

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TELECONFERENCE VIA ZOOM
May 3, 2021**

Vice Chairman Wenger called the meeting to order at 8:03 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 April 23, 2021 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.

Members of the public calling in to the meeting who would like to ask a question or make a comment, can press *9 to raise their hand and *6 to unmute themselves.

INTRODUCTORY STATEMENT

Read by Board member Friedman

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.

Mr. Friedman stated the zoning board doesn't change or modify the zoning requirements. Those are set forth in the municipal ordinance adopted by the borough council. Those requirements can only be changed by the borough council. The zoning board's role is to determine only whether a section of the municipal zoning code should be relaxed for a particular applicant. The board members here take their obligations extremely seriously.

Mr. Friedman stated the chairman had asked him to deliver the following statement. There has been some confusion in the community about public comments at the zoning board meetings. As required by the ordinance by-laws, the agenda always includes verbal communications. Verbal communications are phone calls or conversations which the board members or council have had prior to the meeting, which need to be disclosed. Public comments are different and are not verbal communications. Public comments are statements made at a meeting that don't pertain to any specific agenda item. They are not required by law to have a period for public comments. Mr. Friedman explained this is because they are not a political body like the borough council. The zoning board is a quasi-judicial body. As a courtesy, the board has entertained public comments in the past. However, because of the number of variance applications being filed to be considered, the board is required to promptly consider them. As a result, the board can no longer have a public comments section on a regular basis. However, the zoning board will entertain public

comments towards the end of each regular meeting, only if all of the other required business, including the consideration of pending variance applications has been concluded.

CORRESPONDENCE

None.

ROLL CALL

Present: Shimmy Stein (joined at 8:23pm), Richard Morf (joined at 8:13pm), Sara Berger, John Smith (joined at 8:13pm), Charles Steinel, Joel Nunez, Amnon Wenger, Marc Friedman, and Jose Morel

Absent:

Also Present: Gloria Oh, Zoning Board Attorney, Carlos Fuentes, Zoning Board Engineer, Councilman Marte, Council Liaison, Michael Knowles, Planning Board Liaison, and Hilda Tavitian, Zoning Board Clerk

APPROVE MINUTES OF PREVIOUS MEETING – April 5, 2021

Motion By: Sara Berger

Second By: Marc Friedman

All ayes. None opposed.

PLEDGE OF ALLEGIANCE

Led by Board member Smith.

Board member Friedman stated comments in respect to a specific application are going to be allowed as they have in the past. Public comments that do not relate to any specific application will be permitted only if there is time at the conclusion of the meeting. Mr. Friedman stated he presumes whoever is running the meeting will call on people in the order in which they raise their hands to the extent possible.

Mr. Wenger stated, for clarification, it's only for things not on the agenda subject to the public comments they were referring to. Members of the public will have the opportunity to discuss and debate every single application before the board today. Mr. Wenger stated all the applications tonight are carry overs from the previous meeting.

OLD BUSINESS

Applications:

1. Fabian Bonilla, 193 Woods Ave, Add a family room, master bedroom, and bathroom (Carried from 4/5/21 meeting)

Mr. Wenger stated last time the applicant was before the board there was a technical hold up. There wasn't a tax collector's certification. It was received and was circulated to the board members through email.

Xiamara Paredes, licensed architect, stated they are proposing a front entry canopy and a two story addition that requires two variances. The front canopy requires a front yard variance and the two story on the side requires an improved lot coverage variance. The house is already non-conforming in the front yard and also with the improved lot coverage. Ms. Paredes shared on the screen the plot plan, exhibit A2. The minimum required for the front yard variance is 25 ft. and the proposed canopy is 18 ft. The second maximum improved lot coverage is 35% allowed, and the existing is 45.22%. They are proposing 51.91%

There are two hardships. Ms. Paredes stated the variances are considered C-1 variances. The location of the house is already non-conforming to the front yard, where the existing is already at 19.67. The proposed is 18 ft. The intent of the canopy is primarily for safety and protection from the weather. They are also looking to improve the curb appeal. The location of the garage is all the way to the rear and is only 2.47 ft. from the rear property line, generating a large, long driveway. The additions comply with all other requirements of the R5 zone. She shared on the screen an aerial view of the block from Google Earth, exhibit A3. She stated the information is accurate and up to date. The line on the bottom shows the property line of the properties on the block. The line on the top is approximately 25 ft. that shows the required setback. There is a little encroachment at the front of the house, into the front yard, as indicated on the plot plan. This can be seen in the picture and shows the house is not out of line with the other houses on the block. The proposed canopy will not be the one closest to the street and will blend in with the rest of the homes. The addition proposed is going to 27.85 ft. of setback that will be complying with the required setback. They are making it much better. They will be improving the aesthetics also. The proposed canopy is over the existing steps and landing.

