

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

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

OPEN PUBLIC MEETING STATEMENT

In compliance 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 December 1, 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's zoning ordinance, which can be found online. 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. 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.

ROLL CALL

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

Absent:

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

APPROVE MINUTES OF PREVIOUS MEETING – November 1, 2021

Motion By: Marc Friedman
Second By: Sara Berger
All ayes. None opposed.

CORRESPONDENCE

Chairman Stein stated they received a letter regarding the Triple J. Family, Inc. D/B/A Dunkin Baskin Robbins, 275 S. Washington Ave, application requesting a postponement until the next meeting. No further notice is necessary.

Board attorney Oh stated they received a letter from Mr. Simon, of Herold Law, attorney representing the owner of the property next to the Dunkin Donuts property. Ms. Oh stated they raised a res judicata issue and it has to be looked into. The application is being carried to the next meeting.

OLD BUSINESS

1. Resolutions:

Matthew Doyle, 75 Hillside Avenue, Construct Semi-Inground Pool
All ayes. None opposed.

Bergen Regency LLC, 51-59 Bedford Avenue, Construct a Multi-Family Residential Building in B-2 Zone
All ayes. None opposed.

Ron & Alizza Weinberg, 60 Highgate Terrace, Construct second story addition and new rear one story addition
6 ayes. 1 nay.

Paul & Selena Koppel, 35 Thames Blvd, Construct a new second story addition and new rear two story addition
All ayes. None opposed.

NEW BUSINESS

1. Applications: Valerie Van Clief
122 N. Prospect Avenue
Change of Use from One Family to Two-Family Home

Valerie Van Clief, applicant, stated she is asking for a change of use variance in order to sell her home. No physical changes are to be made. Ms. Van Clief stated 30 years ago she had put in a second kitchen that was fully okayed by the town with permits for her daughter, daughter's husband and her son to live in the home. Mrs. Van Clief stated six years ago she had a room raised over her attic and around the same time she had her legal second kitchen moved upstairs. All permits were finalized and inspections were done. She received a Certificate of Occupancy for all upstairs work being done on a legally, two-family house. She thought that was the category her house was listed as until she went to list it for sale. She was told she would have to apply for variance in order to change it to a two-family listing.

Chairman Stein requested clarification that no physical work was being done to the property. Mr. Stein stated the home is in an R5 zone and applicant is requesting a two-family variance with no construction.

Ms. Van Clief stated no. It's exactly the way it has been since her daughter moved in years ago.

Board member Friedman stated he doesn't understand why if this is in an R5 zone and it's a two-family house, why a use variance is required.

Ms. Van Clief stated it's been listed as a one family house since 1967 when she bought it. As far as she knows, the only time the category changed was when they applied to put in the extra kitchen. Then, it got classified, according to the town, as a mother/daughter. Nothing changed for 30 years. She explained when she was ready to sell her home, it was hard to sell it as a mother/daughter. Therefore, she decided to put in another bedroom in the attic and moved the kitchen with the required permits.

Chairman Stein stated it's just a matter of re-classifying the house as a two-family, which should have been done years ago.

Ms. Van Clief stated the assessment doesn't have the kitchen and the room upstairs listed, which was done 30 years ago.

Questions from residents within 200 feet and beyond:

No one came forward.

Board attorney Oh stated two-family homes are permitted in the R5 zone. This is just a change of use. It was not designated as a two-family previously.

Chairman Stein stated it's a change of designation, not a change of use.

Motion to Approve Application as a Two-Family Home

Motion By: John Smith

Second By: Richard Morf

All ayes. None opposed.

Ari Moskowitz
234 S. Washington Avenue
Construct Two Story Building – Used Car Lot

Board attorney Oh stated this application was received a few months ago and it is now being heard. She would like to ask Mr. Capizzi to lax the time constraints on the application until the next meeting.

Matthew Capizzi stated they will happily grant an extension of time for the board if necessary.

Chairman Stein stated once they start hearing the application, it will just be a continuation of the application.

