

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
February 6, 2023**

Vice Chairman Amnon 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.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on this matter.

PLEDGE OF ALLEGIANCE

Led by Mr. Smith.

ROLL CALL

Present: Richard Morf, Sara Berger, John Smith, Amnon Wenger, Jose Morel, Jason Bergman, and Marc Friedman

Absent: Shimmy Stein and Nishant Desai

Also Present: Gloria Oh, Zoning Board Attorney, Joseph Kong, Zoning Board Engineer, and Hilda Tavitian, Zoning Board Clerk

INTRODUCTORY STATEMENT

Read by Board member Fridman.

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 – January 9, 2023

Motion By: Mr. Smith

Second By: Mr. Bergman

All ayes. None opposed.

CORRESPONDENCE

None.

OLD BUSINESS

1. Resolution: 145 West Main Street LLC, 145 West Main Street, 3 Two-Family Dwellings

Board member Smith stated he had voted no for the application for the following four reasons. First, item #4 on the application asked if the property borders on a county road. Mr. Smith explained the applicant had checked off no and it is a county road. Second, a traffic study is required if it is a county road. A traffic report was not done. Third, he had asked the planner a question which was never answered. Lastly, Mr. Smith stated it is too big of a project. He stated he can't vote for the memorialization of the resolution, but he can state his opinion. Also, taxes weren't paid until after the application was approved by the board. He stated for an application to be complete, taxes have to be up to date and the tax form was not complete.

Board attorney Oh stated taxes were due February 1st, 2023 and taxes were paid in January 2023.

Vice Chairman Wenger stated Mr. Smith's comments are noted. He asked Ms. Oh if in her opinion, not checking that it is a county road and a traffic study was not done, would be grounds to overturn the vote. He inquired if the board's vote would be subject to following the town and county's ordinances.

Board attorney Oh stated she confirmed with the board engineer that the property does border a county road. Ms. Oh stated the resolution states the applicant will have to follow all ordinances and directives of the Borough of Bergenfield, county, and state. In addition, there will be two provisions in the resolution that state the approval was granted based on the testimony of the applicant, witnesses, exhibits, and application submitted to the zoning board. The relief granted is subject to the conditions stated in the resolution. The applicant will have to get the county's approval as the property borders a county road. Ms. Oh stated if the county requires a traffic study, then they will have to submit one. The traffic study is discretionary for an application like this one.

Mr. Wenger stated if there is a problem with the traffic, the county will decide and have the applicant make the changes.

Mr. Barry Doll stated there may be other things lacking from the application besides taxes not paid. He stated if the board goes ahead and approves the application, they are going to appeal it. He inquired what harm would there be to get all the facts straight.

Mr. Wenger stated the board listened to months of testimony for the application. Once it is deemed complete, the board needs to hear the testimony. The court has to decide the proper jurisdiction.

Mr. Smith stated when the application is received from the building department, it is assumed the application is complete. It's not the board's fault.

Mr. Doll stated he had brought it to the board's attention and was told it was verified by the board attorney and the board.

Mr. Wenger stated a decision was already rendered.

Board engineer Kong stated the zoning board has no jurisdiction regarding the county road. As a condition of the approval, the applicant has to satisfy all outside agency approvals. The plans will not be signed off until there is proof of that. Mr. Kong stated everything the board doesn't have jurisdiction over, the county will require. If there are revisions to be made, it will come back to the

board engineer for review. The resolution itself, contains the conditions required upon approval. If this project was on a borough road, traffic for three double family homes would not typically generate a lot of traffic.

Maria Ng stated the papers should have been checked to ensure everything was correct. Taxes have to be paid. She stated she didn't know how the application was before the zoning board since 2020 and taxes were not paid during the whole time.

Vice Chairman Wenger stated the application was already voted on and approved. The board is only voting on to memorialize the resolution or if the resolution needs to be modified.

Motion to Approve Resolution

Motion By: Mr. Bergman

Second By: Mr. Wenger

Three ayes. Two nays.

