

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TELECONFERENCE VIA ZOOM
November 2, 2020**

Chairman Shimmy Stein called the meeting to order at 8:01 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 October 26, 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.

Board attorney Mondello stated the Zoom conferences were not designed for contentious applications. They will not be able to proceed with hearing the application for 145 West Main Street if there are more than 100 people who are trying to join the meeting. The public has a right to hear, see, and comment on the application. Mr. Mondello stated unfortunately some other accommodation is going to have to be made. Mr. Mondello stated he may have to call the company to see if the number of participants in the meeting can be increased. Mr. Mondello suggested the board may consider having an in-person meeting. Mr. Mondello stated he will try to have the number of participants that can join the meeting increased.

Board Chairman Stein stated out of fairness to the applicant, they should pick another date to meet before the December ZBA meeting. The majority of people on are present for 145 West Main Street. Mr. Stein suggested picking another night and to increase the number of participants able to join the meeting and do something within the next 7 days. Mr. Stein stated the board will determine a new date at the end of the meeting, once the public portion has ended and will have to notice everyone again.

Mr. Wenger stated they will be constrained even more if it will be in-person as they have to ensure social distancing and won't be able to fit 100 people at borough hall.

Mr. Capizzi stated he appreciates whatever accommodations the board is able to make. Mr. Capizzi reminded everyone that a special meeting notice needs to be posted relative to the new date.

Mr. Smith stated the Bergenfield High School can accommodate over 200 people.

Ms. Berger stated you can't do that with social distancing.

Mr. Wenger stated the school might not allow it.

Mr. Mondello stated he and Mr. Capizzi will have an offline discussion. He will have to pay to have the number of participants increased from 100 to 1,000 and the applicant will have to re-notice. There are probably more than 100 people trying to get in to the meeting. It's a pandemic and there needs to be some flexibility.

Mr. Stein stated it can't be next week since it needs to be re-noticed. Mr. Stein stated the applicant would need 10 business days. Mr. Stein apologized to the applicant, Mr. Capizzi, and everyone who joined the meeting for tabling the application and hopefully be able to hear the application before the next scheduled Zoning Board meeting.

Mr. Capizzi stated they would need 10-14 days. Mr. Capizzi suggested the board have a work session after the board finishes the other business on the agenda to discuss a potential date 2-3 weeks from now or some other time in December.

Mr. Wenger explained the application for 145 West Main Street will not be heard tonight and everyone within 200 feet will be re-noticed. They can all drop off the meeting tonight.

Mr. Mondello stated for those not within 200 feet, the meeting will be published in the Record and it will be posted on the borough website.

Ms. Janet Rosado stated she lives within 200 feet and she and other neighbors received the notice late. She wanted reassurance that the notices are received in a timely matter.

Mr. Mondello stated there may be postal delivery delays. The website can easily be checked. It may not be the applicant's fault in this case. This will be adjourned and there will be a new date. There will be notices sent to residents within 200 feet, put on the borough website, and published in the newspaper.

INTRODUCTORY STATEMENT

Welcome to the Zoning Board of Adjustment. Let me briefly explain what we do. We are appointed by the Bergenfield Council to decide when a property owner should get relief from the strict application of the zoning code requirements. Typically, we hear two types of variances. The first is whether an applicant can vary from land restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second is a use variance, where an applicant wants to use the property for a purpose not permitted under the zoning ordinance in that zone.

In these cases, the applicant has the burden of meeting certain criteria set forth in the Municipal Land Use Act. We carefully listen to the testimony, including objectors, and review all relevant documents. If a majority of the Board concludes that the applicant has satisfied those criteria, we must grant the requested variance.

ROLL CALL

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

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

APPROVE MINUTES OF PREVIOUS MEETING – October 19, 2020

Motion By: Charles Steinel
Second By: Sara Berger
All ayes. None opposed.

CORRESPONDENCE

Request for Extension – Dr. Jason Suss, 179 S. Prospect Avenue

Mr. Mondello stated the applicant is requesting an extension. It is either up to the board to decide whether that extension should be granted or if they have any questions for Mr. Suss as he is here. The request was made by Mr. Madaio, the applicant's attorney. It was for an expansion for his dental office.

Dr. Jason Suss stated they did the architectural planning for the variances granted. He had to shut down the business completely when the pandemic hit. The supply chains closed down and bank lending stopped. Mr. Suss stated he had to focus on re-opening his business. The focus of construction and planning both with contractors and dental supply chains had shut down. Mr. Suss stated he recently tried to reignite the process and spoke with a number of dental contractors, both construction and dental supply chains, and either they are just opening or are backlogged. They can not provide the services he is looking for. His concern is that he would not be able to pull permits in time prior to when the variance approval expires.

