

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
June 13, 2022**

Chairman Shimmy Stein called the meeting to order at 8:04 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.

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.

ROLL CALL

Present: Shimmy Stein, Richard Morf, John Smith, Jose Morel, Jason Bergman, and Marc Friedman

Absent: Sara Berger and Amnon Wenger

Also Present: Gloria Oh, Zoning Board Attorney, Robert Beringer, Zoning Board Engineer, and Hilda Tavitian, Zoning Board Clerk

MOTION TO GO INTO CLOSED SESSION

Motion By: Chairman Stein

Second By: Mr. Bergman

All ayes. None opposed.

1. Resolution – 16 Glenwood Drive North

Return to Open Session at 8:23 p.m.

PLEDGE OF ALLEGIANCE

Led by Mr. Smith.

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 that are set forth in Bergenfield's 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. 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.

APPROVE MINUTES OF PREVIOUS MEETING – May 2, 2022

Motion By: Mr. Bergman

Second By: Mr. Morf

All ayes. None opposed.

CORRESPONDENCE

Chairman Stein stated a neighbor of 84 Lee Place wrote a letter regarding the variance granted for a wrap around porch. The neighbor sent a letter with a list of their safety concerns after the resolution was adopted. All of the concerns were addressed at the meeting by the board engineer. They are entitled to voice their concerns. However, it is out of the board's hands. The resolution was approved on May 2, 2022 and the notice of decision was published on May 6th, 2022. Mr. Stein explained they legally have 45 days from May 6th, 2022 to file an appeal. It does not come back to the Zoning Board.

OLD BUSINESS

1. Resolutions:

Avram Zamist, 16 Glenwood Drive North, New Single Family House

Ben Wine, attorney from Prime & Tuvel, stated this is an unusual situation and they are requesting a motion for reconsideration. The reconsideration is based on the review of the draft resolution by the applicant. He stated in reviewing the tape, there is some ambiguity on both sides. The board approved the expansion of the existing structure with concessions and his client misunderstood the concessions. Mr. Wine stated the resolution was not adopted at the May 2, 2022 meeting. On May 11, 2022, Mr. Zamist pulled a demolition permit and demolished the structure. Mr. Wine stated he can present to the board an email received from Tracey in the building department stating the permit was ready and payment was needed. The draft resolution forwarded to his office last week reflects the minutes adopted. A motion for reconsideration entitles the board to correct a mistake of facts and they are entitled to reconsider. The applicant would re-notice and follow the town's procedure for an open public meeting.

Chairman Stein stated there wasn't a demolition permit pulled, as per Mr. Ravenda. Mr. Stein inquired if it would be a brand, new application. The approval they got was based on the existing structure. The structure no longer exists. Mr. Stein explained when they come back with a new application, the risk is that being in an R5 zone, they would wind up with 5 ft. setbacks. They may have less than what they have now. The board had voted eliminating variances and based on what the applicant had told them. The two choices the applicant has are: if they are willing to live with what was granted and build on the footprint or come back with a brand, new application with new drawings and new notice. They will need all the variances that were existing non-conforming before.

Comments from residents:

No one came forward.

Mr. Wine stated they would like to proceed with reconsideration and come back with revised plan.

Motion To Allow To Come Back with New Application

Motion By: Mr. Stein

Second By: Mr. Smith

All ayes. None opposed.

1. Resolutions:

Enrique Urquiola, 87 Hickory Avenue, An addition

Motion By: Mr. Bergman
Second By: Mr. Morf
All ayes. None opposed.

Yitzi & Terri Karasick, 65 Thames Blvd, New Single Family House

Motion By: Mr. Morf
Second By: Mr. Bergman
4 ayes. 1 Abstain. None opposed.

**Oleg Lukyanov & Alina Vosk, 69 Glenwood Drive North, Paver Driveway, Paver Patio, and
Wooden
Deck**

Motion By: Mr. Bergman
Second By: Mr. Morf
All ayes. None opposed.

David & Jessica Lefkowitz, 23 Thames Blvd, An addition

Motion By: Mr. Bergman
Second By: Mr. Morf
All ayes. None opposed.

