

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
March 2, 2020**

Mr. Friedman called the meeting to order at 8:00 P.M.

PLEDGE OF ALLEGIANCE

Led by Marc Friedman.

ROLL CALL

Present: Richard Morf, Sara Berger, John Smith, Charles Steinel, Joel Nunez, Joel Berkowitz and Marc Friedman

Absent: Shimmy Stein and Amnon Wenger were excused.

Also Present: Ronald Mondello, Esq., Zoning Board Attorney, Frank Rotonda, Zoning Board Engineer, and Hilda Tavitian, Board Clerk

APPROVE MINUTES OF PREVIOUS MEETING – February 3, 2020

Motion By: John Smith

Second By: Sara Berger

All ayes. None opposed.

CORRESPONDENCE

51-5 Bedford Avenue – Requesting extension of site plan and variance approval.

Board attorney Ron Mondello stated he received a letter from Douglas Bern who represents Bergen Regency LLC, requesting an extension of approval granted by the Zoning Board of Adjustment June 4, 2012. The applicant was unable to start construction of the 12 unit building due to economic factors. Mr. Mondello explained the board can pass a motion to extend time for the applicant to start construction. In the past, the board has required the applicant to appear and give the reasons why they have not begun construction.

Board member John Smith stated the period of time that an extension may be granted is two years beginning from the approval date. The approval date was 2012. There was no public notice either about this. The memorialization states it was supposed to be a two story. It can go to three stories now since the town allows for three stories to be built. There were residents who spoke against the application in 2012. They should resubmit a new application to the building department. Mr. Smith suggested a letter be sent letting them know they need to start from scratch.

Mr. Mondello stated the letter references 12 units and the resolution states 8 units. Mr. Mondello stated 2 board members feel the application should start anew.

Board member Richard Morf stated it was changed to 6 units. It has to go to the site plan committee.

Board member Sara Berger stated she agrees with John in that it is totally new and should start from scratch.

Motion to have applicant submit new application for 51-59 Bedford Avenue

Motion by: John Smith

Second by: Sara Berger

All ayes. None opposed.

Mr. Smith passed around pictures of 145 Wilbur Rd to the zoning board members regarding the paving issue. The paving issue is getting out of hand. The zoning board doesn't grant this but as shown in the picture that is what they do after they get their CO. Mr. Smith stated there should be some discussion and input about the proposed ordinance. Mr. Smith stated he had called the borough engineer and faults him for what is being allowed with the pavers. The zoning board agreed to a certain percentage of pavers allowed and the new ordinance throws that out. Mr. Smith stated the ordinance will not be voted on until the April meeting. The April zoning board meeting is the day before the council meeting. Mr. Smith stated silica sand was included in the ordinance. He disagrees partially about the zoning board not having a say. The zoning board does have a say because of the lot coverage.

Mr. Friedman inquired if there are any other members who would like to comment about the paver issue. Mr. Friedman inquired if there will be a problem if the discussion regarding the ordinance is postponed until the next zoning board meeting because the ordinance might be passed in the interim. Mr. Friedman stated they have a full agenda tonight.

Mr. Mondello stated he had circulated the proposed land ordinance from the borough attorney to the board members. It's up to the Planning Board to review it. Mr. Mondello stated the governing body drafts an ordinance and sends it to the Planning Board. The Planning Board will review it and either make suggestions, be in favor of it or be opposed to it. There is no legal vehicle for the Zoning Board to weigh in. He will forward the comments, questions, and concerns of the zoning board regarding the proposed ordinance to the borough attorney.

Board member Charles Steinel stated the proposed ordinance doesn't do anything to address the issue with the pavers. It was illegal what was done and should be dealt with by the building department. Mr. Steinel stated there is no way in fairness for the board to take everyone's little quirks that they have problems with.

VERBAL COMMUNICATIONS

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

None.

Mr. Friedman stated an issue has arisen since the last zoning board meeting concerning whether the agreement to engage an engineer on behalf of the board was with Pennoni Engineering, a former employer of Mr. Rotonda, or whether the agreement was to engage Mr. Rotonda and not the company. The problem is that Mr. Rotonda has reaffiliated with another engineering company since the February meeting. Mr. Friedman stated he believes this a matter that should be carried to the following meeting because he has not been on the board long enough to make a judgement about whether the agreement should be with Mr. Rotonda or with Pennoni Engineering. He doesn't express an opinion either way. The chairman and vice-chairman should be present.