Matthew Capizzi, 11 Hillside Avenue, Tenafly, NJ, attorney for applicant, stated they are before the board for a application located at 234 S. Washington Avenue. It's a used car lot that's been in existence for over 30 years under Double A Discount Auto. The business has evolved over the years. At present, most of the sales are done predominantly online. Mr. Capizzi stated vehicles are bought at a local auction house and are either driven to the property or brought directly to the purchaser of the vehicle. The site is essentially used as a display area for vehicles that are available for purchase, somewhat of a holding area, and somewhat of an area for prospective purchasers to come to the property and view the inventory. The property currently has a small, one-story building acting as a small hub for office personnel. Mr. Capizzi explained they are seeking to make several site improvements, including the construction of a new two-

story building that will operate as the headquarters for the employees. Mr. Capizzi stated used car sales is a use that is not allowed in the municipality in any zone and is allowed as a secondary use associated with new car sales. There are no new car sales occurring at the property. It is a legal existing non-conforming use. Technically, there is more building area for the non-conforming use and they are seeking a D2 use variance. There is less area of the property for the display of used cars. Mr. Capizzi explained they would have a de-intensification of the site. There are some bulk variances required as to the setbacks of the proposed building. The side rear yard setbacks are less than what's required. Some improvements include drainage enhancements, resurfacing of the parking lot, and landscaping enhancements. Mr. Capizzi stated they spoke with the board engineer about some of the comments he made in his review letter and they are prepared to address them.

Board member Smith inquired if he has to recuse himself from hearing the application as the VFW is a block away from the application and he is listed as the post master for the VFW.

Board attorney Oh stated she is not sure what Mr. Smith's responsible is in connection with the VFW. However, to be on the safe side, Ms. Oh suggested Mr. Smith recuse himself.

Board member Smith recused himself from hearing the application.

Chairman Stein stated the D variance requires 5 votes for approval.

Sean McClellan, licensed engineer, 101 West Street, Hillsdale, NJ, shared on the screen the site plan, Exhibit A1 dated 4/7/21. He stated the plan shows the existing condition. It's a small building for used car sales. It's a corner lot on N. Washington Avenue and West Broad Street. It is in the B2 zone with a lot area of 11,200 sq. ft. It conforms with the lot width and depth. The impervious lot coverage is 98%. Cars are lined up along the perimeter and the interior of the lot, with no striping on the property. There is one grade for drainage. Mr. McClellan stated there was no discernible circulation pattern in and out of the property when he visited the site. He showed on the plan that the proposed pink spots will be designated for displaying the cars. They are proposing 7 spots for customers and employees to park their cars. They anticipate some of those spots will be utilized for displaying vehicles, also. They are proposing a driveway that takes you in and then takes you out, making it much better for the site conditions. He showed on the plan the proposed two-story building. The existing grade will be removed and replaced with three new grades with three 1,000 gallon seepage pits. They will make one of the 7 spots an accessible handicapped spot. Mr. McClellan stated the aisle width is 24 feet. As per the board engineer's recommendation, they will shorten the width of the walk and shorten the length of each parking space to give a better back area. They will cut the sidewalk down from 4 feet to 3 feet and shorten the length of the parking from 18 feet to 17 feet. There will be 22 feet between the stalls and the sidewalk, which would be sufficient. There might 1-2 people visiting the site for the entire week. The traffic from the customers would be very little, if any, as most of the sales are online. He doesn't believe the cars are brought onsite by trailers that hold 12-15 cars. Mr. McClellan stated there are some small trees along the property line that will be removed. There will some shade trees planted along Broad Street or a planter. They will replace the sidewalks in the right of way. The gas and water from S. Washington Avenue will be utilized. The existing sanitary sewer line will most likely be replaced from the proposed building to W. Broad Street. The wood fence will be very close to the proposed building and will be replaced with a vinyl fence. The 6 x 5 dumpster pad will be enclosed with fencing. Waste will be picked up twice a week by a private company.

Chairman Stein inquired if the 3 seepage pits in the back of the property will be adequate. They are heavily concentrated in one area. Chairman Stein stated the lighting was not discussed.

Board engineer Fuentes stated the property drains from S. Washington Avenue to the rear to where the building is proposed. The way they have their grades shown now along with their seepage systems is fine.

Mr. McClellan stated the existing lighting onsite will remain.

Mr. Fuentes inquired if the light on the corner of the property will be relocated to somewhere else on the site as there is a conflict with the spaces and the light.