The meeting resumed at 9:15 pm.

2. Application:

Triple J. Family, Inc. D/B/A Dunkin Donuts Bask Robbins
275 S. Washington Avenue
Drive Through
Carried from May Meeting

Board member Richard Morf recused himself.

Mark Madaio, attorney for applicant, stated Matthew Ross is now the attorney representing the objector.

Matthew Ross, Mueller Law Group, 19 Engle Street, Tenafly, NJ stated he represents Peters' Properties as an objector.

Board member Friedman stated he listened to the tape of the last meeting and signed the certification.

Mr. Madaio presented a painting of Dunkin Donuts from the mid 1950's when it first opened (Exhibit A16). Mr. Madaio explained when his client first purchased the Dunkin Donuts, one of his friends had published an article and taken an early picture of the store (Exhibit A17). Mr. Madaio stated the board members had received a package from him which was already submitted for the consideration of res judicata. They were never marked and now would like to have them marked them and be resubmitted. Mr. Madaio read into the record all of the exhibits A3-A15 he submitted.

Chairman Stein stated for the record that he has no relationship or doing any business with the applicant.

Mr. Madaio stated previously the operations manager of Dunkin Donuts, Joy Juevarra had testified. Mr. Madaio stated they fully comply with the borough's parking ordinance.

Joy Juevarra stated Dunkin Donuts is a family business and is just like the picture of the building when it first opened up. A picture is like a thousand words. She stated that their lifestyles may have changed since then, but it's still all about family. She saw her parents open the store at age 13. It was her first job and she is still here. Dunkin Donuts is a staple in town and part of their heritage and history. It was the second Dunkin location in New Jersey. She explained when people want to get together and have celebratory moments, they go to Dunkin Donuts. They are here to provide for the community. The world is changing and they are just adopting. She is a nurse practitioner and she cares for people. It's the same concept at Dunkin Donuts.

Mr. Madaio stated there is a change in industry in which most places that sell coffee have drive throughs.

Mr. Ross inquired if the 40% decrease in sales was due to Covid-19. Mr. Ross inquired if their two non-drive through locations are River Vale and Bergenfield. He inquired, since the peak of covid-19, has there been an improvement in the percentages of sales at Dunkin here. He inquired if it is correct that there are only 16 drive through locations in the county. Mr. Ross wanted clarification that this was a family business. Mr. Ross stated that the corporate offices are encouraging franchises to add drive throughs. Mr. Ross inquired if the corporate offices for Dunkin are offering incentives for drive throughs based off the model Dunkin. Mr. Ross inquired if corporate offices are offering construction managers to assist with the drive throughs. Mr. Ross inquired if it is correct that the corporate offices have dictated two drive through lanes. He inquired if it is an option for the franchisee and if it is an option they have chosen. He inquired if the incentives change, if they go from one lane to two.

Ms. Juevarra stated the locations that did not have drive throughs decreased in sales by 40%. The Little Ferry location that has a drive through had a decrease of 15-20% in sales. Ms. Juevarra stated the River Vale and Bergenfield locations do not have drive throughs. There has been an increase in sales because people are coming out, but not back to the way it was before pre-covid. Ms. Juevarra stated that is correct, there are only 16 drive through locations in the county. Ms. Juevarra stated that is correct. Ms. Juevarra stated that is correct. She stated yes, that is the standard. Ms. Juevarra stated having two drive through lanes is not a requirement. It depends on the layout of the property. The Little Ferry location is a single lane drive through. She responded no.

Mr. Madaio stated any plan or design submitted has to be approved by Dunkin.

Mike Hubschman stated they have to send the plans to Dunkin Donuts for approval and it takes a while. The drawings were submitted June 2021.

Chairman Stein stated everything needs to be approved. They have a general model.

Mr. Ross inquired if there is anything stopping the owner from reinstituting a 24 hour day after the drive throughs, if approved, go in.

Ms. Juevarra stated there are no plans to be 24 hours. The current hours are the preferred hours of the crew members and their opinions are valued.

