

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES**

February 3, 2020

Mr. Stein called the meeting to order at 8:00 P.M.

PLEDGE OF ALLEGIANCE

Led by Shimmy Stein.

Re-Appointment of Zoning Board Member Richard Morf.

ROLL CALL

Present: Shimmy Stein, Richard Morf, Sara Berger, John Smith, Amnon Wenger, and Marc Friedman

Absent: Charles Steinel, Joel Nunez, and Joel Berkowitz were excused.

Also Present: Ronald Mondello, Esq., Zoning Board Attorney, Frank Rotonda, Zoning Board Engineer, and Hilda Tavitian, Board Clerk

APPROVE MINUTES OF PREVIOUS MEETING – January 6, 2020

Motion By: John Smith

Second By: Sara Berger

All ayes. None opposed.

OLD BUSINESS

1. Resolutions:

Shanty, LLC

51 E. Main Street

Construct a 26 unit rental apartment building with affordable housing.

Motion to approve resolution

Motion By: John Smith

Second By: Sara Berger

All ayes. None opposed.

Yoni & Leba Pollock

4 Lee Place

Extension to existing garage and expansion of second floor.

Motion to approve resolution

Motion By: Shimmy Stein

Second By: Marc Friedman

All ayes. None opposed.

Josh Grajower
31 Lee Place
Addition to single-family dwelling

Motion to approve resolution

Motion By: John Smith
Second By: Shimmy Stein
All ayes. None opposed.

Dr. Jason Suss
179 S. Prospect Avenue
Construct an addition to an existing non-conforming dental office

Motion to approve resolution

Motion By: Sara Berger
Second By: John Smith
All ayes. None Opposed.

Board member John Smith stated Mr. Knowles, liaison from the Planning Board, is in attendance at the meeting tonight.

2. Accept By-Laws as Amended

Board Chairman Shimmy Stein stated everyone received the by-laws. Mr. Stein stated sending something out by regular mail is worthless. He stated sending it out registered mail is not fair as it is an additional cost to the applicant. The website is much better than it's been since Hilda has been here. Mr. Stein stated if anyone had to come back, they can find it on the website.

Board member Wenger stated he agrees with Mr. Stein. The entire purpose of the change was to minimize the additional burden put on the taxpayers.

Board member Sara Berger was in agreement with Mr. Stein and Mr. Wenger.

Board member Marc Friedman stated it is with the understanding that the website is going to identify the application that's been carried to a future meeting and the date of the meeting.

Board member John Smith agreed with everyone with posting the notice on the website. Mr. Smith inquired if the building department can add to the application the applicant receives, that any cancellation or continuation will be on the borough website to save the applicant money.

Mr. Mondello stated the notice that goes to residents within 200 feet is a form the building department has created. Mr. Mondello stated he sees no problem with suggesting to the building department to change the form and add on the borough website the information.

Mr. Mondello inquired if he should incorporate the change in the by-laws that Mr. Steinel had originally suggested. There would be some language incorporated in the by-laws that if a meeting is cancelled, all applications would be carried to the next meeting.

Mr. Stein stated it's not the by-laws that should be changed. The letter should state all applications are automatically carried to the next meeting.

Mr. Mondello stated the by-laws should reflect under notice section that if the meeting is cancelled, that application would be carried to the next meeting. Mr. Mondello read "continuances" into the record.

Motion to Approve Amended By-laws:

Motion By: John Smith

Second By: Amnon Wenger

All ayes. None Opposed.

CORRESPONDENCE

None.

NEW BUSINESS:

1. Jordan Silvestri
58 Sussex Road
Addition of two new floors.

Mr. Mondello stated he has not received the notices sent to residents within 200 feet and the advertisement placed in the Record. Mr. Mondello stated what Mr. Silvestri provided was only the letter from Mr. Ravenda confirming the application was received. Mr. Mondello stated the board is divested of jurisdiction if Mr. Silvestri can not provide proof that notice was published in the newspaper. Mr. Mondello stated Mr. Ravenda's letter of denial was what the applicant had published in the newspaper, not the notice of his application to be heard at tonight's meeting. Mr. Mondello stated the application is being carried to next month.

