

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TELECONFERENCE VIA ZOOM
SEPTEMBER 13, 2021**

Chairman Stein called the meeting to order at 8:00 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 September 7, 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.

PLEDGE OF ALLEGIANCE

Led by Chairman Stein.

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 regulations that are set forth in Bergenfield and zoning ordinance. Typically, we hear two types of variances. The first is whether an applicant can vary from land use restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second type of variance 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 Law which is available online. The Borough's zoning ordinance is also available online. 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 for a bulk variance, we must grant the requested variance. Approval of a use variance requires five affirmative votes.

Chairmen Stein stated everyone received a letter today and Hilda informed him last week that Joel Nunez has resigned from the board effective immediately. He thanked him for his service.

ROLL CALL

Present: Shimmy Stein, Richard Morf, John Smith, Amnon Wenger, Marc Friedman, and Jose Morel

Absent: Sara Berger and Charles Steinel

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 – August 2, 2021

Motion By: John Smith
Second By: Richard Morf
All ayes. None opposed.

CORRESPONDENCE

Chairman Stein stated they received a letter from 40 Sixboro Hickory LLC, 40, 44, 46, 48 Hickory Avenue stating they are withdrawing their application. They were to be carried over to this meeting.

OLD BUSINESS

NEW BUSINESS

1. Gary DeMauro
16 Tyson Place
Convert 2nd Floor to Residential

Chris Blake, architect, shared on the screen the site plan (Exhibit A2) consisting of 2 pages. The first page shows the existing second floor plan. It is an existing two-story building in the rear portion of the property. There's parking in the front of the property. There currently are four offices on the second floor that are vacant. They are proposing to keep two of the offices and turn the other two offices into residential apartments. The first floor of the building has a 1 unit residential apartment on the left hand side. On the right hand side, there's a garage area used for storage. The property is in the B-2 zone and is in the business district. Mr. Blake stated the variances they are seeking are for proposed use of a residential unit where a business unit is allowed. They are not proposing any changes on the first floor. They are changing approximately 50% of the space on the second floor from two offices to two residential units. Mr. Blake stated they will not be changing the size or shape of the building. All of the zoning bulk items will remain non-conforming. The property is undersized and is too narrow. It is existing non-conforming in the rear yard. The right combined side, as well as the maximum improved coverage, the building height, and front yard are all in compliance.

Chairman Stein inquired why the building height is approximately 30 ft.

Mr. Blake stated they can do better. It is less than 30 ft.

Mr. Madaio stated two years ago, the board granted permission for a residential use on the first floor. They are not here for the first floor and only before the board for the second floor. Mr. Madaio stated on the second floor, they currently have a full floor of offices. They are seeking to convert about 50% or a little more of it from offices to residential. The placement of residential on the second floor in the B-2 zone is a permitted use. It is not a D variance. Mr. Madaio explained residential on the second floor in a B-2 zone is allowed. The non-permitted use is the grandfathered office space on the second floor. The B-2 zone permits these two residential units on the second floor. They are proposing to put two apartment units on the second floor of a B-2 use that is permitted by code.

Chairman Stein stated the confusion comes from the rejection letter where it says non-permitted use.

Mr. Madaio stated Mr. Ravenda might have been contemplating the fact that it's a mixed use. In the B-1 & B-2 zone, you are allowed mixed use, commercial on the first floor and residential on the second floor. This application is to make the building more conforming. It eliminates the commercial or a chunk of the

commercial on the second floor and adds the residential on the second floor which contemplates the ordinance.

Chairman Stein asked Ms. Oh if this is correct, that they need to apply only for a C variance and not a D variance.

Board attorney Oh stated that is correct.

Mr. Madaio stated that is all contained in the limiting schedule. The limiting schedule permits any B-1 permitted use under the same condition prescribed. It's an amended site plan approval. They are making no changes to the site plan. It's not exempt from site plan.

Board member Friedman stated on page A2, it says "proposed/existing first floor plan". He stated he is confused and inquired if the apartment adjacent to the garage area is an existing apartment.

Mr. Blake stated the entire first floor is existing. There isn't anything proposed for the first floor. The drawing indicates, in the front portion, an asphalt parking lot. There is enough space for parking vehicles on the right and left. There is a two-way aisle that is more than 30 ft. in the middle. The parking on the right and left are both existing. Each side has 7 parking spaces with a total of 14 spaces currently available for parking. They are not proposing to change any of that. They lost 1,600 sq. ft. on the second floor and are losing 8 spaces. The office space that was there would require 8 spaces. The parking spaces for residential would only require 4 spaces. Mr. Blake stated they are making a gain of required parking spaces which the requirement would be 15.8 spaces.