Mr. Ross presented aerial pictures from Google maps (Exhibit A1 from objector). The first page was a layout of Wendy's drive through, the second page was the McDonald's drive through, third page was the Taco Bell drive through, and on the fourth page of the Burger King. Mr. Ross stated the fifth page is a printout of the Dunkin Donuts with parking on either side and means of ingress and egress. It loops around the building. He inquired, from an operational perspective, if there is any reason they couldn't have the two drive through lanes where the means of egress/ingress are right now.

Ms. Juevarra stated they would lose parking. It would work from an operational perspective. The two lanes will work operationally.

Questions from residents with 200' and beyond:

Roxanne Santos, 10 Magnolia Street, stated when Mr. Ross had inquired if there was anything stopping resuming 24 hour operations after the drive through if approved, Ms. answered the question in a round about way. All they have to go by is her word.

Mr. Madaio stated it is not their intention. There is no legal impediment.

Jeff Wahl, 33 Magnolia Street, inquired when the survey on the number of patrons and cars there will be in the parking lot was last done. He inquired if they used the numbers during covid-19 in the application.

Ms. Juevarra stated they always have an updated list every week. She stated, from an operational standpoint, they get the average customer counts on a daily basis.

Chairman Stein stated the traffic engineer would be able to answer that question.

Mr. Madaio explained everything is pre-covid numbers. The only time covid numbers were used was only when they were specifically asked how much they were off because of covid.

Roxanne Santos, 10 Magnolia Street, inquired if the delivery of supplies comes on Wednesdays at 4am. She inquired about who will plow the snow in the winter. She inquired if there have been any studies done that impacts the drive through.

Ms. Juevarra stated none of the times the vendors deliver will change. The DCP supplies they receive is once a week on Wednesdays between 11:00-11:30am, the slowest time for them. They have control over when the delivery is. The garbage trucks come at 5:00am. The trucks that deliver at 3:00am won't change. She stated she is not aware of any studies done.

Board member Smith inquired if the number of employees for walk-ins will stay the same.

Ms. stated they have adequate staff now and the staff will be able to multi-task.

Mike Hubschman stated there were some minor comments from Pennoni Engineering and the county regarding the walkway to the rear, the measure from the front yard and the canopy. There was no change in the impervious coverage. There will be two drive through lanes. The lights will be LED with 14 ft. high back shields with no glare. Drainage will change and will show more grades.

Mr. Madaio stated Exhibit A2, the site plan, was amended to include the site plan revisions dated 5/17/22. He inquired if the drive throughs can be moved anywhere else and if changing the drive throughs to the middle will lose parking spaces.

Mr. Hubschman stated there is only 100 ft if moved elsewhere. Mr. Hubschman's response was yes. The entire area is paved. They are providing a 2 ft. buffer. The site is not big enough to put lanes in the middle of the parking lot.

Mr. Ross wanted to clarify a parking variance is not being sought. He inquired how many parking spaces there currently are. Mr. Ross inquired how many windows from the Peter's property face the parking lot. He inquired if emissions testing was done.

Mr. Hubschman's response was correct. Mr. Hubschman stated there are 10 in the parking lot and 6 along the east end. If they shift the drive through to the left, they would lose 10 spaces. There are six windows. The alcove goes 5-8 ft. back. Mr. Hubschman stated there was no emissions study done.

Board engineer Beringer stated he is still waiting for the traffic engineer's testimony to review some of his comments.

Frank Truilo, 8 Martin Place, Chatham, NJ, licensed architect, stated he had done the previous remodel in 2014. The architectural plans (Exhibit A18) are dated 12/1/21. The building footprint does not change. They are only adding a drive through window at the back corner. The counter is now "L" shaped and they are going to make it a straight line. The window is a 4 ft. sliding window. Mr. Truilo stated the sign currently has the logo Baskin Robbins Dunkin Donuts. They will be taking the Donuts off the logo. Two years ago, Dunkin Donuts had re-branded their logo. The sign will just say Dunkin. A sign variance is required since there are three signs. The ordinance only allows one sign. They will be repainting the building in medium to light grays. Mr. Truilo stated there will be directional signs for safety that are standard. There will be a canopy over the window to protect food from inclement weather. There will be one window for both payment and picking up the food.