Mr. Silvestri stated he has the receipts from the notices sent to residents within 200 feet. Mr. Silvestri stated he an email copy of notice sent to the newspaper.

Board Chairman Shimmy Stein stated the board has no right to review the application if notice is not published in the newspaper. Mr. Stein stated applicant needs to get notice published in the newspaper for next month's meeting in order to be heard.

2. 104 Highgate Terrace LLC
104 Highgate Terrace
Construct an addition to single-family dwelling.

Mr. Smith stated it doesn't show who the owner of the property is on the application. He stated the county tax records still lists Francisco and Maria George as the owners of the property. Mr. Smith stated he is confused because it states all taxes are currently paid by the owner. Mr. Smith stated the last page only shows the last taxes that were paid in October. Mr. Smith stated, according to the borough administrator and the tax collector, all tax records are current.

Mr. Mondello stated there is no legal basis to refuse to hear an application because an applicant has not paid their taxes. However, if the application were to be granted, it could be a condition of the resolution

that no certificate of occupancy shall be issued until the taxes are paid. If the board is inclined to grant the variances sought, as a condition of the resolution, Mr. Mondello stated he will ask applicant to produce a deed showing the owner is 104 Highgate Terrace LLC.

Mr. Ari Becher, applicant, stated he has done this many times and was surprised a new page was instituted in the application where it had to be filled out and signed by the tax collector. The last page was signed by the tax collector's office saying the taxes are current. 104 Highgate Terrace LLC is a corporation. It's not a partnership, it's a single ownership. Mr. Becher stated the house was purchased December 30th, 2019. The deed was sent in but it wasn't recorded by the state yet. There is a two-month lag time.

Ms. Berger stated the taxpayer's certification says 104 Highgate Terrace LLC.

Mr. Stein stated the taxes on the property are paid. The owner is the only person that can come before the Zoning Board to get a variance.

Board engineer Frank Rotonda stated sometimes the tax office does not update its records as quickly as the deed changes. It takes weeks and months sometimes.

Jordan Rosenberg, architect from 27 N. Broad Street, Ridgewood, NJ, stated they will be taking down the majority of the existing house, save part of the existing foundation, and rebuild a new house over the existing foundation and new foundation. They are proposing a 5-bedroom house that is similar to 191 and 61 Highgate Terrace. They are seeking variance for lot coverage and side yard setbacks because there is a deficient lot width of 50 ft. If they were to comply to the code with 7.5 ft. setbacks, the house would be too narrow and would not conform with the other homes on the block. The left side and the right side setback variance are 5 ft. The right side setback is already existing 5 ft. They intend to continue the existing non-conformance of 5 ft. towards the back. The other variance sought is the combined side yard setback. The lot coverage is 35.5% and a total improved lot coverage of 53.8%.

Mr. Stein stated it is a big house on a small lot. There is 36 ft. in the back that can be played with. He would rather see them go back. Mr. Stein stated the optics are terrible. There is 11 ft. in the back to work with.

Mr. Wenger stated the nature of the block in general is to have 5 ft. side yards.

Mr. Mondello stated it is not known if the application for the other house ever came before the board. . Mr. Mondello stated every application stands on its own merits and perhaps the board was generous with those other applications. Those applications don't weigh in on this application.

Mr. Becher stated this is the third house he has purchased in the past two years. Mr. Becher explained that for 61 Highgate Terrace, the variance was awarded for 5 ft. side yards for both the right and the left side. He currently owns 91 Highgate Terrace, came before the Zoning Board, and was approved for 5 ft. on one side. A neighbor had protested and they ended doing 7.5 ft. on that side. Mr. Becher explained they are trying to stay within the other new construction on the block. The staircase goes up and down the back. There is a way to get around the property if the neighbor puts up a fence. Mr. Becher inquired if they can continue to have the existing non-conforming 5 ft. on the right side and bump it in on the left side. Mr. Becher inquired if they can take the existing 5 ft. and make it better, with 6 ft. on both sides.