Mr. McClellan stated they will relocate the light.

Chairman Stein stated there are approximately 30 legal parking spots on the property and requested clarification if, based on use, one handicapped space is enough.

Board engineer Fuentes stated for a minimum of 25 spaces, 2 handicapped spaces are required.

Mr. McClellan stated they are not going to stripe the spots designated on the plan by pink.

Questions from residents within 200 feet and beyond:

No one came forward.

Raul Mederos, licensed architect, Imagen Architecture, 24 W. Railroad Avenue, Tenafly, NJ, shared on the screen the architectural plan dated 1/11/21 (Exhibit A1). The building is a two-story rectangle. It will be for business use with several offices and all required restrooms. There will be a standard HIP roof and they are proposing hardy panel siding where the building faces the two streets. They are proposing hardy planks for the other sides of the building. The ceiling heights throughout the first floor, between the offices and the garages are 10 feet. It's a two-car garage and its intended use is to prepare (waxing, detailing) and wash cars for display on the lot. There is no lift. Mr. Mederos stated it shows in the grid on the plan, the front facing elevations of the building are the hardy panels, which will resemble stucco siding. On the sides, facing the interior, they are proposing standard, hardy, horizontal plank siding. They are well within the height limitation for the zone. The elevation is based on pre-construction, which is 24 feet. As built, it will be somewhere between 25-26 feet based on the proposed site work. Mr. Mederos explained the 24.4 feet specified on the engineer's plan is based on pre-construction conditions onsite.

Chairman Stein stated there would be no variance required even if they are off by a couple of feet. They need to clarify what it's going to be, should the application be approved. He requested clarification that there will be no car repairs.

Mr. Mederos stated that's the requirement per the code. There's been no talk about any repairs of any kind.

Mr. Capizzi stated that they can confirm that there will be no repairs performed at the property.

Board engineer Fuentes inquired if there is any proposed signage on the building.

Mr. Capizzi stated they are going to rely on the existing sign for now.

Chairman Stein stated they would need a permit for any other sign. They should have no issues if they stay within the ordinance if they choose to add a sign.

Mr. Capizzi stated they will not be making any modifications to the signage.

Board member Morf stated he was concerned with the rear property setback being close to the other building, being only 5 feet. He inquired if the building could be shifted to the front a little bit more. Mr. Morf inquired if they can't make it a circular driveway.

Mr. Capizzi stated if they bring the building further towards Washington Avenue, they won't be able to keep the drive aisle at least 22 feet and would reduce the drive aisle in depth.

Mr. Mederos stated the back wall will be fire rated, which is necessary. The fire separation is defined as the midpoint between the closest points of the two structures. The building would be designed to conform to the fire rated requirements. Mr. Mederos stated it doesn't make a difference. It's a one hour fire rated wall and will be per code and no windows are going to be allowed there. The windows that are shown on the elevation at the 5 feet setback location will be omitted and removed in subsequent revisions of the plan. They are proposing a hardy plank siding, which is not a code requirement, but is as close as you can get to non-combustible with regards to siding.

Board member Morf stated it looks like they have storage in the other building. If there is a fire back there, it could be dangerous. Mr. Morf inquired if it is a wood building or a concrete, block building.

Board member Steinel inquired why the handicapped bathroom will be on the second floor.

Mr. Mederos stated according to the code, it's a requirement.

Board member Friedman asked Mr. Mederos to describe what is on the other side of the property line.

Mr. Mederos stated he didn't pay attention to the neighboring property when he visited the property.

Chairman Stein stated, according to the drawing, there are four storage sheds. There is a bigger structure behind it but is not along the fence. There is about a 10 foot distance between the two structures. There will be a minimum of a 6 foot fence between the two properties.

Mr. Mederos stated there was mention about a roof overhang from a neighboring property which may cover a outdoor staircase. The difference of having their building five feet, two feet or less doesn't make a difference due to the fire rating requirement.

Chairman Stein stated the door swings for handicapped bathrooms are supposed to come out and not in and suggested switching the swing. Chairman Stein stated, should the application be approved, they would have to comply with all ADA regulations.

Mr. Mederos stated they will be sure to meet the code requirements.

Questions from residents within 200 feet and beyond:

No one came forward.

