

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TELECONFERENCE VIA WEBEX
July 6, 2020**

Chairman Shimmy Stein called the meeting to order at 8:09 P.M.

OPEN PUBLIC MEETING STATEMENT

In compliances with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on two municipal public notice bulletin boards and published on the borough website. Notice of this meeting via the June 29, 2020 Sunshine Notice has been sent to the Record, Star Ledger, and Cablevision, posted on two municipal bulletin boards and the Borough website.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on this matter.

PLEDGE OF ALLEGIANCE

Led by John Smith.

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: Ronald Mondello, Esq., Zoning Board Attorney, Frank Rotonda, Zoning Board Engineer, Hilda Tavitian, Board Clerk, Councilman Rafael Marte, and Michael Knowles, Planning Board Liaison

APPROVE MINUTES OF PREVIOUS MEETING – June 1, 2020

Motion By: John Smith

Second By: Amnon Wenger

All ayes. None opposed.

VERBAL COMMUNICATION

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

Mary Sullivan, resident, stated the Mayor and council are going to back to in-person meetings in a couple of weeks. She is hoping the Zoning Board is going to be doing the same as the background noise and poor connection is impossible. The courtroom could hold 40 people safely at 25% capacity. If the council can do it, she doesn't see why the zoning board can't do it.

Chairman Stein stated it is not the board's call. Mr. Stein stated he is over 64 years old and does not have a comfort level going into buildings right now with a lot of people. The board can take a vote after review of the applications.

Mr. Mondello stated it's up to the board, not the governing body. There may be board members in a particular category that are extraordinarily concerned about any type of exposure to the virus.

CORRESPONDENCE

Mr. Stein recused himself from the discussion regarding 35 Regent Street.

Board attorney Ron Mondello stated he doesn't have the correspondence for 35 Regent Street.

Board clerk, Hilda Tavitian, stated she did not receive any correspondence regarding 35 Regent Street.

Mr. Stein stated they had received variance for a swimming pool. The variance expired and they want to renew it.

Karen Kirschenbaum, resident of 35 Regent Street, stated they had applied for variance when they were building their home and had run out of money for the swimming pool. It is now in their interest to have a swimming pool especially with the coronavirus situation. Mrs. Kirschenbaum stated she thought it ran out last year.

Mr. Mondello inquired when was the approval. Mr. Mondello told Mr. Friedman he would be able to vote. Mr. Mondello stated the application was approved August 1, 2016 and memorialized September 12, 2016. The applicant had agreed to meet the board engineer's requirements. They were going to use pavers around the driveway and walkway to help reduce the 45%. They had submitted plans for the pool to the board engineer for approval.

Mr. Wenger stated the application came before the board within the last 2-3 years maximum. Mr. Wenger inquired if the pool they are planning to build is identical to the plans approved before.

Board member Friedman stated he was not on the board at the time when the variance was granted. He inquired if he should recuse himself. Mr. Friedman stated he agrees with John and would like to see the plans.

Mr. Stein stated on July 3, 2017, they received a one-year extension.

Board member John Smith stated he never received notification for the extension and Hilda didn't know anything about it. He would like to see the plans. He is not against it but he doesn't know what he is approving. They had to submit plans for the pool to the engineer and he doesn't remember seeing those plans. Mr. Smith stated he doesn't know if there will be variances required due to the size of the pool. Mr. Smith stated he was on the board in 2017 and he doesn't recall this application. He would like to know what he is voting for.

Mr. Mondello stated Mr. Smith would like to see the plans and inquired if there are other board members who would like to see the plans. Mr. Mondello stated this happened in 2016 and Mr. Smith was not on the board back then. Mr. Mondello stated he doesn't have record of there being an extension. It's been four years since the application was heard. It seems like the board is leaning toward having the case heard again.

Mrs. Kirschenbaum stated yes the plans for the pool are the same.

Mr. Wenger suggested polling the board to find out if applicant should come back or if the board will grant the extension at this time.

Board member Charles Steinel stated the plans including the pool were approved in August 2016. The variances granted at that time may be different from what they are today since there have been some changes in the land use law. Mr. Steinel inquired if this is going to be a new application with new rules or is it going to be an old application with the old rules.

