

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES
TELECONFERENCE VIA WEBEX
May 13, 2020**

Chairman Shimmy 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.

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 John Smith.

ROLL CALL

Present: Shimmy Stein, Sara Berger, John Smith, Charles Steinel, Amnon Wenger, Joel Berkowitz and Marc Friedman

Absent: Richard Morf and Joel Nunez

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

Comments from Public on Anything Not on Agenda

Mr. Stein stated in response to Ms. Sullivan's stating it was not right to hear new applications coming in during the coronavirus situation, he called the building department twice and no one returned his calls. Mr. Stein stated he spoke with some people in the governor's office. Mr. Stein stated this is the wave of the future.

OLD BUSINESS

1. 104 Highgate Terrace LLC
104 Highgate Terrace
Construct an addition to single-family dwelling.

Board Chairman Stein inquired about what is happening to the right side of the house. The side variance was removed from the application. However, the wall has to stay the same as is.

Mr. Rosenberg stated the existing garage shall remain. They will be building a second floor over the garage. They are building to 29.6 inches on top of the garage.

Board attorney Mondello stated there are no issues with that.

Mr. Stein stated there are no variances required on the right side anymore. The wall can't be taken down.

Mr. Becher stated there is a miscommunication. The garage wall which is existing will remain. Mr. Becher explained that whatever height it is now is going to be extended north, upwards. There will be a new two-story structure on top of the garage. The right-side wall will be extended towards the sky.

Mr. Stein stated he can do that. It is as of his right.

Board member Friedman inquired why isn't that an expansion of a non-conforming use.

Mr. Mondello stated the board in the past has taken the position that any change to that wall, structure, whatever exists on the side yard setback is an exacerbation of the pre-existing side yard setback. In this case, the applicant is going higher, but not higher than the total building.

Mr. Becher stated if they were doing a renovation that didn't require zoning board approval, the building department would allow to build on top of the existing side yard setbacks regardless of what it is.

Mr. Mondello stated he disagrees with Mr. Becher, as the board has always viewed those types of changes as a exacerbation of the side yard setback. You would need a variance for that.

Mr. Stein stated they are going to need a side yard variance. If they don't get a variance, it would have to be 7.5 ft. If they get a variance, it will be 5 ft. The existing building is 5 ft. If the board gives the variance and maintain that, they can't go further back. They can keep the 5ft. as is.

Mr. Rosenberg stated they are continuing the existing non-conformance of 5ft. and upwards above the garage. Mr. Rosenberg stated they did take the addition in. They improved the side yard setback on the right side to 7.8 ft. Mr. Rosenberg explained they eliminated a good portion of the 5 ft. encroachment into the right-side setback. The only right-side setback that remains is the existing garage and the second-floor addition above the garage.

Mr. Mondello stated the board would typically view something like that as an exacerbation of a pre-existing variance. Mr. Mondello stated it would require a variance even though they are just going up.

Mr. Wenger stated the applicant has tried to work with and taken the advice of the board. They have worked to eliminate some of the variances. He is in favor of the application.

Mr. Steinel stated if the application is approved with 5 ft. setback, he would like to have it written in the resolution that it is limited to 26 ft. 8 inches. Mr. Steinel inquired if the drainage design is adequate.

Mr. Berkowitz stated he is ok with it. Mr. Berkowitz stated there is going to be a lot of use in the basement and if there is only one egress.

Mr. Rosenberg stated the only means of egress presented is the staircase. There's no egress window presented. Mr. Rosenberg stated they would be happy to incorporate one. Mr. Rosenberg inquired if the

egress window would be allowed in the side yard or it would be required to be in the rear yard. Mr. Rosenberg stated they will be using pervious pavers.

Mr. Mondello stated he has seen in the past when former firemen have been on the board, they would want to see those windows big and wide enough for someone to get through in case the staircase is on fire. Mr. Mondello stated the egress window will be in the rear yard.

Mr. Smith inquired what kind of pavers will be used for the patio. Mr. Smith stated it looks like flagstone. Mr. Smith stated he wants the egress window in the rear of the house. Mr. Smith explained the applicant has to give a new full-scale survey in the name of the owner of the property. The survey must include driveway, sidewalk, deck, shed, and setbacks with the percentages of the coverage. He doesn't see that. Mr. Smith inquired if that was submitted to the building department. Mr. Smith inquired what the percentage of concrete of the existing walkway and driveway is. Mr. Smith stated he doesn't know if his calculations are correct. Mr. Smith stated he would like to know what the increase in lot coverage and total improved lot coverage is. Mr. Smith inquired what the steps are going to be made of.

Mr. Becher stated they made the house skinny and narrow. If they have to put an egress window in the basement, he would like the board allow him to put the egress window either in the left or right side considering the backyard encroaches on the patio and the air conditioning unit. Mr. Becher stated the percentage of coverage is on the first page of the plans.

Mr. Stein stated he prefers to see the egress window on the left side.