Board engineer Fuentes stated there are some details missing on the plan. They are requesting the applicant to provide curb and pavement detail. Mr. Fuentes inquired about the proposed landing and steps. Mr. Fuentes stated typically when the seepage pit is proposed, they require the ground and soil permeability testing be done and results of the testing be provided to their office for review. Mr. Fuentes stated he will resend his letter.

Ms. Paredes stated they are not proposing any changes to the driveway. The driveway is already existing. They usually indicate that in the construction documents. They will provide that information granted the application gets approved tonight. Ms. Paredes stated they will make sure the engineer provides the necessary information for the seepage pit.

Board member Smith inquired why the board should ignore ordinance 186-83, that non-conforming lots can't be increased or decreased and grant the application. Mr. Smith stated Ms. Paredes testified that nothing was being done with the driveway, but the plan is proposing an increase in the square footage of the driveway. The existing lot coverage is 45.32% and going up to 51.91%. Mr. Smith stated the lot coverage they are asking for is a lot.

Ms. Paredes stated they are not impairing the intent of the ordinance and impacting the neighbors in any negative way. They will be enhancing the aesthetics of the house which will be beneficial for the neighborhood and community. Ms. Paredes stated she had misunderstood. They weren't modifying anything in the front for the curb cuts. They are adding side stairs and slightly modifying the driveway. The area can be pavers, instead of asphalt. Ms. Paredes stated they can eliminate the existing walk altogether. It would be approximately 120 sq. ft. which is larger than the square feet they were adding to the side of the driveway.

Mr. Fuentes stated the walk seems bigger and eliminating it will make it better.

Mr. Smith inquired if they can use pavers for part of the driveway to help with the lot coverage.

Mr. Bonilla stated that it is a good possibility.

Board member Morf inquired about the location of the seepage pit. Mr. Morf stated there is a lot of hard surface in the backyard. Mr. Morf inquired if there is enough room for the seepage pit.

Ms. Paredes stated the seepage pit has been designed by the engineer. It will be 500 gallons and will take care of the stormwater and will be within the property. She doesn't know where the seepage pit is going

to be located. The engineer had only done the calculations. Ms. Paredes stated the property is wide. The requirement of a seepage pit is 10 ft. from the property line and 15 ft. from the house. There is plenty of room. Ms. Paredes's response was yes.

Board member Steinel inquired what percentage of the lot coverage is caused by the driveway.

Ms. Paredes stated the driveway is 2,186 sq. ft. existing. It is almost 22%.

Board member Berger inquired why they are doing the addition.

Ms. Paredes stated the present, existing footprint of the house is 811 sq. ft. The existing second floor is 635 sq. ft. The total house presently is 1,446 sq. ft. with 2 ½ bedrooms. The third bedroom is like a walk-in closet. She shared the floor plan on the screen of the existing house.

Mr. Bonilla stated they have two kids. It's just for the four of them. They have lived in Bergenfield for 23 years and love the house and town. They decided to enhance what they have. The house was built in 1939 and priorities were different back then.

Board member Morel stated the project is solid and identified that changing portions of the asphalt driveway to a permeable, paver system would eliminate concerns with the lot coverage.

Mr. Wenger inquired if that is something Ms. Paredes is willing to do.

Ms. Paredes inquired if the entire driveway would have to be done in pavers or can it be a big portion. Mr. Bonilla doesn't know the price of pavers. They have in the past proposed having the pavers at the beginning and leave the other part alone.

Mr. Smith stated the applicant gets an extra 10% credit for using pavers and would help with the lot coverage. Mr. Smith stated he or the other board members are not suggesting the entire driveway should be done with pavers. The cost will be enormous with the length of the driveway.

Mr. Wenger agreed with Mr. Smith and suggested Ms. Paredes work with the engineer.

Questions from residents within 200 feet:

No one came forward.

Questions from any residents:

No one came forward.