Mr. Mondello stated typically it is the time of the application rule that governs. The application has approval for maximum lot coverage, maximum improved lot, minimum side yard, and minimum rear yard. However, they have expired. It is the time the application rule, under the old rule and old ordinances. Mr. Mondello confirmed that the application was to demolish a two-story single-family dwelling and construct a new two-story single-family dwelling with an in-ground pool. The only thing that remains is the construction of the pool.

Mr. Wenger inquired if the applicant needs to come before the board since they have already put a shovel in the ground.

Mr. Mondello stated if they put a shovel in the ground, they can continue with the construction. Mr. Mondello stated it's been more than a year that a shovel has been in the ground.

Mrs. Kirschenbaum stated the construction was completed in October 2017.

Mr. Rotonda inquired if the permit is still open with the building department. Mr. Rotonda inquired if the applicant went to the building department and if they sent her to the zoning board.

Mrs. Kirschenbaum stated she doesn't know if the permit is still open.

Motion to approve extension of variance approval:

Motion By: Mr. Wenger
Second By: Mrs. Berger
1 recuse, 4 ayes, 3 nays

Mr. Nunez stated it would be good if the applicant confirmed there still is an open permit for the variance. If it's not open, then they can present new documents for the plan. As long as the building department is ok with it, so is he.

The extension was extended for a year.

OLD BUSINESS

Resolutions:

1. Congregation Beth Abraham – 396 New Bridge Rd – Request Extension

Motion By: John Smith
Second By: Charles Steinel
All ayes. None opposed.

2. Bob Lutz – 155 Sussex Rd – Convert Two Floors into Two and Half Floors

Motion By: Amnon Wenger
Second By: Sara Berger
All ayes. None opposed.

3. Mr. & Mrs. Sheffey – 36 Greenbriar Street – Addition of Front Porch

Motion By: Charles Steinel
Second By: Amnon Wenger
All ayes. None opposed.

4. JAH Realty Associates – 205-207 N. Washington Avenue – Convert First Floor Office Space into 4 One-Bedroom Apartments

Motion By: Amnon Wenger
Second By: Sara Berger
All ayes. None opposed.

NEW BUSINESS

1. Melissa Fried
109 Westminster Avenue
Addition of a pool.

Mark Madaio, attorney for applicant, stated the property is located at 109 Westminster Avenue. It is a relatively new construction and they are proposing to construct a new swimming pool. The two variances they are seeking are a side yard setback of 9 feet and an improved lot coverage of 52.2%. The applicant is seeking to add an additional 945 sq. ft. for a total of 4,072 sq. ft. The applicant was already approved for a basketball court and had permission to build the basketball court with pervious pavers which is going to be replaced with a swimming pool.

Perry Frenzel, NJ licensed engineer from Azzolina & Feury, 30 Madison Ave, Paramus, NJ, stated he has experience with the installation of 5-6 swimming pools. The site plan was prepared under his direction for the sole purpose of adding a swimming pool. The lot size is 7,800 sq. ft. where 6,000 sq. ft. is required for the zone. The two side yard setbacks variance for the pool is 9 ft. where the requirement is 10 ft. Mr. Frenzel stated the existing improved lot coverage is 40.1%. They are proposing to add 120 sq. ft. with total proposed of 945 sq. ft., 12.2%. There isn't anything in the board engineer's review letter of recommendations that they would not be able to comply with. They had a discussion with the board engineer and are in the process of making some modifications. The swimming pool falls under the ordinance as being impervious, despite the fact it collects water. The proposed pool is 40x30 with the edging being approximately 3 feet of pavers around the pool. The impervious coverage requirements are due to concerns with drainage. Swimming pools generally have a 3-6 inch drop from the pulpit to the pool and drain water falling on the drain surface would be retained in the pool and would not run off. They are seeking a total additional coverage of 565 sq. ft., which is 7.3%. Mr. Frenzel stated he does not believe there would be any detriment of the addition of the swimming pool.

Mr. Stein stated Bergenfield does count pavers.

Mr. Steinel inquired if there is an existing seepage pit.

Mr. Frenzel stated there are two seepage pits in the rear yard and will be relocated to the front yard. Mr. Frenzel stated they took the two seepage pits and stacked them on top of each other to get the separation required for the driveway after speaking with Mr. Rotonda.

Mr. Stein inquired if the seepage pit that is moved to the side will be enough to handle the water.