To Grant Extension for One Year Beginning January 2021

Motion By: Amnon Wenger
Second By: Shimmy Stein
All Ayes. None Opposed.

VERBAL COMMUNICATION

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

Mary Sullivan, resident, suggested posting the special meeting notice on the Facebook page besides posting it on the borough website and requested it not be scheduled during Thanksgiving week as people may be traveling.

Mr. Stein asked Hilda Tavitian, board clerk, if she could get the special meeting notice posted on the Facebook page.

Ms. Tavitian stated she would ask the borough administrator if the special meeting notice could be posted on the borough's Facebook page.

OLD BUSINESS

Resolutions

1. Jessica Xiong, 60 Portland Avenue, Non-permitted use to open a massage-body work salon

Approve Resolution Denying Application

Motion By: John Smith
Second By: Sara Berger

All ayes. None opposed.

2. Rami Glatt, 132 Highview Avenue, Convert garage into living space

Approve Resolution

Motion By: Amnon Wenger

Second By: Marc Friedman

All ayes. None opposed.

3. Leen Mosley, 46 Greenwich Drive, Construct a sunroom

Approve Resolution

Motion By: John Smith

Second By: Amnon Wenger

All ayes. None opposed.

Applications

1. 34 Highgate Terrace, LLC
34 Highgate Terrace
Build a new single-family house

Jordan Rosenberg, architect for applicant, stated they are proposing a new single family residence at 34 Highgate Terrace. The proposed property is 50 ft. wide lot but is subjected to R6 zoning requirements, which is a 60 ft. Although there is a deficient lot of 50 ft., they are not asking for side yard setback variances. Mr. Rosenberg stated they are asking for more than the required minimum., 7.58 ft. on the left and 7.58 ft. on the right. The existing house has a severe side yard setback of 4.3 ft. on the left side and 4.7 ft. on the right side, which is significantly non-conforming. Mr. Rosenberg shared on the screen the existing survey of the house. Mr. Rosenberg stated they intent to eliminate the non-conforming conditions and bring the house into conformance to better the zoning ordinance. It will create a better, positive scenario. They are requesting building coverage of 33.9%, where 30% is the maximum allowed and total improved lot coverage of 47.9%, where 35% is the maximum allowed. The variances being requested are the same as the variances approved by the board for a previous application. Mr. Rosenberg stated this house fits in nicely with the neighborhood, improves some of the non-conforming issues, and is a clean, new house.

Board engineer Rotonda stated there were 8 items listed in his report and requested if the applicant received it. The items in the engineer's report include: a property survey with topography be provided, a seepage pit is proposed to collect runoff from the proposed roof areas, applicant would be required to extend a storm drain if soil conditions preclude the installation of a seepage pit, the existing and proposed grading conditions be added to the plans, spot grades around the perimeter of the house be provided, grading should not direct runoff towards any neighboring property, construction details be provided, and any damage within the existing right-of-way shall be repaired in accordance with the borough design standards.

Mr. Wenger stated the application is similar to some of the other applications already approved by the applicant and has no problem approving it.

Mr. Smith stated the duo has appeared before the board numerous times and they know each application stands on its own merits and what the board has done in the past has no bearing with him. Mr. Smith asked Mr. Rotonda if he reached out to the code official and spoke with him about this application. Mr. Smith inquired if the board engineer found anything wrong with the lot coverage and the improved lot coverage. Mr. Smith stated they are always over with the lot coverage and do nothing to decrease it, increasing it every time, and making the houses bigger. Mr. Smith stated he understands staying within the community, but he would like to see an application stay within the lot coverage. Mr. Smith stated he meant the houses he's been building in that area, not referring to anything racial or religious. Mr. Smith inquired why they always exceed the lot coverage. Mr. Smith stated the lot coverage is becoming excessive and it is being overdone in town.

Mr. Rotonda stated he did speak with Mr. Ravenda about this application.

Mr. Stein asked Mr. Smith what he meant when he said within the community. We're all residents of Bergenfield. Mr. Stein stated he finds what Mr. Smith said to be offensive and to explain himself.

Mr. Rosenberg stated he is 100% in agreement that every application stands on its own merits. The municipal land use law suggests that. Mr. Rosenberg stated he wants to show the board that he has learned from Mr. Smith's objections from previous applications, reviewed them and adapted to those concerns. He is trying to listen to him and respect his objections by moving in a positive direction. Mr. Rosenberg stated they are dealing with a hardship that they are in a R5 zone restricted by R6 criteria requirements. Mr. Rosenberg stated he and Mr. Becher have been able to build 80% of their houses variance free.