Grant application subject to conditions discussed regarding pavers and lot coverage:

Motion By: John Smith

Second By: Sara Berger

All ayes. None opposed.

Chairman Stein apologized for being late. Mr. Stein stated he had used an idiom at the last meeting which has been in use since the late 1800's. Unknown to him, it has become vulgarized over the years. It was not his intentions to be vulgar in any way, shape or form. Mr. Stein sincerely apologized for anyone who was offended.

2. Elozor Preil, 65 Maiden Lane, Add a sunroom and deck (Carried from 4/5/21 meeting)

Mr. Stein stated the tax certification was received and the application is deemed complete.

Elozor Preil, applicant, stated they want to square off the house by adding a sunroom and a deck. They enjoy sitting in the sun without bugs. The deck is for purposes of making the back look nice. The current patio is old and broken. It will enhance the quality of their lives, company visiting, and their children and grandchildren.

Board engineer Fuentes inquired if there was anything in his letter that was outside of their scope they were willing to do. Mr. Fuentes inquired about the impact the proposed improvements will have on the drainage or what the increase from the impervious areas will be towards the neighboring properties. The only thing the borough will require will be that the runoff is not directed towards the neighbors. Mr. Fuentes requested the proposed materials that will be used for the deck and sunroom be provided as well as the construction methods.

Board member Smith inquired why the board should grant the non-conforming. Mr. Smith inquired what the variance was for when he had gone before the board previously. Mr. Smith inquired how far off the property line is the deck.

Mr. Preil stated it is a small amount. The property was conforming because they have pavers as the driveway. The law changed and that put them over. It was within the conforming coverage area when they put the pavers. It was granted for a cantilever on the front of the house and for a mudroom that was added. Mr. Preil stated the deck is in line with the house. It looks like it's 5 ft from the property line on the side and the back is in line with the house.

Mr. Stein stated the law didn't change. They started enforcing the existing ordinance. Mr. Stein stated that according to Mike Ravenda, there is no side yard variance necessary.

Mr. Smith stated he doesn't have a problem with it. He stated when he looked at the house while parked on Frederick Place, he was confused with it and that is why he is asking for the distance of the deck.

Mr. Preil stated it is at least 25 ft. The deck is flush with the back of the house and the existing construction.

Questions from residents within 200 feet:

No one came forward.

Questions from residents beyond 200 feet:

No one came forward.

Alexey Braginsky, engineer, stated they are planning to connect the leaders to the existing leaders in the house. The water will flow the same way it does now.

Questions from residents within 200 feet:

No one came forward.

Questions from residents beyond 200 feet:

No one came forward.

Grant Application with Variance Provided Water is Tied in with Existing System

Motion By: Amnon Wenger

Second By: John Smith

All ayes. None opposed.

The meeting was recessed at 9:19pm and resumed at 9:30pm.

3. C.R. Restoration, LLC, 83 Hickory Avenue, Build six town houses (carried from 4/5/21 meeting)

Chairman Stein stated Christopher Naylis is representing the Bergenfield Fire Department. Mr. Stein stated there were a lot of questions regarding fire safety at the last meeting.

Mr. Rosenberg stated he only has the planner as a witness tonight. Mr. Rosenberg suggested getting Mr. Naylis' thoughts on the record first.