Mr. Morf stated there is a set of stairs on the right side constructed one foot off the property line and egress is also one foot off the property line. Mr. Morf stated by moving it back to 7.5 ft. gives more space for breathing room. The lot coverage will also be reduced if you push it back to 7.5 ft. 5 ft. is too tight. It is 36 ft. to the bay window and have room to move back. Mr. Morf stated it has to be redesigned. Mr. Morf stated it is still too close. Side yard variances are becoming a problem now.

Mr. Rosenberg stated they will revise it if needed.

Mr. Stein stated he can go back 10 ft. and can do it on their own. It can't exceed 11 ft. Mr. Stein suggested they redo the drawing. Everyone on the board wants to see you conform to the code. The 5 ft. on the left side is glaring. Second, something can be done about the 50%. Two-thirds of the house is being changed and the architect can play with the numbers.

Mr. Wenger stated the board can grant the lot coverage variance to whatever the calculations are. Mr. Wenger inquired of Mr. Mondello if the board can be polled so they can advise Mr. Rosenberg.

Mr. Smith stated he remembers how Mr. Becher argued with the board with previous applications for not getting what he wanted. It's the same case here. Mr. Smith stated the board is trying to correct wrong doings from the past.

Mr. Mondello stated it is not unusual to take a poll as to specific items the board is struggling with and see if some members are comfortable with 6 ft. on each side versus 7.5 ft. Mr. Mondello stated the applicant is not guaranteed an approval at 6 ft.

Motion by Amnon Wenger of those board members who are in favor of 6 ft. Side Yard Variance on Each Side:
3 Ayes. 3 Nays.

Mr. Morf stated it's not that he's opposed to it. He just would like to see a plan that reflects that. They can discuss the coverage issues once it is redrawn.

Mr. Stein stated the board would entertain 6 ft. Mr. Stein stated the application will continue to be reviewed next month. No further notice is necessary.

Mr. Mondello stated the application is being carried to next month.

VERBAL COMMUNICATIONS

Comments by members of audience on matters not on evening's agenda.

Barry Doll, resident of 97 Highgate Terrace, stated he is curious about the 53% coverage. He can't believe it was accepted and got to this point. Secondly, there is nothing about pavers on the limiting schedule and asked that the building department update the schedule. Mr. Doll stated he wants to make sure the paver issue is resolved. Mr. Doll stated they are going down a slippery slope when the numbers are being changed.

Mr. Wenger stated the building department hasn't decided and have been debating it for a year. Mr. Wenger stated the board has the right to grant exceptions to the rule.

Mr. Stein stated it is up to the Mayor and council to decide. Mr. Stein stated the board wants to solve the problem but their hands are tied. It's been going on for over 2 ½ years. The board reviews each application separately.

Mr. Smith stated he received a telephone call from the code official Friday about the paving issue and if he had the diagram that was presented to the zoning board members at the last meeting. Borough attorney John Schettino will be drafting the ordinance on the paving issue and what type of pavers are going to be use for the town for tomorrow night's meeting. The zoning board is allowed by law to grant certain variances to give relief and try to do it fairly with everyone. The paving issue has gotten out of hand. There are councilmembers that don't want to change the ordinance to offend certain groups in town.

Mr. Mondello stated the code never said that pavers were impervious.

Mr. Stein stated the applicant doesn't need to re-notice. The applicant just needs to show up and it will be on the agenda.

Mr. Becher stated they will revise the drawing.

Mr. Rotonda suggested to the applicant to get a letter from the zoning officer clarifying what will be required.

MOTION TO ADJOURN MEETING

Motion By: John Smith

Second By: Shimmy Stein

All ayes. None opposed.

Meeting was adjourned at 9:00 am.

Respectfully Submitted,

Hilda Tavitian, Zoning Board Clerk