Board member Steinel stated the application has changed dramatically. The applicant and the board have both made concessions to get to a point even with COAH. The board voted to approve the 15% COAH obligation long before the settlement. The resolution itself took a long time to complete. On top of that, a meeting was cancelled. You can't go back and do a do over.

Board member Stein stated the board doesn't have the right to say which unit will be low income.

Mr. Stamos stated the applicant would like to have 1 three bedroom and 3 one bedroom units.

Mr. Mondello stated it is clear the board needs to follow the agreement and although the borough doesn't tell the board what to do, the board is part of the borough. The board shouldn't be going against an agreement the borough made with a superior court judge and a master. Mr. Mondello explained if the board decides not to go with this bedroom distribution, he doesn't know what the Mayor and council would do. If they were to run it by a superior court judge to change the resolution to reflect 1 three bedroom, 2 two bedrooms, and 1 one bedroom, that's what it would be. Mr. Mondello stated the parties are the borough and the affordable housing entity in Trenton. The settlement came after the application was approved. The applicant had to put aside four units for affordable housing but the board didn't know what the bedroom distribution should be. Mr. Mondello stated he had received correspondence from the borough attorney and the planner saying it needs to be 1 three bedroom, 2 two bedrooms, and 1 one bedroom, sometime after the application was decided.

Mr. Smith stated the borough attorney had explained that it's kicking the can down the road if the board doesn't go along with the court's decision.

Mr. Stein stated the resolution says 1 three bedroom, 2 two bedrooms, and 1 one bedroom unit.

Mr. Stamos stated the application wasn't a part of the plan. He moved forward with the application outside of the plan as a use variance as opposed to gaining the benefit of waiting, being in the plan, and going in as a permitted use.

Mr. Wenger inquired of Mr. Mondello if there is a way to build in a contingency where the board can approve the application as recommended by the courts. However, they build in the possibility if they appear before the Mayor and council and convince them otherwise, then it would automatically revert. Mr. Wenger stated the planner did a terrible job and he is trying to come up with some sort of solution.

Mr. Smith stated they are punishing the applicant. The governing body was told since the first meeting the application was presented. Mr. Lydon knew what he was bargaining for in the courts and refused to come here or send someone else from his office to explain to the zoning board the numbers.

Comments from residents within 200' and any residents:

No one came forward.

Mr. Shanahan stated he thinks a 3 bedroom and 3 single bedroom units is a good compromise between what the state would like to see. The settlement agreement states it is an agreement between the borough of Bergenfield and the state. Both parties are in agreement. Mr. Shanahan stated he gets brought in during the bad part costing him five months of legal expenses. He had the option of taking his chances in front of the zoning board or be inserted in the plan. There was no idea how long it was going to take for Bergenfield to settle with the state in fair share housing. Mr. Shanahan stated he has worked with the board making changes. Mr. Shanahan stated all he is asking for is to look at the makeup of the building

and give him a distribution that equates to the distribution of bedrooms versus what they want. He never had any intent of having a 3 bedroom unit. He is against building a 3 bedroom unit.

Board member Stein suggested having 2 two bedroom units and 2 one bedroom units. The 15% is not based on the room but based on four units. Mr. Stein inquired if the agreement is a matter of the room count.

Board engineer Frank Rotonda stated he doesn't see how not having a 3 bedroom unit for anyone would violate the agreement. Mr. Rotonda stated he read the agreement and it would not violate the agreement if there wasn't a three bedroom unit available. If there was a three bedroom available and a low income housing family was denied access to the three bedroom, that would violate the agreement.

Mr. Mondello stated he has gotten a lot of direction from Mr. Lydon and Mr. Schettino and they were adamant about the 1 three bedroom, 2 two bedrooms, and 1 one bedroom distribution. The 1 three bedroom agreement didn't come from the applicant. Mr. Mondello stated he disagrees with Mr. Mondello. The distribution was back in June. Mr. Lydon had stated a 1 three bedroom, 2 two bedrooms, and 1 one bedroom was required. Mr. Mondello stated the agreement is a matter of units and bedroom distribution. Mr. Mondello explained that kicking the can down the road means that the next application that comes before the board, they will have to make up the deficiency.

Mr. Smith explained that Mr. Schettino had stated if they do not agree to change the numbers, all they are doing is kicking the can down the road. Mr. Smith stated there is a bill before the Senate and trying to enforce veterans first, residents second, and then anyone else. It has not passed yet.

Mr. Rotonda suggested including in the resolution that there are no 3 bedrooms that exist.

Approve the resolution based on four units with room distribution of 2 two bedrooms and 2 single bedroom units.

Motion by: Shimmy Stein

Second by: Sara Berger

All ayes.

Motion to have Mr. Mondello make amendment to the resolution.
All present voting in favor. None opposed.

Mr. Mondello stated the applicant could have picked up his permits to start work after the application was approved.

Memorialize Amended Resolution

Motion By: John Smith

Second By: Shimmy Stein

All ayes. None opposed.

NEW BUSINESS

1. Yoni & Leba Pollock
4 Lee Place
Extension to existing garage and expansion of second floor.

Mr. Stein apologized on behalf of the town for what was done to him the past two months.