Christopher Naylis, former chief of Bergenfield fire department, stated he was at the site plan committee meeting on February 11, 2021 when this application was reviewed. He had provided comments at the meeting from the fire department's prospective. He had suggested the use of fire sprinklers for the building. He had also suggested a life safety sprinkler to let the occupants out of the building, but to fully sprinkler the building, those occupied spaces as well as the combustible concealed void spaces. Mr. Naylis state fire sprinklers in the combustible void spaces would be not for the occupants of the building but also for the firefighters that might have to fight a fire. Mr. Naylis stated at the site plan meeting he had asked what the fire flow requirements were for the proposed building and they did not have that information at the meeting. They did their own calculations and that type of building would need 6,000 gallons per minute. The water demand from the public hydrant is 750-800 gallons per minute. Hickory Ave has a six inch water main. If the building was fully engulfed in fire, there would not be adequate water flow stream capabilities for the unsprinklered building. If the building is sprinklered, it would cut down the demand significantly and there would be additional stream allowance. The sprinklers would cut down the water flow demands down by 250 gallons a minute. Mr. Naylis stated there were a couple of other suggestions if the applicant does not want to do fire sprinklers. The fire flow requirements can be cut and reduce the fire allows by providing fire walls that extend up through the roof line. Additionally, you can run a brand new 12 inch gridded main from their project down to Washington Avenue. It is proposed unsprinklered and there would not be enough water to fight a fire if that building was fully engulfed. The access concerns were also brought up at the site plan committee meeting. Mr. Naylis stated they are proposing 100 ft. from the curb line to the mouth of where the building and parking lane is going to be. The international fire code states 125 feet before you have to provide some turnaround for fire apparatus. Fire apparatus is not going to park outside of Hickory Avenue. You have a access lane and there is access to the property by the fire department. There are no provisions for fire apparatus to turn around safely and exit the property. One suggestion would be to cut down the number of units. There is a 17 ft. width on each of the side yards and 25 ft. setback off the rear that provides decent access around the building for the fire department, but still not great in throwing ground ladders and providing rescue capability in the sides and rear of the building. If the building was fully sprinklered, it gives the fire department and the occupants way more time to get in there, rescue anyone that needs to be rescued, as well as keeping the fire under control. Mr. Naylis stated he had provided some examples of different places that have had townhouse fires that were unsprinklered during his testimony at the site plan meeting. Fire departments lost those buildings because of the type of construction, most notably the Avalon in Maplewood, and the developments in Mahwah and Englewood.

Mr. Rosenberg stated the building will be fully sprinklered and will also provide the necessary fire ratings up to the roof line. They would like the opportunity to deal with the concern of vehicular movement on the site. Mr. Rosenberg stated he has spoken with the applicant and would like to adjourn so they can meet with their engineer and talk with Mr. Naylis about the issue raised this evening. Mr. Rosenberg stated they will have the planner testify after they have revised the plan.

Mr. Smith inquired if they would be able to put out a fire at the back of the building with all of the hose laid out.

Mr. Naylis responded yes.

Mr. Friedman asked Mr. Naylis to explain what he meant when he said yes.

Mr. Naylis stated the hose bends and when they try to pull it onto properties like this one with driveways, the engine will try to hug one side or the other so they are not impeding the fire apparatus that would be coming onto the property. The biggest concern is for the aerial device to get in there for rescue. Mr. Naylis explained they would want access to the front of the building for the aerial device. The drive access into the property is 20 ft. which is within the requirements and is more than adequate. It is 25 ft. across, heading east to west. The area around the building is adequate for the fire department to traverse and be able to put up portable ladders to be able to use aerial device if the need came to be. They would not be able to turn the vehicles around.

Mr. Smith inquired what happens to the water pressure if they were fighting a fire at this building and the church across the street all of a sudden caught fire. Mr. Smith inquired about needing more fire plugs and hydrants.

Mr. Naylis stated it's not necessarily about the pressure. It's about the flow. You wouldn't have enough gallons per minute to fight that fire and another fire. Mr. Naylis explained you would have to relay pumps and have to take water from the source. Water would have to be taken from Washington Avenue all the way up to Hickory Avenue to provide adequate water pressure and flow. Mr. Naylis stated you can earth that's underground. You start taking out more water, you run into issues when the pipe collapses. The capacity is not there when there is more potential fires in the area. 6,000 gallons of water a minute is needed to fight a fully engulfed building fire there due to the size. The other homes in the area are significantly less and require less water.

Mr. Steinel stated his concern is that this development is behind existing houses and if they pull up in the street, their view would be so obscured that all that would be seen is smoke coming up before the houses. He stated his concern is the existing parking plan that a fire truck is able to maneuver and position properly.

Mr. Rosenberg stated they need a revised date and to be announced to the public.

Mr. Stein stated it will at the next meeting on June 7, 2021. The public can ask their questions and make comments when they review the revised plan on June 7, 2021. The application is adjourned to June 7, 2021 with no further notice necessary.

4. 145 West Main Street, LLC, 145 West Main Street, Change of use to a multi-family family dwelling R-5 zone to RM zone (Carried from 4/5/21 meeting)

Special Meeting for 145 West Main Street on May 25, 2021 8pm-11pm
All ayes. None opposed.

Mr. Smith inquired what does the new date do to the board's window.

Mr. Stein stated they will have to extend it. Mr. Stein stated the board has 120 days to approve or deny the applicant. The applicant has the right to extend that deadline.