2. September 2023 Meeting Date

Motion to Schedule Tuesday, September 12, 2023 Meeting

Motion By: Mr. Smith

Second By: Mr. Bergman

All ayes. None opposed.

A recess was taken at 8:27 pm. The meeting resumed at 8:35 pm.

NEW BUSINESS

Application:

1. Ronald Hermann
1 Norfolk Street
Proposed Cabana, Deck, and Inground Pool

Matthew Capizzi, attorney for applicant, stated Mr. and Mrs. Hermann own the property at 1 Norfolk Street located on the corner of Norfolk Street and Westminster Avenue. The reason for the variance application has to do with the therapeutic needs of Mr. Hermann. Mr. Hermann has Parkinson's disease and as part of his muscle training program, his doctor has recommended he incorporate swimming in his routine. The variances being requested in this site plan are relative to pool setbacks and impervious coverage.

Kent Rigg, 24 Godwin Avenue, Midland Park, NJ, licensed engineer, presented Exhibit A2, the same plan submitted but colorized. Mr. Rigg stated the existing property is a 7,748 sq. ft. corner lot located within the R-6 residential zone with frontage along Norfolk Street and Westminster Avenue. Mr. Rigg stated they are proposing to construct a cabana, deck, in-ground pool, and a retaining wall. The variances being requested are: proposed pool to be constructed 6 ft. from the rear property line and 5 ft. from the western side property line where 10 ft. is required, proposed cabana in the eastern side yard area and is set back only 1 ft. where 15 ft. is required for corner lots, and proposed improved lot coverage is 51.1%, where 35% is maximum allowed. The proposed pool size will be 40x18 and will be 6 ft. away from the rear of the property line. The proposed patio will be 15 ft. on the Westminster Avenue side. Mr. Rigg stated a 6 ft. high vinyl fence is proposed that will provide a buffer from the neighbors. A seepage pit in the front yard is proposed to connect to each corner of the roof drain.

Board engineer Kong stated there was no inclusion of the construction of the roof drain across the driveway. He inquired if the existing driveway is going to be replaced with pervious pavers and if it is pervious now. He requested more details of the existing driveway and to confirm if they are taking credit for pervious pavers and how they are planning to restore the existing driveway.

Mr. Rigg stated there is minimum disturbance with the paver driveway. Mr. Rigg stated he can't tell if the driveway is pervious pavers and needs to confirm by taking out a spot or two from the driveway.

Mr. Kong stated he would like to see details to make sure it's pervious pavers. Clarification is needed along with documentation to receive the credits. Mr. Kong inquired if they would be able to comply with all comments made in his engineering letter. Mr. Kong stated test results need to be submitted from the permeability test.

Mr. Rigg stated they will comply with all comments made in the engineering letter.

Board member Morel inquired if the L shaped construction is within the property line. He asked about the depth of the pool.

Mr. Rigg stated it is just 10 ft. short of the property line.

Mr. Capizzi stated the pool will be no deeper than 6 ft.

Mr. Friedman inquired if there will be plumbing in the cabana. He inquired about the height of the cabana.

Mr. Capizzi stated there will be plumbing for a shower. It will be no taller than 15 ft.

Vice Chairman Wenger stated they are not seeking variance for the height of the cabana. It will be capped at what the maximum height in the regulations allows.

Mr. Friedman stated the pool is 40x18. He inquired if there is any reason the pool can't be reduced to 36x18. He inquired if there is any technical impediment to moving the pool closer to the house so that the rear setback would increase from 6 ft. to 8 or 10 ft. Mr. Friedman inquired if the pool will be enclosed for use all year round.

Mr. Rigg stated it could be done.

Mr. Capizzi stated the pool will not be enclosed.

Board member Morf inquired if they can eliminate the cabana and move the pool closer to the house.

Mr. Capizzi stated they will try to provide some separation between the pool and the deck by taking 2 ft. out deck, making it 14 ft. The pool would then be 8 ft. off the property line and bring it closer to the house.

