

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TELECONFERENCE VIA ZOOM
July 12, 2021**

Chairman 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. Notice of this meeting via the July 2, 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 and 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. The Borough's zoning ordinance is also 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, John Smith, Charles Steinel, Joel Nunez, Amnon Wenger, and Marc Friedman

Absent: Sara Berger and Jose Morel

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

APPROVE MINUTES OF PREVIOUS MEETING – June 7, 2021 & June 29, 2021

Approve June 7, 2021 Minutes
Motion By: John Smith
Second By: Marc Friedman
All ayes. None opposed.

Approve June 29, 2021 Minutes
Motion By: John Smith
Second By: Charlie Steinel
All Ayes. None opposed.

CORRESPONDENCE

Mr. Stein stated they were supposed to vote for the 145 W. Main Street application tonight. He stated due to complications, the vote will be carried over to the August 2nd meeting.

OLD BUSINESS

1. Resolution:

Congregation Beth Abraham, 396 New Bridge Rd, Request approval for amended site plan.

All ayes. None opposed.

NEW BUSINESS

1. Joseph & Bernice Mandel
17 Westminster Avenue
An addition.

Board member Steinel recused himself from hearing the application.

Board member Smith stated the letter of denial is addressed to another person, not the person who did the paperwork. His understanding is that the paperwork needs to be submitted by the owner and is confused about who the owner is. Mr. Smith stated on the affidavit of ownership, it is written that he will be the owner as of the day of the hearing. Mr. Smith stated any paperwork for variance needs to be done by the owner of the property. Mr. Smith stated he just wants clarification and is not here to argue.

Board attorney Oh stated the paperwork does not need to be submitted by the owner. She stated they can ask the applicant when they come up. Ms. Oh stated the applicant does not have to be the owner of the property. It can be someone who has an interest in the property. They will ask the applicant when they come up to testify.

Mr. Wenger stated they could be contractor purchasers.

Bernice Mandel read a statement into the record.

Board engineer Fuentes stated they looked at the plans and listed the required variances. There is a variance needed for the lot width. He stated that given the existing conditions of the property, it is a existing non-conforming condition which will not be affected by the application. There is also a maximum building coverage variance required. The applicant is requesting 36% of the lot area, where a maximum of 30% is allowed. The existing building covers about 22% of the lot area. Mr. Fuentes stated the last variance requested is for improved lot coverage, where 53% is being requested and maximum allowed is 35% . Mr. Fuentes stated under existing conditions, 42% of the lot is already covered by impervious surfaces. The plans indicate there is a proposed generator to the rear of the addition. They would like to get some information for the functioning of the generator before a decision has been made. They would also like to get more information about the utility service lines and if new service lines would be required to be brought into the property for the additions. Mr. Fuentes inquired if the roof leaders

would be connected to the existing roof leaders if possible. If not possible, they ask the applicant to make the effort to do that.

Chairman Stein stated they did not specify on the drawing the exact location of the generator. It has to be five feet from the nearest window.

Mr. Fuentes stated it has to be a minimum of two feet away from the building.

Ali Qureshi, licensed architect, stated he works with Henry Garcia and that they prepared the drawings.

Mr. Friedman inquired if Mr. Qureshi is licensed in the state of New Jersey.

Mr. Qureshi stated he is.

Mr. Stein stated the biggest engineering issue is water runoff. He doesn't see a seepage pit on the drawing. Mr. Stein stated they require a seepage pit for a construction such as this. The generator must be per code, far enough from the window and the building itself.

Mr. Qureshi stated they will take care of that when they do the construction drawings. He stated no water should run off to any property as a general rule. They will follow the engineer's recommendations.

Board member Wenger requested confirmation from Mrs. Mandel that they are the owners of the property.

Mr. & Mrs. Mandel confirmed that they are the owners of the property.

Board member Morf stated they have an asphalt driveway and a concrete walk. He inquired if they can eliminate that to take care of some of the total lot coverage and suggested putting in pavers. There are a set of windows right over the generator.