Mr. Rosenberg stated they show only the existing percentages because it is going to be all demolished. Mr. Rosenberg stated he can include in the chart what the existing lot coverage is. Mr. Rosenberg stated the existing survey doesn't have any measurements on the existing driveway. Mr. Rosenberg stated the steps will be masonry, like blue stone steps. It is one solid piece of blue stone. The existing driveway is 31 ft. 6 inches long by 11 ft. 4 inches wide which is a total of 358 sq. ft. The front walkway is approximately 3 ft. wide and 23 ft. long.

Mr. Mondello stated the board is usually interested in what the applicant is proposing.

Mr. Friedman stated he agrees with Mr. Smith with where the egress window should be. He didn't hear any facts from Mr. Becher about why the egress window should not be in the rear. Mr. Friedman stated he would like to hear from objectors of adding 7 ft. to the existing wall.

Mrs. Berger stated she is in total agreement with the plan.

Board engineer Frank Rotonda stated the applicant has added a seepage pit to mitigate the increase in impervious coverage. He is containing all of the runoff from the pavers as if they were impervious. The calculation and design presented is conservative. The drainage system is adequate as proposed. Mr. Rotonda stated the applicant removed the side yard encroachment. Mr. Rotonda stated he prefers the egress window to be on the left side. If there are people on the patio and there's a window well, it might present a trip hazard.

Comments from residents within 200 feet:

Scott Chudnoff, resident, stated his main concern is trying to protect the overall environment around the house. He would like as much space as possible on the side and to see the character of the area preserved as much as possible. Mr. Chudnoff stated they came to the neighborhood 15 years ago and things have changed significantly. He would like to look out his window and get some sunlight. He saw the building they are building across the street and almost the entire front yard is pavers which makes him nervous. He wants to be a good neighbor. People are allowed to expand their property but not to encroach the integrity of the neighbor's property.

Mr. Stein stated there is a variance but the applicant is going up. There is a variance necessary for the 26 ft. of wall. Mr. Stein stated the minutes from the last meeting are not ready yet. Mr. Stein stated the applicant has to go for a variance if he wants to keep the right side at 5 ft.

Barry Doll, 97 Highgate Terrace, stated he thought the side yard variance was going to be 7.5 ft. from the property line, not considering any existing foundation. Mr. Doll stated he would like to refer to the minutes from the last meeting on what was recorded. Mr. Doll stated anything should be done until the minutes are reviewed. Mr. Doll stated a comment was made at the last meeting that the side yard setback on the right side and the left side should be 7.5 ft. Mr. Doll stated variance is required for the building that is going to be put on top of the existing garage and it has to be 7.5 ft. Mr. Doll stated there still is 13% over the allowed requirement of 35% and that is a significant number over the required percentage. Mr. Doll stated that is unreasonable, would like the board to look at that, and resolve that in a better way. Mr. Doll inquired if there are any plans to fill the backyard with dirt.

Mr. Rosenberg stated they are not proposing to change the existing grade. Mr. Rosenberg stated they tried their best in taking the board's constructive criticism into consideration. They started in February with 5 variances. They whittled the house down to make it skinny and long. They hope that everything they did has made a positive impact in the eyes of the board.

Comments from any residents:

No one came forward.

Mr. Steinel stated the egress window in the basement is not required because it doesn't have an occupancy. Mr. Steinel stated, with or without egress, it makes a deadly combination if rooms are made in the basement.

Mr. Mondello confirmed Mr. Steinel's recommendation not to increase the width of the windows in the basement and to forget the egress window.

Mr. Smith stated he agrees with Mr. Doll about the 7.5 ft. Mr. Becher had stated in the last meeting if he gave the 7.5 ft., he wanted an increase in his lot coverage. Someone on the board had said Mr. Becher isn't giving 7.5 ft., that's already what the law is. Mr. Smith stated he is looking at the chart and agreed that 48% and the required is 35% total even with the pavers, which is way over the 10% allowed. Mr. Smith stated there is something wrong with the numbers. Mr. Smith stated the applicant needs to come down from maximum lot coverage and the improved lot coverage counting pavers. Mr. Smith stated he guarantees that within a year there are going to be rooms in the basement. Mr. Smith stated the egress window should go in the rear of the building. Mr. Smith stated the numbers did not go down from his last set of plans.

Mr. Becher stated he decreased the building lot coverage from the last plan.

Mr. Mondello inquired if the egress window is going to be installed and where it is going to be placed.

Mr. Stein stated it is not the board's call.

Mr. Wenger stated egress windows are not required.

Motion to Approve Application

Motion By: Amnon Wenger

Second By: Sara Berger

6 ayes. 1 nay.

MOTION TO ADJOURN MEETING

Motion By: Charles Steinel

Second By: Amnon Wenger

All ayes. None opposed.

Meeting was adjourned at 8:45 pm.

Respectfully Submitted,

Hilda Tavitian, Clerk
Zoning Board of Adjustment