Mr. Capizzi stated it will be extended.

Mr. Wenger stated there was an attorney hired to represent Mrs. Rosado and wanted to comment on record.

Mr. Stein stated he will be able to comment after a date for the special meeting is chosen. Mr. Stein stated Mr. Capizzi will give notice of the special meeting on Tuesday, May 25, 2021.

Mr. Stuart Lieberman, attorney representing Mrs. Rosado, stated they are dismayed as they sat through the entire last meeting and they have a planner here tonight. Mr. Lieberman stated he doesn't understand if Mr. Capizzi had another meeting tonight, why this wasn't adjourned. Mr. Lieberman stated he doesn't recall getting a letter.

Mr. Capizzi stated Mr. Lieberman had received the letter from him two weeks ago stating they were not proceeding this evening. It was emailed to his office. The letter clearly stated they were on for scheduling purposes only this evening and Mr. Lieberman was copied on the letter.

Mr. Stein stated he saw the letter also and it was to schedule a new date only.

Mr. Mondello stated he will be sending out the meeting notice. It helps him with the preparation of the resolution. If there isn't anything else, they are set for May 25, 2021 at 8:00pm.

VERBAL COMMUNICATION

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

Mary Sullivan, resident, stated she clarified with the borough attorney Schettino and he had said you can limit comments to five minutes but there is no limit on questioning an applicant's specialist. Ms. Sullivan stated Mr. Schettino had said that only people within 200 feet need to give their address, beyond 200 feet is optional.

Mr. Stein stated absolutely. The board is not here to stifle anybody's questions. The only limit is during public comment. Mr. Stein stated yes, that is correct. Mr. Stein stated all that giving an address does is give a courtesy to people who are impacted more by an application.

Matt Doyle, 75 Hillside Avenue, stated he had submitted an application to the building department for an oval 12x20 swimming pool and was denied because of lot coverage. He inquired what his next steps are. Mr. Doyle inquired if it is more than just a revised survey that shows where the pool is. Mr. Doyle stated it's 240 sq. ft., 43%. He inquired putting \$3,000 in escrow.

Mr. Stein stated his next steps are to go for variance and go before the zoning board. Mr. Stein suggested having an engineer do the calculations for water absorption and runoff. Mr. Stein can't tell him what to do and if it will be granted or not., but Mr. Doyle may want to bring a professional and get the engineering numbers in line to mitigate issues presented by a pool. Mr. Stein stated a pool presents a problem. Mr. Stein stated the pool might add 15% more. He inquired what percentage is Mr. Doyle going for. Mr. Doyle will have to explain to the board that the extra percentage of coverage will not negatively affect water runoff from his property. An engineer is needed to help with the numbers. Mr. Stein stated Mr. Doyle needs to speak with the building department about the escrow requirement.

Jennifer Odamtten, resident, inquired about a possible enclosed patio in the back. She had originally wanted to have a deck installed and was told she wouldn't be able to due to the amount of concrete in her backyard. She inquired what her next step would be. She stated that they made it seem like Bergenfield is trying to be greener and that was why she was denied.

Mr. Smith stated it probably was denied because of the lot coverage, having too much concrete.

Mr. Stein stated she will need to consult with a professional. He inquired what percentage was written on the letter of denial. Mr. Stein stated it's a numbers and negative impact game. The board can not tell Ms. Odamtten what to do.

Mr. Smith asked Ms. Oh if there is any way a letter can be written to the applicant to add money to the escrow account. Mr. Smith stated he had called borough hall earlier in the day and was told the professionals bill were paid up to date, but more money will need to be added again because there will be another special meeting. If not, they are going to run into the same problem. The borough attorney had said if there isn't enough escrow money, they should not continue to hear the application. Mr. Smith stated they need to get assurance that there is money in the escrow account before the meeting on May 25th, 2021. Mr. Smith inquired who will take care of that.

Mr. Stein asked Hilda, board clerk, to find out if there is money in the escrow account.

Board clerk Hilda Tavitian stated she spoke with the building department earlier in the day and they had requested more money for the escrow account from the applicant. She will follow up with the building department prior to the next meeting.

MOTION TO ADJOURN MEETING

Motion By: Sara Berger

Second By: John Smith

All ayes. None opposed.

Meeting was adjourned at 10:09PM.

Respectfully Submitted,



Hilda Tavitian, Clerk

Zoning Board of Adjustment