Mr. Smith stated in the picture on the drawing, it shows trucks are parked there. He inquired if the trucks are going to still be there.

Mr. DeMaura, owner of the building, stated that is temporary. Mr. DeMauro stated the reason they are going to change the space to residential is because they can't get anyone to rent the office space. The trucks are parked there only temporarily because of the flood.

Mr. Madaio stated they are before the board for parking, which they are deficient. This application makes the parking less deficient than existing. They are better than they were before and are not changing the building footprint. They are not altering the side, the yards, and the height.

Chairman Stein stated anything that is non-conforming is a C variance.

Board engineer Fuentes stated he was in agreement with Mr. Madaio and the testimony given by Mr. Blake. The subject site is in a B-2 zone. Residential use above a commercial use is allowed in a B-2 zone. He doesn't believe it is a use variance case. There are bulk variances. The variances are non-conforming, pre-existing conditions and will not be altered by the proposal. It would just be a continuation of the existing non-conforming. The one variance the board should keep in mind is the required parking spaces. There is a requirement for 16 spaces and a total of 14 are provided. Mr. Fuentes stated it has been explained that it is a condition that is being enhanced by the application. As per the borough ordinance, an evergreen hedge or a nontransparent fence is required per code along the eastern and western side of the parking area. Currently, there is a chain link fence which can't be seen through. Mr. Fuentes explained the applicant has the option of either converting the fence into something that is compliant with the code or providing an evergreen hedge along the sides of the parking. Mr. Fuentes stated they are suggesting the applicant provide either a stop sign or a stop bar at the exit of the parking area. During his field visit, Mr. Fuentes noticed there were some cars parked on the gravel area in the front of the parking area, which is not a permissible spot for parking. Mr. Fuentes stated he is not sure if the garage stores vehicles or

smaller machinery. Mr. Fuentes stated if it's to be for storing vehicles, then he stated he doesn't see how they can have a parking space with a vehicle entering and exiting the garage. The plan shows there are 3 proposed lights to be installed on the building. It will bring the existing parking lot into compliance with the lighting code of the borough. Mr. Fuentes stated they are not proposing any improvements and are not increasing the impervious areas. Stormwater should not be an issue for this site. Mr. Fuentes stated they can have some testimony regarding traffic analysis. The board should have a better understanding whether the proposed change in use will increase or decrease the traffic produced by the site.

Mr. DeMauro stated its only for storage.

Chairman Stein inquired if the applicant will comply with the fencing requirement. Mr. Stein inquired if Mr. Madaio wanted to discuss the traffic. He stated he personally doesn't see a problem in the traffic flow. Mr. Stein inquired if the parking spots will be dedicated to the residential tenants.

Mr. Madaio stated they will comply with everything in Mr. Fuentes' letter. Mr. Madaio stated the town's ordinance indicates there will be less traffic by the fact that there's less spaces required. It's a fully permitted use.

Mr. DeMauro stated he can mark the spots.

Board member Smith inquired if there will be a handicapped spot.

Mr. Madaio stated there will absolutely be a handicapped spot.

Board member Friedman stated that Mr. Ravenda had stated in his letter that "the application to convert the second floor to residential and convert the partial first floor has been denied". Mr. Friedman inquired if Mr. Ravenda was incorrect with the partial conversion of the first floor.

Mr. Madaio stated he made the same mistake because of the way it was noted, as existing/proposed. Some members of the board may recall about two years that he was before the board for the first floor, which was already approved.

Chairman Stein inquired if there will be 14 parking spaces, not 12.

Mr. Madaio stated they are accepting that the higher number is the right number and will go with the higher number required.

Mr. Friedman stated the first reason Mr. Ravenda gives for denying the permit is "nonpermitted use – residential above a garage and storage". Mr. Friedman asked Mr. Madaio if it is his position that Mr. Ravenda is wrong in that in the B-2 zone, the proposal to construct two apartments on the second floor is not a nonpermitted use. Mr. Friedman stated he was at the property today and it occurred to him that there is no retail use there as contemplated by the ordinance. Therefore, maybe Mr. Ravenda is right and the applicant would need a use variance to be able to construct two apartments above a garage. There is no retail space on the first floor. Mr. Friedman stated he wants to make sure the board does the right thing for the community. If the garage is being used for storage, it is not being used for commercial/retail within with the intent of the zoning code in the B-2 zone.