Board engineer Frank Rotonda stated there was some confusion. The plan shows some distance between the property line and the curb line. The plan shows the seepage pit to be inside the property and not within the town's property. The change that was made was to stack the seepage pits. Mr. Rotonda stated in discussing with the building department their only concern is the sump pump overflowing. The plan does not show a sump pump in the basement. Mr. Rotonda stated he has no objections to what is being proposed and the proposal satisfies run off issues.

Mr. Frenzel stated there is a sump pump in the basement. Mr. Frenzel stated there are porous pool covers that allow water to go directly into the pool.

Mr. Berkowitz stated in the winter people normally cover the pool and some covers are very tight and rigid. The water would revert out of the pool and go onto other surfaces and it really would not be pervious.

Mr. Smith stated he doesn't see the tanks stacked on top of each other on the new plans received via email because the drawing is not to scale on what the board is supposed to receive. Mr. Smith stated it could have been given to the borough to be delivered to the board members like the applications are. Mr. Smith stated there is supposed to be a survey but there wasn't one in the packet. Mr. Smith inquired if the engineer has considered a soil test. Mr. Smith stated that on the plan at the top of the drawing, it shows they will be using concrete pavers.

Mr. Rotonda stated there is a survey and the drawing was signed by a land surveyor. Mr. Rotonda stated that Mr. Smith is right and sometimes there is ground water. In cases with residential properties, it is done at the time of the construction. They will have to excavate the area at the time of construction.

Mr. Frenzel stated they will be using porous, pervious pavers.

Mr. Madaio stated the applicant is agreeable to writing in pervious pavers especially if he's agreed to that and the engineer has that in the spec.

Mr. Friedman stated the current plans shows a pool that is 40x20. Mr. Friedman inquired if the variance is not granted for the side line, the pool can be reduced to 38x20. If that were the case, there would be no engineering or design impediment to creating a pool that's 38x20 instead of 40x20. There would be no material affect of the use of the pool by the occupants of the house and their visitors also.

Mr. Frenzel's response was yes to Mr. Friedman's question. The change in the length of the pool would not be a noticeable difference. The pavers around the pool will be porous and is shown in detail on the bottom of the plan.

Mr. Madaio stated they would amend the application so there would not be a need for a side yard variance.

Residents within 200 feet:

Michael Schechter, 86 Westminster Avenue, stated he is supportive of the pool being put in.

Harry Bram, applicant and resident of 109 Westminster Avenue, stated he had previously received approvals for a pervious basketball court. It was going to be porous pavers and didn't count as coverage back then. Mr. Bram stated they are seeking to replace the basketball court with a 38x20 swimming pool and use porous pavers that will allow water to go through. There will be a new drainage system.

Mr. Madaio stated they will be taking out the 2 ft. and the pool will only be 38 ft. in length.

Mrs. Berger inquired if there is a gate around the property.

Mr. Bram's response was yes.

Questions from residents within 200 feet:

No one came forward.

Approve Application

Motion By: Amnon Wenger

Second By: Sara Berger

6 Ayes. 1 Nay.

2. Susan Sytner
88 Rector Court
Add second floor addition, first floor addition, and patio to single-family residence with existing non-conforming setbacks.

Chris Blake, licensed architect 24 New Bridge Rd, Bergenfield, NJ, stated they are seeking a variance for improved lot coverage. They are proposing an addition to the rear of the house and there is an existing corner property. The original house is 10.5 ft. from the side street. The existing front yard is 10.5 ft. that is non-conforming. They are proposing to extend the front porch aligning with the existing non-conforming property. They are proposing a second addition of a sunroom to the rear of the house. They are also seeking improved lot coverage for a patio in the rear of the house. They are proposing the improved lot coverage from 21.62% to 25.80%. They are allowed 22.71%. The coverage is needed because of the rear patio. There would still be a lot of greenery and would fit in with the neighborhood.

Mr. Rotonda stated there was a question about the lot coverage that he amended in his report. They are requesting 2,616 sq. ft. whereas 2,271 sq. ft. is proposed. They have a 15 ft. side yard requirement and they are proposing to extend the property to continue the existing 10.5 ft. setback. There were no outstanding engineering issues, just the standard things having to do with storm drainage.

Mr. Berkowitz inquired how close to the neighbor's property are the overhangs.