Mr. Smith stated he disagrees with Mr. Friedman since every member present tonight voted at the January meeting, including Mr. Friedman. The tape states who everyone voted for. Mr. Smith stated he had nominated another firm. It is wrong to kick it back another month and should carry it out now. Mr. Smith stated he had listened to the tape and it doesn't mention it by name. The board chairman could not remember the name of the firm nor the name of the engineer.

Mr. Mondello stated he had sent a clip of the recording to the board members.

Mr. Steinel stated he listened to the tape and the consensus of what was being said to maintain the individual engineer for another year, meaning retaining the firm. The firm was voted because of the services being received from the individual. He read the board attorney's memo about the borough attorney stating that there wasn't a contract signed. Mr. Steinel stated they were talking about the individual and the board never went out for RFQ's last year. The borough did but not the zoning board. He was voting to hire the individual engineer at the January meeting.

Mr. Friedman stated it's his view to carry this issue to the next meeting where the chairman and the vice chairman are present. He has the prerogative to do so being the chairman of the meeting tonight.

OLD BUSINESS

1. Approve 2019 Annual Report

Mr. Mondello stated the annual report lists Shanty as not having been memorialized. It needs to be updated to reflect that it was memorialized. Mr. Mondello stated he had sent an email to Mr. Smith about Congregation Ohr Ha Torah being sent to the Planning Board. The zoning board made a decision to send it to the Planning Board. The purpose of the annual report is to show what the relief was in an application. There was no relief as the zoning board no longer had jurisdiction to hear the temple. There wasn't a decision made in respect to the relief sought. The zoning board was divested of jurisdiction. The building official had said it no longer resides with the zoning board. Mr. Mondello stated if the board had no objection, he would put in the annual report Mr. Smith's comments that the board had an interpretation of a skylight.

Mr. Smith stated the board heard and made a decision about Congregation Ohr Ha Torah. Mr. Smith stated the minutes of the meeting (3/4/2019) in which the case was heard mentioned Shimmy Stein stating zoning board members are not voting on the approval but on the definition of a skylight. Mr. Smith inquired who sent it to the Planning Board as the zoning board agreed it had to stay with the zoning board. Mr. Rosenberg decided to pick up and send it to the Planning Board. Mr. Smith stated there should be some record on the annual report about the decision the board made.

Motion to Approve 2019 Annual Report with amendments:

Motion By: Charles Steinel

Second By: Sara Berger

All ayes. None Opposed.

2. Applications Carried Over from Last Month:

Jordan Silvestri
58 Sussex Rd
Addition of two new floors.

Mr. Mondello stated Mr. Silvestri had not published notice in the newspaper as to the hearing last month. Residents within 200 feet were sent notices.

Scott Bella, NJ licensed architect, stated the applicants would like to add a level and are asking for impervious coverage variance. The addition is going to be directly above the existing dwelling. They are not expanding the footprint with the exception of asking to put a little stoop with steps on the first floor down to the rear yard, increasing impervious coverage by 33 sq. ft. There is an existing stoop on right side of house. They are renovating the first floor and the new design is requiring the stoop be taken out and put in the rear. The hardship they are dealing with is an undersized lot where 5,000 sq. ft. is permitted and they have 4,400 sq. ft. 48.9% is the existing impervious coverage and they are asking for 49.6%. The reason they are adding is because it is paved under the existing stoop. Mr. Bella stated all three sides of the stoop is paved and they will not leave the little portion unpaved. Mr. Bella stated the parking is on the other side.

Mr. Friedman stated it is not a hardship in the sense that the property can be used as a single-family dwelling.

Mr. Steinel wanted confirmation that if the existing stoop is removed that it is paved currently. Mr. Steinel inquired if the parking is in that area.

Mr. Smith stated there are different variances listed.

Mr. Bella stated they had to formally ask for variances for those that were non-conforming and already existing. The zoning department had told them the only variance that would be required would be the impervious one. Mr. Bella explained just the stoop and steps will be changed. The driveway and the existing patio are concrete. Mr. Bella stated it was his understanding it would not make a difference whether it was concrete or brick pavers. Mr. Bella stated removing the patio would reduce it by 3%. Mr. Bella stated they will be taking out the walkway as well.