Mr. Madaio stated it is his position as such because it is the town's zoning ordinance's position. Mr. Madaio read the zoning ordinance into the record. Mr. Madaio stated there is no definition in the zoning ordinance of commercial retail. There is a definition of business, retail, wholesale or service. There are a lot of second floor apartments where the downstairs is commercial in a broad sense. Mr. Madaio stated

the distinction is being a very observant one. The phrase is "residential units above ground floor commercial retail units". In the strictest sense, emphasis is on "retail" rather than "commercial".

Mr. DeMauro stated it is just his personal tools that are stored in the garage.

Mr. Friedman stated if he is right and it's very technical reading, testimony would also be required to satisfy the requirements for a D variance.

Mr. Madaio stated in the past this was some sort of commercial garage, a commercial facility. If the board feels strongly about planning testimony, then the matter can be carried and they would provide it.

Mr. Stein stated the board should consider that they are not touching the area and not making any changes. The applicant is strictly here for the upstairs.

Board member Smith stated he knows there are other garages and his memory is that there was an apartment and then they switched it over to commercial on the second floor. There are other businesses in town with residential above garages.

Questions from residents within 200 feet and beyond:

No one came forward.

Mr. Madaio asked the board to consider a D variance as maybe necessary to permit residential over a garage as opposed to commercial.

Board member Friedman asked Mr. Madaio, in respect to the positive and negative criteria, he is satisfied with the negative criteria just by seeing the property and walking in the neighborhood. He asked Mr. Madaio to identify for the record to discuss what the positive criteria are.

Mr. Madaio stated there is no particular hardship other than the condition of the building structure and the changing of uses over time. This is a C2 application where the benefits of the deviation outweigh any detriments of the deviation from the zoning code and that the purposes of zoning are advanced. Mr. Madaio stated those purposes add adequate light air and open space, preserve appropriate variety of different uses, residential areas that seems necessary as opposed to office uses that seem vacant for a long time, and an aesthetic benefit.

Chairman Stein stated they are adding the D variance.

Motion to Approve Application

Motion By: John Smith

Second By: Amnon Wenger

All ayes. None opposed.

2. Gazmend Lita
372-378 S. Washington Avenue
Change of use

Mr. Madaio stated the property is located across the street from the laundromat and is a little up the street from the Walgreens on the corner. It is on the south end of town and is in the B-1 zone. The application is to add two residential units to the first floor because of the difficulty in renting commercial units on the

first floor. Mr. Madaio stated the cross hatched area on the plan are two commercial spaces that are not prime. There is one space that is only accessible from the rear by the side door of the building. It has no frontage or exposure on the avenue. There is another commercial space on the first floor and that is the one with the slight jog in it. That space is also difficult to work with. Mr. Madaio stated on the existing, the single space on the right hand side is already a residential space on the first floor.

Chris Blake, architect, 24 New Bridge Rd, Bergenfield, NJ, shared on the screen Exhibit A2, the existing first floor plan on the left side. The other commercial space has access from the front of the building. Mr. Blake stated there is an existing 1 bedroom residential unit on the first floor. The upper right hand drawing is showing the site plan with the parking to the left hand side. Mr. Blake explained that on the second page, in the middle of the page, shows what they are proposing to do. On the left side is the new apartment unit to the rear and on the right hand side is the new apartment unit that is in the front. The apartment to the rear is 1553 sq. ft. that is a three bedroom unit and the bedroom on the right is 1027 sq. ft., which is a two bedroom unit. They are not proposing any changes to the footprint. The only change that may occur is that some of the windows in the bedrooms may be adjusted for egress. Currently, they are required to have 19 spaces of commercial on the first floor. Mr. Blake stated they have 2 spaces for the residential unit on the first floor. On the second floor, there are five apartments. Each of those units would require two spaces. They would require 31 total spaces currently as the existing building. They are proposing to have two commercial spaces on the first floor, losing square footage of the commercial spaces. That would decrease their requirement of commercial space from 19 to 7 spaces. They will be increasing the residential from 1.8 to 1.9. While they will decrease 8 units of commercial, they will be increasing 4 units in residential. They have a net loss of 4 parking spaces. They are required to have 23 parking spaces, where 15 spaces are provided. The apartment unit created in the back with no frontage on the avenue is not a good layout for commercial space.