Mr. Morf inquired if brick pavers could be put in the driveway to help reduce the total lot coverage. Mr. Morf inquired if they could shift the driveway to the left.

Mr. Rosenberg stated there is a large, mature tree to the right of the existing driveway. They are proposing a new driveway that's 17 ft. wide. If they are to do a pervious or paver driveway, they would have to dig down 16 inches, which would severely disrupt the root system of the tree causing the tree to die. Mr. Rosenberg stated they are proposing asphalt on the surface to save the tree. The tree is on the neighbor's property. Mr. Rosenberg stated they could shift the driveway to the left but that won't help. The root system for the oak tree is underneath the driveway.

Mr. Stein stated that they do have the proper drainage system.

Mr. Steinel stated he noticed on the plans there is a patio in the rear yard. Mr. Steinel stated if it was left as grass, it would be a reduction in coverage. He didn't hear in the testimony that Mr. Rosenberg would agree to everything the board engineer has recommended, including the drainage.

Mr. Rosenberg stated should the board vote in favor of the application, every single item listed on the engineer's report would be addressed to his satisfaction.

Mr. Nunez inquired what the height of the building is.

Mr. Rosenberg stated the proposed building height is 30 ft.

Mr. Friedman stated he is appreciative of the thoughtfulness that Mr. Rosenberg brought to the application.

Residents Within 200 Feet:

Stephen Wohlberg, 47 Highgate Terrace, stated he is concerned with getting water in his basement. There's a lot more ground coverage. He stated he heard the water table in Bergenfield is high and the seepage pits are not enough. Mr. Wohlberg stated there is water coming into his basement from the project being done at 514 S. Prospect Avenue. Soggy socks and wet shoes. The house covers too much ground and the ground can't take it. There is a river coming in behind him. Mr. Wohlberg stated there will be no place for the water to go with this application. Mr. Wohlberg inquired how much more cubic feet is going to be excavated. He doesn't want water coming in from across the street.

Mr. Rosenberg stated he didn't run the calculation for soil movement for how much cubic volume of soil is coming out. The seepage pit is designed to hold 3,837 gallons of water which lessens the burden of the rain water runoff on the property. They will follow all the guidelines set by the DEP requirements.

Mr. Rotonda stated sometimes during construction there's temporary drainage problems. Mr. Rotonda stated many times it is speculated what will be found when the ground is dug up. Mr. Rotonda stated that is why overflow is written into the report. One of the objectives is to prevent water getting into the house and the neighbor's property. Mr. Rotonda stated the architect has done as much as he could with the design. The board doesn't have control of the infrastructure of the city and do the best with each application. Mr. Rotonda stated it sounds like they are going to conform with the requirements.

Mr. Wohlberg stated their block is one of the blocks that has storm drainage. He stated he is concerned about the seepage pit and he didn't hear it mentioned that the water is going to be connected to the sewer system. Mr. Wohlberg stated he didn't hear how many cubic feet will be displaced and is surprised it was not calculated.

Mr. Rotonda stated it doesn't matter what size basement the builder puts in. The water is going to go into his house and not in the neighbor's house. It is a lot cheaper to connect to a storm drain if there is one across the street as it is usually better. Mr. Rotonda stated it usually goes through the building department. The applicant is required to balance the discharge of water from the site and the standard practice is to try to overdesign the retention of water so they can assure they don't increase the runoff.

Mr. Rosenberg stated they would love to connect the overflow of the seepage pit to the town's storm drain if the town allows them to.

Mr. Steinel stated there are a lot of storm sewers and sanitary sewers in Bergenfield that have cracked pipes and leaks. There's been a lot of restoration work done. Mr. Steinel suggested before connecting to it, they should see if the storm drain can handle it and go through the borough engineer. There's been digging on the block.

Ari Becher, applicant, stated he is not involved with the construction of the property behind the house being built behind the neighbor, but he can tell just by driving by that the landscaping and exterior infrastructure is not currently in place. Mr. Becher explained any potential issues the neighbor may be having with water runoff is probably short term. Mr. Becher stated the neighbor is across the street and diagonal where Mr. Becher is building the home. He can assure the neighbor that the likelihood of any water that is going to travel from his property and onto his property is beyond unlikely. Mr. Becher

stated with the existing house all of the current liters discharge above grade and all the water is above grade. Mr. Becher explained the proposed house has all the gutters going underground to the proposed seepage tank. They are creating a better situation than currently exists.

Residents Within 200 Feet & Beyond:

Samuel Chasan, 35 Highgate Terrace, stated the big oak tree would not be affected by digging down for the seepage pit. Mr. Chasan stated a concern of his is that there are a lot of kids on the block and wanted assurance that the side is safe guarded by putting up a temporary construction fence during the construction.