Mr. Morf inquired if the footprint of the house was going to be expanded and what material will be used for the driveway. It can help your total lot coverage if brick pavers were used for the driveway and the existing patio. It would reduce the numbers. There is a certain percentage that could be gained if brick pavers are used. The 49% will shrink down closer to 40%. Mr. Morf stated removing the patio is taking a step in the right direction. Mr. Morf stated they would like to see more greenery on a small lot.

Mr. Silvestri stated the goal is to remove the side patio and replace it with grass creating an area for the kids to play. Mr. Silvestri stated he would like to use pavers for the existing driveway and walkway.

Mr. Steinel stated the reason the applicant is here is because they are increasing. Mr. Steinel stated it will be good if they memorialize that the walkway and patio shall be removed, replaced with grass, and the driveway done in pavers since the applicant is going to reduce the numbers.

Mr. Smith inquired about the seepage pit.

Mr. Rotonda stated the seepage pit was addressed. Some styles of pavers allow water to permeate and some styles of paver systems do not. If a paver system that allows water to permeate is chosen can be deemed as pervious. Mr. Rotonda stated they usually require a seepage pit for expansions.

Mr. Mondello stated the board's past practice asks if the applicant would install a seepage pit.

Mr. Bella stated the applicant has no objections to a seepage pit.

Comments from residents within 200 ft.:

No one came forward.

Comments from any other residents:

No one came forward.

Motion to approve application with recommended changes:

Motion By: John Smith

Second By: Charles Steinel

All ayes. None opposed.

104 Highgate Terrace LLC – **CARRIED OVER TO APRIL MEETING**

104 Highgate Terrace

Construct an addition to single-family dwelling.

NEW BUSINESS:

1. Zenon Kopec
514 S. Prospect Avenue
Addition of single-family dwelling.

Natalie Migliore, project manager for applicant, stated they are asking for lot coverage and improved lot coverage variances. Mr. Kopec had filed an application for addition of the dwelling and received permits in December 2019. He proceeded with the structure of the foundation. The foundation was approved and then a denial letter was received due to lot coverage. Their proposed lot coverage was 39.7% which does not include the driveway, walkway, and a small patio that was going to be constructed using pavers. It is an extra 719 sq. ft. with these items included. Ms. Migliore stated the foundation is part of the original foundation. The original building permit was for additional remodeling. They did exactly as planned, keeping part of the existing foundation and built up a few inches higher. Ms. Migliore stated they followed the protocol.

Mr. Zenon Kopec stated he has a permit for the demolition. Mr. Kopec stated they raised the foundation wall by 8 inches.

Mr. Smith stated he went to check the property and saw there was a hole in the ground with a new foundation. Mr. Smith stated they were putting the cart before the horse. Mr. Smith stated someone in the building department did not look at the plans.

Mr. Mondella stated the reason they have this situation is because they applied for A and decided to do X.

Mr. Morf stated this is a rebuild. Mr. Morf stated they dug up the backyard and have a egress window in the side that is only one foot of the property line. The definition of renovation and addition is that part of the building is there. Mr. Morf stated that when a house is taken down there is no house. There's

nothing to renovate. It's a total rebuild when you build on top of part of the old foundation. Someone is getting the definition of renovation mixed up. Mr. Morf stated if they had come to the zoning board before putting in the foundation, they would have told them to put the egress window in the back. Mr. Morf stated putting it close to the property line is dangerous.

Mr. Friedman stated he was confused also as when he went to see the property he expected to see a single family dwelling and it wasn't there.

Mr. Steinel stated the letter telling them lot coverage variance is needed is dated February 11, 2020. Mr. Steinel inquired when the permits were issued. The letter is all the zoning board has to work with and it deals with lot coverage strictly. There are a lot of other issues. Mr. Steinel stated the zoning schedule shows what's to be removed and the proposed total. Mr. Steinel stated the schedule doesn't show what's allowed. The plans don't help him and there is missing information. Mr. Steinel requested there be an explanation from the building department as to what went on and a better set of drawings with the requirements be submitted. Mr. Steinel stated they need to stop this and carry it until the board gets an explanation from the building department.