Mr. Qureshi stated they can look into it depending on the township's ordinance and how much they give for replacing the blacktop.

Mr. Stein stated they would make sure the generator will be five feet away from the windows. There are no measurements on the drawing. Mr. Stein stated the comments were about water runoff, seepage pit, and tying it into the storm system. The generator must be 100% per code. Everything has to be 100% per code. The generator must be specified. It was suggested the applicant change the asphalt and concrete to paving stones.

Mr. Qureshi stated the homeowner has to agree to changing the asphalt and the concrete to pavers. It's a very good suggestion to make the impervious coverage as low as possible.

Mr. Aryeh Mandel, applicant's son, stated there are pavers on the side of the house that they are prepared to move already. They will try to get the lot coverage as close as possible within the guidelines of the city.

Mr. Stein stated it's not just a matter of coverage alone, it's impervious coverage. Mr. Stein stated moving the pavers on the side helps with improved coverage. The asphalt driveway and the concrete are an issue and they are trying to help alleviate water runoff issues that may arise. It's good for the property to have and is aesthetically pleasing. It's more likely to keep the basement from flooding too.

Questions from residents within 200' and beyond:

Dr. Elmo Randolph, resident, stated there are a lot of problems with the application as presented. There are 12 other people that wanted to be at this meeting but there was such short notice. It was sent the weekend of the 4th of July when people are still out of town. It was received a week ago on Saturday.

Mr. Stein stated the notice was given in the legal proper time. All legal protocol was followed.

Dr. Randolph stated they want variance on building and impervious coverage. The town allows 30% on the lot and they are asking for 36%. They already have 42% impervious coverage and want to go to 53%. It's unacceptable. Dr. Randolph stated what's going on right now on the entire block, between Highgate Terrace, New Bridge Rd, and Westminster Ave, is that they are being overbuilt. He's lived here since 1968 and never had a water problem. They have built the lots up so much that they are getting flooding. He presented some pictures on the screen and asked the pictures be entered as evidence. The pictures were taken last week from his camera. Dr. Randolph stated he has a picture that has the time and date on it. He explained the photo is showing the back of 17 Westminster Ave as it is now with 2 decks. The previous owners covered the decks with concrete, forcing water onto his property for a long time. Dr. Randolph showed a picture of the four feet between the applicant's house and the shrubbery of his property. He explained when it rains there, water retained in that area. They have a French drain that is underneath that area which leads to his property. Dr. Randolph inquired if they have a topographical survey. Dr. Randolph inquired if a percolation test was done. He showed a picture of himself in boots standing on his property Friday morning and a picture of Shawn in his basement with a 1 ½ inch of water. The impervious has already exceeded by 20% and now they are asking for 150% over the allowed. He inquired how he is going to be indemnified if this can't be mitigated by the property owner. If they are allowed to develop their lot, it will diminish the value of his property. Dr. Randolph stated they are going to build 7 feet away from his property a 20 foot structure and going to have a window looking into his bedroom. They are going to place a generator 7 ½ feet away from his property that is going to start up once a week in front of his bedroom. That's not fair. He didn't have any time to obtain legal counsel for this when notice was given on a holiday. He asked for a postponement so he can obtain legal counsel and get the other people that would like to testify. They need an engineer and they need to find out why the water is coming through their property. The existing is 42%.

Board attorney Oh stated the pictures can't be entered as evidence since they are not time and date stamped. Ms. Oh requested Dr. Randolph tell them what the purpose of the photos are.

Mr. Stein stated they already discussed with the owners that water going in will be alleviated by tying the drains into the storm system. Second, the concrete in the backyard will be removed. They are not required to have a topographical survey. Mr. Stein stated no one is required to indemnify anybody. Mr. Stein stated the existing includes the concrete and the asphalt. If it is removed and replaced with pavers, it will bring the number down. They will work on a total calculation for the property.

Shawn Shields, 9 Westminster Avenue, stated he is concerned with the water. There have been tons of water the past several months. His basement was flooded a few weeks ago and he has had to replace the floor a few times. If what's happening next door is going to contribute to that or make it worse, it's a big concern for him.