Questions from residents within 200' and beyond:

Joseph Tryvala, 33 Magnolia Street, inquired where people will park and how they will be able to exit if deliveries are made by 50 ft. trailers. Mr. Tryvala stated the speaker at the window will disturb the neighbors.

Mr. Truilo stated deliveries can be taken from the front door. Mr. Truilo stated the menu board will have speakers.

Roxanne Santos, 10 Magnolia Street, requested the dimensions of the window. Ms. Santos inquired how high will it be from the ground. She inquired if employees in the drive through window will be able to see over the 6 ft. fence.

Mr. Truilo stated the window will be 4 ft. wide and 3 ft. high. Mr. Truilo's response was no.

Mr. Madaio submitted the drainage report as Exhibit A19.

Chairman Stein stated the special meeting should not be for the traffic engineer's testimony. Chairman Stein stated the application is carried to the August 1, 2022 meeting with no further notice.

NEW BUSINESS

Applications:

1. Matthew & Sabina Hackman
16 Somers Avenue
Porch and Patio

Matthew Hackman, applicant/owner, stated they would like to build a small mud room and porch. Mr. Hackman stated when they come into the house, there is no place to put their coats and shoes. They would like to build the front 9x5 ft. They are currently at 25 ft. and it shows proposed at 19.7 ft.

Chairman Stein stated coverage is good, it's just front yard setback.

Board engineer Beringer stated the addition doesn't impact the site in any negative way.

Questions from Residents within 200' and Beyond:

No one came forward.

Motion to Approve Application:

Motion By: Mr. Smith

Second By: Mr. Bergman

All ayes. None opposed.

2. Rebecca & Jason Katz
44 Glenwood Drive North
An addition

Sergio Chavarria, licensed architect, stated they are proposing an addition to a single-family house to the rear and the side of the property. The existing house does not have a garage. They are expanding the property to include a attached garage. Mr. Chavarria stated they will maintain the line of the existing porch encroaching on the front setback.

Chairman Stein pointed out the drawing shows no variance for front yard setback. The side yard requirement is 5.10 ft. and they have 13.5 ft. A variance for that is also needed. The coverage is good.

Board engineer Beringer inquired if they will be using the existing utilities, if they are going to add more bathrooms, and if the existing sanitary water will be able to handle it. Mr. Beringer stated there are some concerns with the stormwater system and there is no onsite water system in the application. He requested documentation as to what is being proposed.

Mr. Chavarria stated they will use the existing sanitary water system. There will be no exceeding water.

Mr. Beringer stated Mr. Chavarria is welcome to say there will be no exceeding water. It just needs to stated as such. Once the revision is made, he will issue an engineering review, should the application be approved.

Mr. Morel stated he would like clarification for the storm water.

Chairman Stein stated should they require a seepage pit, they will provide it. The owner and architect agreed to it. Mr. Stein stated, should the application be approved, it will be 18 9/16 ft. 20.8 ft is the garage, which is incorrect.

Mr. Friedman inquired if the applicant gets approved for 19 ft, the intent is not to move the garage closer to the street.

Mr. Chavarria stated there is no need to move it closer.

Questions from residents within 200 feet and beyond:

No one came forward.

Motion To Approve Application

Motion By: Mr. Bergman

Second By: Mr. Morf
All ayes. None opposed.

A five minute recess was taken at 9:05 pm.

VERBAL COMMUNICATIONS

Comments by members of audience on matters no on evening's agenda

Mary Sullivan, resident, suggested including in the annual report applications that were not approved also.

Board attorney Oh stated she already includes in her reports applications that were denied.

MOTION TO ADJOURN MEETING


Motion By: Mr. Bergman

Second By: Mr. Smith

All ayes. None opposed.

Meeting was adjourned at 10:43 p.m.

Respectfully Submitted,


Hilda Tavitian, Clerk
Zoning Board of Adjustment