Ms. Migliore stated the permits were issued in December. Mr. Kopec has constructed several houses in the area and pavers were never included in the lot coverage. Ms. Migliore stated when the application was filed the lot coverage was calculated and approved. The foundation was inspected and was accepted and approved. It is a financial hardship for Mr. Kopec to wait from one meeting to another to find out why the building department denied this.

Mr. Rotonda stated the building department issued the permit for demolition and construction on January 29, 2020. A stop work order was issued because they determined the plan required zoning board approval. Mr. Rotonda stated he was not told the reason why and is his recommendation to solicit testimony as to the history. Mr. Rotonda asked the board to consider the application not being improper as they showed what they proposed to do. Mr. Rotonda stated what is missing is the presence of the house which might have been a consideration in the vote. The plan can be considered accurate and relied upon in rendering a decision. Mr. Rotonda stated in his conversation with the building department, there was no indication that something was done wrong but was just a procedural matter. Mr. Rotonda stated he spoke with the building TA.

Mr. Smith stated he agrees with Mr. Steinel in that there are things missing on the plan and are incomplete. Mr. Smith stated there is no explanation why the construction was stopped and would like to know who the board engineer spoke with in the building department. Mr. Smith stated he doesn't see anything about seepage pit in the plans. Mr. Smith suggested that a letter be sent to the building department to look at the plans better.

Mr. Joel Nunez stated sheet A-6 is missing, doesn't see the scope of work or key notes to show what is existing on the plan. No one is trying to make things harder for you. Everyone here is trying to help you here and make sure it is safe for people living in the house.

Ms. Migliore stated their plans were approved by the building department and there are some internal issues. It feels like the applicant is being penalized because of it. They did everything according to their proposal drawings which were approved by the town. The foundation was inspected. They will come back to provide more details. The variance is for lot coverage that was calculated on the plans, was

submitted and approved. The only change was a different inspector that interpreted the town ordinance differently. She had called the town today to inquire about lot coverage in R-5 zone. The lot coverage comes down to the issue of driveway, sidewalk, and the patio.

Mr. Friedman stated that nobody is suggesting any wrongdoing or bad faith on the applicant's part. The board needs to satisfy that the requirements of the zoning ordinance are met. Something did not go right. Mr. Friedman suggested the applicant consult with the engineer and the building department regarding the engineering issues.

Mr. Mondello stated the board is going to require some additional information and details. Mr. Mondello stated the board engineer is of the opinion that there is sufficient information on the plans. The board can disagree with that. Mr. Mondello stated he is trying to find out what the board wants the applicant to do exactly.

Mr. Steinel requested that Hilda, board clerk, if possible, contact the building department and have them explain in a memo to the zoning board members of when things were approved and under what zoning ordinance, at the time of the application, did they grant approvals for this and where are we today. Mr. Steinel stated their variance required chart has no all the way down. But, they received a letter stating they had to appear in front of the zoning board and then the letter has condition 1. It doesn't make sense. Something has to conform.

Motion to carry application to next month without further notice and get new accurate drawings

Motion By: Charles Steinel

Second By: John Smith

All ayes. None opposed.

Mr. Mondello stated any approvals the applicant has is void because they are here.

Mr. Rotonda stated the building department can't issue a permit until the zoning board acts and applicant wouldn't be able to continue construction.

Mr. Nunez stated the application will be moved to next month until the board receives more clarification as to why the application was denied.

The meeting was recessed at 9:20 pm for five minutes and was resumed at 9:25 pm.

2. Cesar & Bernadette Abella
79 Lilac Street
Addition to single-family dwelling.

Bernadette Abella, applicant, stated she and her husband are applying for approval of variance in order to expand their home. They would like to accommodate her parents who are having a hard time paying their rent and will be taking them in. Ms. Abella stated they have the smallest house on the street and handed out a google map of her street showing this.

Mr. Smith recused himself since he is affiliated with the VFW Post, which is located within 200 feet of 79 Lilac Street.