Larry Quirk, licensed architect, stated the house is currently under construction. The first floor was renovated and they are adding a second floor. They would like to expand the existing garage towards Lee Place adding 57 sq. ft. to the building coverage and to the lot coverage. The side yard setback will be 12.10 ft. along Greenbriar Street where 15 ft. is required. The applicant can not park the car inside the garage even with the renovations. The depth of the interior of the garage and the front door to the stairs is 17 ft. They will make it 21 ft. so they can park their car. The new front of the expanded garage will line up with the front of the house.

Mr. Smith stated the survey is not signed or dated. The applicant who owns the home does not have their information on the plan. Mr. Smith inquired what kind of pavers will be used for walkway and driveway and what the width of the driveway will be. Mr. Smith inquired about what will be done with the trees as two of the trees are borough trees.

Mr. Quirk stated he received the survey from the homeowner. Mr. Quirk stated they will be removing 2 inches from the width of the driveway and will be removing the concrete patio. The width of the driveway, at the furthest will be 16 ft. and at the narrowest will be 14 ft. They will not be using pavers for the driveway. The walkway will be regular pavers. Mr. Quirk stated they are not asking for coverage. They would not exceed 40%. They will be removing the patio and part of the driveway. Mr. Quirk stated there was some confusion between the board and the building department about what was included and not included in terms of pavers when the project started. Mr. Quirk stated he was under the assumption they had to count the pavers. Mr. Quirk stated the trees will stay. Mr. Quirk's response to Mr. Steinel's question was yes.

Mr. Steinel inquired if the encroachment on the left side is going to be maintained with the straight line all the way down with the garage.

Comments from residents within 200':

Paul Kreger, resident, stated a mini van will fit in a regular garage. The back end of the garage has a staircase leading into the house. Mr. Kreger stated part of the garage must have been used for livable space.

Mr. Quirk stated a mini van may fit but is very difficult to get out of and maneuver to get to the front of the stairs. Mr. Quirk stated they are making the garage longer, not wider. The second story addition does not require any variances.

Comments from any residents:

No one came forward.

Approve Application:
Motion by: Amnon Wenger
Second by: Charlie Steinel
6 ayes. 1 nay.

2. Josh Grajower
31 Lee Place
Addition to a single-family dwelling

Jordan Rosenberg, licensed architect, stated the client wants to improve his home which is old and needs improvements. It is a small house currently with three bedrooms on the second floor and they are proposing a five bedroom house. There are no architectural anomalies.

Mr. Mondello stated if the applicant is using pavers would be to assume they are 0% pervious. The board might be more inclined to grant your variance if they understand what kind of pavers you're using.

Mr. Stein stated the type of pavers you use, the sealant you use, and the way they are laid out does affect.

Mr. Rosenberg stated they have to submit to the town engineer the permeable paver detail in order to be approved for permeable pavers in Teaneck. The town engineer will review it and then send a letter stating they approve the detail. Mr. Rosenberg presented to the board members a handout of a sample permeable paver detail and a picture of the pavers. There are no sealants.

Mr. Rotonda stated what Mr. Rosenberg is saying is a good idea. Mr. Rotonda stated that Mr. Ravenda, in his correspondence, had recommended each application provide manufactured details of specifications that demonstrate the permeability of the paver. The latest report had indicated that if you are to take the credit, then you should provide a detail that demonstrates the pavers are pervious. It would comply with directions received from the building department.

Mr. Smith confirmed with Mr. Rosenberg that the engineer in Teaneck has to see the plan at each level.

Mr. Nunez inquired why it is proposed 50% on the front page. Mr. Nunez stated he doesn't see the porch added in the improved lot coverage. Mr. Nunez inquired if there will be a elevator.

Mr. Rosenberg stated the town is now interpreting pervious pavers differently and asked Mr. Mondello for advice how to interpret it. Mr. Mondello recommended providing the board a chart that shows what the percentages look like if 100% of the pavers were counted towards coverage, if 50% of the pavers were credited towards pervious, and 0% of the pavers that counted towards coverage. It's for the board to understand the severity of the numbers. Mr. Rosenberg explained to Mr. Nunez where on the chart the proposed porch will be. Mr. Rosenberg stated there will be no elevator.

Comments from residents within 200':

Paul Kreger, 26 Lee Place, inquired if the façade will be removed and if they will be doing the same thing as 9 Lee Place. Mr. Kreger stated there is no space between the two houses and disagrees with what is being done. Mr. Kreger inquired if the house can handle a septic system.

Mr. Rosenberg stated the front of the house will not be removed but they will be taking out the windows. The portico will be pushed back to accommodate a front porch.

Comments from any residents:

No one came forward.

Mr. Smith inquired what the water table in the area is. Mr. Smith stated the road was flooded when he went to check the house after it had rained. He inquired if applicant is currently living there.

Mr. Rosenberg stated they haven't done any testing to see what the water table is.

Mr. Stein stated the board requires all construction to have a seepage pit.

Mr. Rotonda stated they would have to find a spot for the excavation for the seepage pit. They always require an overflow towards the street to prevent damage to the properties.