Mr. Madaio stated residential units are usually intended to be on the second floor in the B-1 or B-2 zone. The goal is to change the two commercial units that are vacant to two residential units. Mr. Madaio stated right now it requires 31 spaces and they only have 15 parking spaces. Subsequent to the proposal, they will require 23 spaces, but they will still have 25 spaces. They are getting more compliant by requiring less parking spaces. Mr. Madaio stated they are not changing the parking lot or adding spaces. The property is not getting bigger. The parking demand is diminished by 8 or 9 spaces.

John Lita, applicant and owner of the building for 20 years, stated the front unit was rarely rented in the past 20 years. The back unit is difficult to rent and was only rented to construction companies, but due to complaints from his tenants, it has been vacant for a year. There are five residential units upstairs. Mr. Lita stated the building was built in the 1940's and has had 5 apartments on the second floor, 1 apartment on the first floor along with 3 commercial units. As Mr. Blake stated, they are proposing 2 extra parking spots in the back. Mr. Lita stated the tenant on the first floor is a coffee shop. They just got their permits to renovate.

Chairman Stein inquired about the extra spaces in the back. Mr. Stein stated in the denial letter, all it says is the use. There is no mention of handicapped parking or anything else. He didn't see a handicapped spot there.

Mr. Lita stated there were 13 before and are adding 2 more to make it a total of 15 spaces.

Mr. Madaio stated Carlos had called out a concern for ADA parking. If it's required, they will have to build it.

Board engineer Fuentes stated it is for a use variance for residential on the ground floor. It is not permitted in a B-2 zone. There were various bulk variances which are existing non-conforming conditions

that will not be altered by the proposal. The two new variances being requested are in regards to the parking spaces. Mr. Fuentes stated there are 15 proposed spaces. However, the two additional spaces in the rear of the building will not be accessible at the same time. There will be limited access if there is one car in the rear spot closer to the northern side of the building and if there is another car in front of it. Mr. Fuentes stated he doesn't think the car will be able to exit and to consider it to be only 14 proposed parking spaces, not 15 spaces. The other required variance, that is an existing non-conforming condition, is the drive aisle for the parking. There is only 19.2 feet for vehicles to back out, where a 24 foot width is required by the ordinance. Mr. Fuentes stated they would like to hear testimony if the parking spaces will be assigned to the different residential and commercial uses. They recommend a stop sign or stop bar at the driveway exit. They would like to hear testimony about trash hauling and storage onsite. The lighting is not part of the application since there already is a lighting system in place and there are no proposed changes. The existing fencing is compliant with the code. As indicated by the traffic analysis, there should be a decrease of traffic being generated.

Mr. Lita stated the trash is removed by a private hauler. The trash container is kept at the end of the parking lot.

Mr. Blake stated the container is at the end of the parking lot. It's not contained in a loose dumpster.

Mr. Stein inquired if there is room for a truck to pick it up even if every spot is taken.

Mr. Lita's response was yes.

Mr. Fuentes stated the location of the trash eliminates the two spaces in the rear of the building. There isn't enough room to provide a compliant space with enough space to maneuver in and out.

Mr. Madaio stated they can eliminate those or use them as ad hoc spaces. They will take them off of their count. Mr. Madaio stated they don't exist now and they are not going to create artificial spaces. Their demand for spaces goes down as a result of this application. Mr. Madaio stated they are not counting two additional spaces due to the difficulty in reaching them.

Chairman Stein stated they were 8 spaces short before and they are now 10 spaces short.

Mr. Madaio stated they used to be 20 spaces short. There are only 13 spaces onsite now. Their demand has gotten significantly less.

Board member Friedman stated there is no doubt that a use variance is required. Mr. Friedman stated he heard nothing that would persuade him that the positive and negative criteria have been satisfied. He looked at the plan with respect to where the parking spaces are situated, and inquired if fire apparatus can get to the rear of the property if required. There is no turn around room for any fire vehicle. Mr. Friedman stated he is concerned about the inadequate space for a fire truck to get to the rear of the property should there be a fire.

Mr. Madaio stated the lane going back is 19.2 feet wide.

Mr. Blake stated it is more than sufficient for a single vehicle to travel through a parking lot. It would be sufficient for a fire truck to get back there. It narrows the path, but is still sufficient for a single vehicle to get back there. Mr. Blake stated it would be the same 16 foot aisle that would be in front of a grocery store fire lane. 16 feet is more than sufficient for a larger vehicle.

Board member Smith inquired if a fire truck would be able to get to the rear of the building even with the fire escapes on the side of the building hanging down.