Mr. Chris Blake, licensed architect for the applicant, stated they are proposing an addition to the rear of the house. It is currently a two-bedroom house. It's 788 sq. ft. of the footprint. They are expanding it 12 ft. to the rear and putting a second floor on it. There will be three bedrooms upstairs with two bathrooms. The house they are proposing is within the requirements for the front, rear, and both side yard setbacks, and the lot coverage. They are here for the impervious coverage. The impervious coverage allowed in town is 40% and the existing is 40.38% which is already slightly over. They are proposing to bring it up to 47.06% for impervious coverage. There is a small sidewalk up to the front door and a small sidewalk to the rear. There is a detached garage to the rear of the property line with a long driveway that is 750 sq. ft. They are not changing the front of the house. There are some side yard setbacks. The driveway and garage will remain where they are. They will follow the instructions of the town engineer and the building department. They have no objection to a seepage pit.

Mr. Friedman asked Mr. Blake to explain to the board the pavers that will be used to replace the driveway and the front walk.

Ms. Abella stated she was told by the building department that the pavers were 50%. Ms. Abella stated they would pave their entire driveway and whatever would be needed so they would not need a variance. But, they denied her application and told her it was only 10% give back. She was given the wrong information. Ms. Abella stated she decided since she is already here and needs approval from the zoning board to go away with paving her driveway, for another 70-80 sq. ft. to be added to her already 227.6 sq. ft. (4.6%) over coverage lot area. She inquired if she could just keep her driveway as is and not have it paved anymore and amend the application.

Mr. Morf stated the only issue is being 227.6 sq. ft. over with a 10% bonus.

Mr. Rotonda stated Ms. Abella is proposing to amend the application to ask for variance that would bring it up to 303 sq. ft. instead of what's shown. Mr. Rotonda stated the applicant would rather spend the money on a seepage pit than the driveway.

Comments from residents within 200 ft.:
No one came forward.

Comments from anyone:
No one came forward.

Motion to approve application with seepage pit and with amendment of driveway not being paved

Motion By: Charles Steinel

Second By: Sara Berger

All ayes. None opposed.

3. SkyZone Trampoline Park
450 South Washington Avenue
Application for change of use.

David Weinberg, licensed architect with Moda4 Design in Dayton, Ohio, stated they are registered in 40 states. Mr. Weinberg stated he is not a registered architect in New Jersey but his principle architect is. The applicant is a LLC. There will be under 500 occupants and they have four exits.

Mr. Mondello stated that is a problem. It is required that a corporation be represented by an attorney in New Jersey. Mr. Mondello stated the application would have to be carried to the next zoning board meeting. There should be either a NJ licensed architect and an attorney representing the applicant.

Mr. Steinel stated SkyZone is a corporation and corporations need to be represented by an attorney.

Mr. Rotonda stated the plans that were submitted need to be signed and sealed.

Mr. Nunez stated there is incomplete information on the plans regarding egress, number of occupants in the building, and parking. Mr. Nunez stated he didn't see anything that was ADA accessible and suggested code compliance be included in the plans. Mr. Nunez inquired if it is just schematics right now. Mr. Nunez inquired if they know who the future tenant that will be occupying the back is.

Mr. Weinberg stated they have more sheets. Mr. Weinberg stated the back of the building is vacant and will be used for storage for now. Mr. Weinberg stated each attraction, trampoline, accommodates a certain number. The total number of occupants will be 209, at maximum, if the events were at 100%. Typically, a parent will bring more than one child.

Mr. Rondello stated another reason a attorney is required is because applicant is asking for a change in use variance, which is one of the most difficult variances to get. There has to be some testimony from a planner.

Mr. Friedman stated the board is required to take testimony and establish a record with regard to all of those requirements.

Ms. Berger stated the board also normally looks at traffic patterns.

Mr. Smith stated the drawings are too small and would like to see traffic study done as he is aware of accidents that occur in that area due to left hand turns. It's a county road and the county will require a traffic study be done.

Motion to carry application to next meeting and additional information requested be provided

Motion By: John Smith

Second By: Sara Berger

All ayes. None opposed.

MOTION TO ADJOURN MEETING

Motion By: Charles Steinel

Second By: Sara Berger

All ayes. None opposed.

Meeting was adjourned at 9:51 pm.

Respectfully Submitted,

Hilda Tavitian, Zoning Board Clerk