Mr. Rosenberg stated the seepage pit is proposed to be in the backyard and will not impair the tree or the root system of the tree.

Mr. Becher stated he is aware of the neighborhood and the all of the children and will do everything necessary to protect the community during construction.

Board member Berkowitz inquired what kind of recourse there is if the application is granted and then finds out there is an extra inch of water in the neighbor's basement once the home is built.

Mr. Mondello stated the homeowner sues everybody, the developer, town, construction code official, and the board that granted the approval. However, there is a heavy burden on the homeowner to proof exactly where the water is coming from.

Approve Application with Requested Variances

Motion By: Amnon Wenger

Second By: Charles Steinel

6 ayes. 1 nay. Motion carries.

2. 145 West Main Street, LLC
145 West Main Street
Change of use to a multi-family dwelling R-5 zone to RM zone

Tabled until November 18, 2020 7:00 PM special ZBA meeting via Zoom

NEW BUSINESS

Discussion of Review of RFQ's

Board member Stein stated the town can send out and distribute the RFQ's, but the board has nothing to do with that.

Mr. Mondello stated the town has always sent out RFQ's for all positions. It is up to the board to decide what they want to do.

Mr. Mondello and Mr. Rotonda left the meeting.

Mr. Stein stated if it's not broke, don't fix it. Mr. Stein stated the board has done a great job under the stewardship of Ron and Frank. They have been covering themselves nicely.

Mr. Wenger stated he has no desire to look at RFQ's. The current experts have been doing a great job.

Mr. Smith stated he wants to look at the RFQ's.

Mr. Morf stated they should see the RFQ's from everybody.

Ms. Berger stated she has no need to look at RFQ's.

Mr. Steinel stated he has no need to look at RFQ's. But, if the board does, a committee is needed and rules as to what they are reviewing.

Mr. Nunez stated he would like to see the RFQ's.

Mr. Stein stated there are 4 board members that don't want to look at RFQ's and 3 that do. Mr. Stein stated at this point, they don't have to look at RFQ's. If there is a new board next year, it doesn't mean they can't do it.

Mr. Friedman stated he is finishing his first year on the board and has a legal background on land use cases. Mr. Friedman stated he doesn't have a need to see RFQ's.

Mr. Berkowitz stated he would probably like to see RFQ's. He looked at them last year and had different opinions. Mr. Berkowitz stated the board should look at the RFQ's every year to see what they are hiring and why they are hiring them.

Mr. Stein stated there are 5 board members in favor of maintaining the current professionals and 4 against. Mr. Stein stated the board has nothing to do with the RFQ's. They can come in and then decide what to do. The borough administrator and council are going to send out the RFQ's anyway.

Mr. Mondello and Mr. Rotonda returned to the meeting.

Mr. Stein stated the board was polled and the regular members voted 4 to 3 not to change the professionals and 5 to 4 of the full board not to change professionals. Mr. Stein stated whatever the borough administrator wants to do, the board will respect it. The board will not do anything.

Mr. Mondello stated based on the vote, the board would not be reviewing RFQ's to replace the professionals. If the board substantially changes in January, the board would have to start over.

Mr. Mondello and Mr. Rotonda left the meeting.

Vote To Maintain Professionals:

4 Ayes. 3 Nays.

Mr. Stein stated unless there is a significant change in the board members, the current professionals will be the same next year.

Mr. Mondello and Mr. Rotonda returned to the meeting.

Mr. Stein stated the board took an official vote to maintain the current professionals.

Mr. Friedman suggested having the special meeting to review the application for 145 West Main Street on Wednesday, November 18, 2020 via Zoom.

Vote to Hold ZBA Special Meeting on November 18, 2020 from 7:00pm to 10:00pm via Zoom
8 ayes. 1 maybe

Mr. Mondello stated the meeting is going to be by Zoom. He is going to have to reach out to them and it is substantially more money his office is paying on a monthly basis. Mr. Mondello stated he will inquire if they will allow him to have a one time meeting with 300 people. It is extremely difficult for him to be the board attorney, the moderator, the muter, etc. There is a growing trend for applicants to pay for a moderator, somebody who mutes, unmutes, and makes sure inappropriate images are taken down quickly. Mr. Mondello stated he will contact Mr. Capizzi and speak to him about a moderator, the new hearing date, and getting the notices to the residents withing 200 feet and publishing in the newspaper. Mr. Mondello stated Hilda will speak with Corey about posting on Facebook and will post on the borough website.

MOTION TO ADJOURN MEETING
Motion By: Charles Steinel
Second By: Amnon Wenger
All ayes. None opposed.

Meeting was adjourned at 9:38 pm.

Respectfully Submitted,

Hilda Tavitian, Zoning Board Clerk