Mr. Josh Grajower stated he isn't living there during the construction and the water conditions were fine.

Mr. Wenger stated it's the best presentation he's seen yet on pavers.

Motion to approve application with variance:

Motion by: Amnon Wenger

Second by: Marc Friedman

6 ayes. 1 Nay.

3. Dr. Jason Suss
179 S. Prospect Avenue
Construct an addition to an existing dental office

Mark Madaio, attorney for applicant, stated applicant is seeking an addition to an existing, non-conforming dental practice use. It initially started as a home occupancy but is allowed as a non home occupancy. It has been operating as a dental practice for 30-40 years. They are seeking some bulk variances. Some of the variances exist and some don't. Mr. Madaio handed out a packet for the board. It is a permitted use. Mr. Madaio explained to the board what he handed out.

Mr. Smith stated his only concern with the application is the parking situation and asked that it be explained.

Tom Skrable, expert, licensed engineer, stated it is a 620 sq. ft. addition to the rear of the building. They will be to add 3 parking spaces, with a total of 5 parking spaces. Mr. Skrable stated nothing else will be changes other than the addition of the parking stalls. The coverage numbers include all of the paver areas that is seen. The new parking stalls will be pervious pavers. There is an additional 30 ft. of borough right of way that has no improvements on it to serve as a buffer between the proposed development and the home next to it. The yard that is opposite the other street is called a rear yard. The setback is consistent with the surrounding lots. They can undertake whatever has been recommended by the board engineer. There's three existing parking spaces now. The total proposed is 5 parking spaces. There won't be a basement.

Mr. Madaio stated the actual number of required parking spaces is 9 and they are proposing 5 which is an increase from what presently exists. The front yard coverage is 25 ft. required and they have 15.3 ft. to Prospect Avenue that is consistent with setback of the houses on Prospect Avenue. The lot coverage is 59.09% and the maximum lot coverage is 35.2% when 30% is only required.

Mr. Rotonda stated the only item he would like explained is the tandem parking. It can be problematic if one car is blocking another car.

Mr. Stein stated that the 59% is an asterisk because they will be using a special system.

Comments from residents within 200' and any residents:

No one came forward.

Dr. Jason Suss, applicant, stated he has been practicing dentistry out of 179 S. Prospect Avenue for the past 15 years. The practice is a one patient at a time type of scenario. They are family dentistry and serve a large geriatric population. They take care of anything from implant dentistry to general dentistry. Dr. Suss stated he is the only dentist along with part time hygienist, a dental assistant, and his wife who is the receptionist. There are currently two dental chairs. They are looking to have four. He is limited to addressing certain types of concerns because there isn't the room for it. There is turnover time as well when they have to sterilize the rooms. There are times when he is treating someone and the dental hygienist is treating someone at the same time. They are not able to accommodate a third person who needs to be seen quickly. The patient has to go offsite for x-rays because of the lack of space. The bathroom is 3 ft. x2 ft. and they have to maneuver to close the door. The staff shares the bathroom with the patients and is a unisex bathroom. They plan to make it more ADA compliant. Mr. Suss stated he treats approximately 12-15 patients a day. Mr. Suss explained that they accept insurance so that patients can choose to see them. It is a qualitative scenario. Dr. Suss will park in the deepest part of the driveway with his wife parking behind him, and one of the employees will park in the non tandem parking area. The dental assistant will sometimes will walk, will park sometimes down the road, and at times will be dropped off. Typically, there are 2 patients there at the same time.

Mr. Friedman wanted to confirm that there will be 6 people at the premises most of the time. He stated that there currently are 3 parking spaces and not everyone requires a parking spot. Mr. Friedman stated what is confusing to him is Dr. Suss wants to double the space but increase the spaces by only two.

Mr. Mondello stated they currently have 3 parking spaces and are going to add 2 with a total of 5 parking spaces.

Mr. Stein stated they are not adding patients.

Mr. Madaio stated the 3 spaces that exist now are well delineated spaces and a makeshift space. The addition is 2 parking spaces and they will be adding two chairs, a bigger bathroom, and room for an x-ray machine. There won't be an increase in dental profession.

Comments from residents within 200':

No one came forward.

Comments from any residents:

Mary Sullivan stated she is having a problem with the math and the parking. She inquired if the doctor drives, his wife, the hygienist, and the assistant. She inquired if she was a patient waiting in the waiting room where she would park if the dentist and the hygienist are both with patients.

Mr. Mondello stated Mr. Suss had testified that the assistant either walks or gets dropped off by her husband.

Mr. Suss stated most patients park on the street.

Motion to approve application

Motion By: Amnon Wenger

Second By: John Smith
All ayes. None opposed.

MOTION TO ADJOURN MEETING

Motion by: Charlie Steinel
Second by: Shimmy Stein
All ayes.

Meeting adjourned at 10:05 PM.

NOTE: No applications will be heard by the Board that were not on the agenda at the time of publications release to the newspaper or applications that do not comply with Article VIII title "Hearings contained in the By-Laws of the Bergenfield Board".

Respectfully Submitted,

Hilda Tavitian
Zoning Board Clerk