David Spatz, licensed planner, 60 Friend Terrace, Harrington Park, NJ, stated he reviewed the plans, visited the property, looked at the zoning ordinance and master plan, and provided a report to use for testimony for this evening. He shared on the screen photos he had taken of the property in late winter/early spring (Exhibit A2). He described what the photographs showed. Mr. Spatz stated the property is in the B2 zone. He explained while it permits new car facilities, it does not permit used car facilities. It is a non-conforming use that has been there for many years. The intensity of use is not being expanded on the property, but the existing building is being expanded. The property is well suited to what is being proposed as the use has been there for many years. Mr. Spatz stated it's in an area that has

automotive uses around it. There is an auto repair shop directly behind the property, tire shop on the opposite side of W. Broad Street, and a couple of automotive uses of replacing auto glass across the street. Mr. Spatz stated what is being proposed is an enhancement of the property and will make the existing use function better by providing a building that can have office space so each employee can have their own office space, an interior garage so two cars can be prepped with the building, and bathroom facilities. It is providing something that makes the site more reasonable to use. The onsite circulation is being improved. They are not proposing an intensification, but an enhancement of the use on the property that makes it beneficial for the patrons, employees, and the surrounding properties. Drainage improvements will enhance the property and will protect offsite properties. Landscaping will be added to beautify the property as there currently are some straggly trees in the rear southwest corner of the property that don't do anything to enhance the site. Mr. Spatz stated the expansion of a non-conforming use variance can be granted because they are providing a benefit to the use of the property and the surrounding properties. There are three bulk variances for rear yard, side yard, and impervious coverage being sought. The site has total control of a majority of the cars on the property. There isn't anything that is substantially negative about what is being proposed. There will be enhancements on the property with drainage, replacing sidewalks, adding curbing, and more controlled access to employees and patrons. The positive improvements that are being made far outweigh anything that might be considered to be negative. It is appropriate to grant the variances.

Questions from residents within 200 feet and beyond:

No one came forward.

Motion to Approve Application with Variance Relief and Conditions:

Motion By: Charles Steinel

Second By: Sara Berger.

7 ayes. 1 recused.

2. Discussion of RFQ's

Chairman Stein stated the RFQ's will be distributed by paper form only. He asked if anyone had comments how the RFQ's should be looked at.

Board member Steinel stated he is not up on the law. He stated when they do the fair and open process, there needs to be a criteria to base your selection. He stated they need some guidance on the type of criteria to look for, such as someone who is local, someone who has experience. The fair and open process is not very helpful to the board.

Board attorney Oh stated it's not up to her to explain what to look for or how things work regarding the appointment and recommendations. This year the borough tried to receive the RFQ's electronically and there was some information about the criteria for selection. Ms. Oh stated she can look into it and will send the information to Hilda tomorrow to distribute to the board members.

Board member Steinel stated you need a criteria to select from.

Chairman Stein agreed with him. They will see what Ms. Oh sends the board members and go from there. The board's reorganization meeting is scheduled for January 3, 2022. Mr. Stein stated the council's reorganization meeting is not until January 4, 2022. He explained being there are two terms that are expiring this year, plus one resignation, it doesn't make sense to have a reorganization meeting where three of the people that voted will not be on the board next year. Mr. Stein made a motion to move the board's reorganization meeting to January 10, 2022 to follow the council's meeting and know who is on the board for the following year.

Motion to Move Reorganization Meeting to January 10, 2022:

Motion By: Shimmy Stein

Second By: Charles Steinel

All ayes. None opposed.

Chairman Stein stated the Dunkin Donuts application will be heard on January 10, 2022 and asked Hilda to inform Mr. Madaio. He thanked all the board members, board attorney, and board engineer for their service this year. He wished everyone a happy New Year and to be safe.

Board attorney Oh wanted to clarify that even though Mr. Smith had voted no to approve the Weinberg application, he could still vote yes on memorializing the resolution.

Mr. Smith stated his vote is still no.

MOTION TO ADJOURN MEETING

Motion By: Charles Steinel

Second By: Shimmy Stein

All ayes. None opposed.

Meeting was adjourned at 9:40 PM.

Respectfully Submitted,



Hilda Tavitian, Clerk
Zoning Board of Adjustment