Mr. Morf inquired if they could make the pool 16 ft. and move the cabana against the back of the house. Also, if they can shorten the pool from 40 ft. to 32 ft.

Board member Smith stated the pavers will have to be redone. He inquired if the leaders are going to be replaced. Mr. Smith stated there is a drain that is 2 ft. off the property. There is water that comes from the

vents at the side of the gutters that is not going into the seepage pit. Mr. Smith stated the gutters now have an opening and inquired if they are going to be replaced. Mr. Smith inquired if any trees will be cut. There are 8 or 9 trees along the back property line on Westminster Avenue. Mr. Smith stated there is no sidewalk on Westminster Avenue or Norfolk Street. If the application is granted, the cabana is going to be in the borough's right of way. Mr. Smith stated they are requesting three variances and the letter of denial shows four variances. The board engineer also identified four variances. He inquired if the applicant is aware of the fourth variance.

Mr. Rigg stated the leaders don't need to be replaced. Mr. Rigg stated the typical overflow is shown on page 2 of the plans. Mr. Rigg's response was yes. Mr. Rigg stated there is a good chance some evergreens will be removed. Some are on the adjoining property. Mr. Rigg stated they are aware of the fourth variance as stated in the engineering letter.

Mr. Capizzi stated some of the trees can be replaced outside of the new fence. They can obtain permission for new plantings for the right of way. Mr. Capizzi stated the cabana will be on the applicant's property.

Questions from Residents within 200' and Beyond:

No one came forward.

Mrs. Jennifer Herman, applicant, 1 Norfolk Street, stated her husband was diagnosed with Parkinson's disease about five years ago. He needs two hours of exercise every day. She explained they made a gym in their home to slow down the progression. Swimming is one of the recommended exercises that her husband doesn't do. Mrs. Hermann stated one of the reasons for the size of the pool is that you are not supposed to make a lot of turns. She requested the board help them do the right thing for Mr. Hermann and stated they can provide doctor's documentation.

Board member Smith inquired how often did the doctor say he had to swim. Mr. Smith stated knowing how often and how much would help with discussion of decreasing the size of the pool.

Mrs. Herman stated the doctor didn't say, but it's like walking. It might be twice a day. Mrs. Herman stated there will be no diving board. They will have strict rules and be very safe.

Mr. Capizzi stated he needs to have one continuous lap. The body can't accommodate turns. Mr. Capizzi inquired if there will be a diving board.

Board member Berger inquired how close will the proposed pool equipment be to the neighbor.

Mr. Rigg stated the slab is 1-2 ft. off the property line.

Mr. Smith stated the pool will be used only about 3 months out of the year. He inquired what the plan is for the other 9 months. He inquired if there is a back-up plan and what if it rains.

Mrs. Hermann stated they have children that live in Boca Raton, Florida. They are going to have to figure it out.

Board member Morel inquired about the cabana.

Mr. Capizzi stated they would like to have a bathroom facility in close proximity.

Board member Berger asked if they can make the cabana smaller.

Board member Smith inquired if they can put the cabana on the west side of the house.

Board member Morf inquired if they can put the cabana in the back of the house.

A recess was taken at 9:19 pm. The meeting resumed at 9:27 pm.

Mr. Capizzi stated they will decrease the deck by 2 ft., making it 14 ft and increasing the setback. The length of the pool will be decreased from 40 ft. to 38 ft and will allow 12 ft. from the property line. They will also plant 6-8 new evergreens.

Questions from Residents within 200' and Beyond:

No one came forward.

Motion to Approve Application with Proposed Changes and Four Variances Listed in Engineer's Report:

Motion By: Mr. Smith

Second By: Mr. Bergman

All ayes. None opposed.

MOTION TO ADJOURN MEETING

Motion By: Mr. Bergman

Second By: Ms. Berger

All ayes. None opposed.

Meeting was adjourned at 9:30 p.m.

Respectfully Submitted,


Hilda Tavitian, Clerk
Zoning Board of Adjustment