Mr. Friedman asked Mr. Blake what kind of single vehicle he was referring to.

Chairman Stein inquired if it would make a difference if the driveway was moved where the two parking spots are. There still wouldn't space for a truck to be able to turn around. There would be more room to operate out of if the area is cleared instead of having it for garbage. Mr. Stein inquired if there would be enough room for a rollaway so the truck doesn't have to go into the corner to pick up the garbage. It would be a place the firemen could work out of in the corner. Mr. Stein inquired about the snow removal.

Mr. Fuentes stated it would definitely clear up that space in the back.

Mr. Lita stated they remove the snow in the front of the parking lot. Mr. Lita stated he removes the snow himself.

Board member Smith inquired if Mr. Lita is responsible for removing the snow and not the residents.

Mr. Madaio stated it is clear that they have not presented planning testimony in this application. If the board feels that planning testimony would help to fully understand statutory issues related to the D variance, they would finish this evening as best as they could and come back and provide that.

Mr. Stein stated there are two issues, the fire and planning. The board would feel better if Mr. Lita came back at the next meeting with the proper experts.

Mr. Smith stated they would like them to come back as he had some questions that would add to the ones Mr. Friedman talked about. It would be wise to get some experts. Mr. Smith stated he would like more information regarding snow and trash removal. They need better testimony as he's seen residents shoveling snow. He inquired if the application is granted, if it would fall under the fair housing element. It should be checked out with the borough attorney. Mr. Schettino had told him that the townhouses and the apartments would fall under fair housing and suggested Mr. Madaio reach out to the borough attorney to find out what the requirements were.

Board member Wenger stated he agreed with board member Smith. He stated that someone has been very active in the chat this entire time disparaging testimony. He wanted to remind everybody that unless they are sworn in, they should not be commenting in the chat.

Mr. Madaio stated he would rely on the borough ordinance. If the fair housing settlement applies, there is nothing anyone can do.

Board attorney Oh stated Mr. Smith has checked with the borough attorney regarding fair housing for another application.

Questions from residents within 200 feet and beyond:

Patricia J. August, 15 Warren Street, stated Mr. Lita crams construction trucks and other cars in the parking lot that crash into her garage, damaging it. They should look at the rebar. Ms. August stated she has talked to him and written him letters. The health department has given him summonses for the garbage. The lids to the garbage are never closed and is bubbling over. Other construction companies dump in the dumpster and the residents that live there can't put their garbage there. There are rats as a result and it is disgusting. The dumpster hits her fence. Mr. Lita puts out couches, heavy windows,

building construction debris that has bent her fence. There is a 3 foot drop in the back of the building and is higher by the bank. Mr. August requested if people are going to park there, to make sure he puts the bars up so they don't hit her garage and drive into her backyard. Ms. August stated she has tenants that park in her yard and does not want anyone to get hurt. The dumpster gets emptied at 4:00am and wakes everyone up. Ms. August stated they can do a OPRA request for all the tickets he's gotten from the health department. She inquired if he can put up a fence and if he is allowed to park unregistered vehicles. There are men there over the weekend that do oil changes and auto repairs in the back. Ms. August stated he rams the snow into her garage with a plow. She hopes there will be improvements made for handicapped parking.

Chairman Stein stated her comments are noted 100% by everyone on the board. Mr. Stein stated when he comes back at the next meeting, Mr. Madaio will have to address the neighbor's concerns. She's testified under oath that these things are happening and they have to show otherwise. Mr. Stein stated if he is code compliant, they can't ask him to do anything. He can do something out of consideration for Ms. August but it is not the board's jurisdiction if he is code compliant. Mr. Stein stated they are addressing many of the issues Ms. August is bringing up. Mr. Stein stated there is no notice necessary. The next meeting is October 4, 2021 on zoom. It will be posted on the borough website and all the information needed for the meeting. The application will be tabled and will be back on October 4, 2021. No notice necessary.

Mr. Madaio stated the applicant extends the board's time to hear the matter. There is an extension for whatever time necessary to provide the board with the information necessary. Mr. Madaio stated in the event they can not have plans reworked, he will be in touch with Hilda and Ms. Oh to figure it out.

PUBLIC COMMENT

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

No one came forward.

MOTION TO ADJOURN MEETING

Motion By: John Smith

Second By: Amnon Wenger

All ayes. None opposed.

Meeting was adjourned at 9:38PM.

Respectfully Submitted,



Hilda Tavitian, Clerk
Zoning Board of Adjustment