Mr. Blake stated the second-floor overhang will be 32.4 ft. to the property line. The other one will be 10.5 ft. which is part of the existing non-conforming. Mr. Blake stated lot size is 5,678 sq. ft.

Mr. Smith inquired what the rear footage of the property is. Mr. Smith stated his calculations do not come out to that number. Mr. Smith stated he doesn't see a retention exit on the plans. Mr. Smith wanted confirmation that there are five bedrooms and how many parking spaces are required.

Mr. Blake stated it is not on the plans yet but will be added upon approval from the engineer and the building department. They will comply with any requirements. Mr. Blake stated there are five bedrooms. Mr. Blake stated they are providing 2 parking spaces.

Susan Sytner, applicant/resident of 88 Rector Court, stated they already fit 2 cars in their driveway. They have a large SUV and a sedan that can be parked side by side as well as back to back. They have room for four full size cars in the driveway if they are parked together.

Mrs. Berger inquired how the lot coverage would change if they got rid of the patio.

Mr. Blake stated the patio is 350 sq. ft., bringing the total to 2,230 sq. ft. which would be under the total allowed. They will use pervious pavers for the patio.

Mrs. Sytner stated that would render the backyard useless for entertainment purposes. It is all grass. They would not be able to put up table and chairs and Sukkoth. She has older children that need a finished surface to play and for basketball. The patio accomplishes all those needs.

Mr. Rotonda stated the applicant has agreed to conform and will provide land survey, a seepage pit, provide details for the brick paver system and other details needed.

Questions from residents within 200 feet and beyond:

No one came forward.

Approve application with variances with the inclusion of the board engineer's recommendations

Motion By: Amnon Wenger

Second By: Charles Steinel

All ayes. None opposed.

Mr. Nunez stated he agrees with continuing with virtual meetings but use Zoom instead.

Mr. Berkowitz stated he agrees with everyone and does not feel comfortable with having in-person meetings.

Mr. Smith stated he agrees with Mr. Stein. He did the food bank and it doesn't bother him if the meetings are held in-person. If the meetings are going to be held virtually, there needs to be a better way as no one can be heard. Everyone needs to be given a fair shot to be heard.

Mr. Friedman agrees with everybody.

Mrs. Berger stated she agrees to doing meetings via Zoom.

Mr. Mondello stated he has a Zoom account and runs the meetings for Rochelle Park and Wanaque. He thinks it is a much better platform. He has never experienced inaudible conversations before tonight's meeting. Mr. Mondello stated it is up to the board to decide if they want to use Zoom or to return to in-

person meetings. Mr. Mondello stated he will send a meeting invite tonight for the Zoning Board meeting on August 3, 2020 that will be held via Zoom.

Mr. Wenger stated he had the virus and knows how serious it is. He prefers to have the meetings held by teleconference.

Mr. Stein stated the next meeting will be held via Zoom. The next meeting is August 3, 2020.

Board Clerk, Hilda Tavitian, stated there are a couple of applications submitted but the applicants wants to be heard in-person.

Mr. Mondello stated those applications are not deemed complete. If any of the applications have been deemed complete, the board needs to dismiss them without any prejudice. Typically, an engineer will state the survey and site plans have been received and are complete and the board would need to discuss them.

Mr. Rotonda inquired if that requires correspondence from his or the attorney's office in the absence an application is deemed complete. The case Hilda is referring to is a larger size site plan and might be appropriate to look at the completeness and get a determination before the next meeting.

Mr. Mondello stated if Mr. Rotonda deems the application complete, the board will have to dismiss it without prejudice because he does not know when they will be returning to having meetings at borough hall. Once an application is deemed complete, the board has 120 days to make a decision unless the applicant grants an extension. If the two applications are already deemed complete, the applicants would have to grant extensions until September or October. Mr. Mondello stated the applicant does have the right to be heard at an in-person meeting. They may feel their expert witnesses might not be able to be heard.

Mr. Stein requested the board clerk send him the names of the applications received. He stated he will give them a call and explain to them what is going on.

Mr. Friedman inquired if the applicant has the right to insist that their hearing be considered at an in-person meeting.

MOTION TO ADJOURN MEETING

Motion By: Charles Steinel

Second By: Amnon Wenger

All ayes. None opposed.

Meeting was adjourned at 10:15 pm.

Respectfully Submitted,



Hilda Tavitian, Zoning Board Clerk