Mr. Qureshi stated the driveway and walkway is roughly 1,045 sq. ft. and it's 16% of the lot.

Mr. Stein stated it's the same number, but not totally impervious.

Board engineer Fuentes stated as per the borough code, you are allowed to take a 10% credit when you move from totally impervious surface, like concrete or asphalt, to a paver surface. If Mr. Qureshi stayed at 1,045 sq. ft., they would get credit for 105 sq. ft. off of the improved coverage.

Mr. Qureshi stated it would be 1.6% of the whole lot.

Mr. Stein stated it's going down to roughly 50%. They are taking away a huge percentage of impervious and making it pavers. They are taking 1,000 sq. ft. impervious and making it semi-pervious.

Dr. Randolph asked when are they going to present a real plan. Dr. Randolph stated none of the water is coming from the front. He stated the water is coming from the back and side of the property. He would like to have the panel go to his house and see the yard. The testimony is based on certain things that are not performed. He has no idea what the runoff is on this property.

Mr. Stein stated should the application be approved, there will be a resolution that will conform to what the board engineer stated is required. There is going to be a huge improvement than what is there now. The water is going to go to the front with the new system that will go into the storm system. There will be a seepage pit in the back that's not there now.

Board member Wenger asked Mr. Fuentes if the applicant follows his recommendations, will that improve the current water conditions as they exist. The testimony of the engineer is that the situation will improve if they allow them to move forward. Regardless of what the runoff is, the engineer says it will improve.

Mr. Fuentes stated it is his opinion that the conditions will improve if they follow their recommendations. They hold the applicant accountable to meet the preconstruction peak runoff rate. He explained if they install a seepage pit or any other type of system that can achieve is going to provide an improvement.

Board member Smith stated what Shimmy is saying is correct. The town does not allow silicon anymore. Mr. Smith stated based on what the engineer said, they are going to place a retention basin in the rear. It will eliminate a lot of the runoff going into the backyard. He hears and knows what Dr. Randolph is saying, especially about the pavers. It's not going to be a full 10% on that. The engineer has to look at that and will have to work with the code official. They'll get a percentage, but not a full 10%. The water problem is going to be rectified somewhat with the retention basin, which they don't have now in the rear of the property. After the engineer does his calculations, he might say a retention basin is needed in the front also because the building is going to be higher and there is more runoff. They are saying all of the runoff water is going to go into the retention basin. He is 95% sure what the engineer is saying is correct.

Mr. Fuentes stated that is correct.

Board member Friedman stated he understood there was a requirement for a retention basin in the back, possibly in the front, and have to tie it to the storm system. He stated it is the board engineer's opinion that by doing those things, it should reduce the runoff onto Dr. Randolph's property. Mr. Friedman inquired if there are any other steps the property owner can take beyond what was just discussed that could further mitigate the runoff from the side or the back onto Dr. Randolph's property.

Mr. Fuentes stated yes, there are. One of the pictures presented by Dr. Randolph is a good illustration for that. The paver walkway that exists now along the side of the house, there was a French drain that ties into his wall for it to drain. Mr. Fuentes explained since they are proposing to remove the paver walkway, there is a possibility to design and include some other water retention system that will alleviate water

coming off the side of the house to Mr. Randolph's property. It's the applicant's call and he can work with their professionals to come up with a preliminary design.

Mr. Stein stated when Mr. Fuentes redoes the calculation of what water retention system is needed should be part of a whole package and not just an individual item. It's a well placed retention system. Mr. Stein told Dr. Randolph he still has water because the system on the property doesn't work since there isn't a retention tank and is not tied into a storm water system. There isn't anything to prevent water from going onto his property.

Dr. Randolph suggested putting gravel between their property and his. He's put in a French drain and still has water.

Mr. Friedman asked the applicant to identify who Brenda Alert is.

Mrs. Mandel stated she was the seller, previous owner of the house.

Accept the Application for Variance Subject to Following Recommendations Made by Board Engineer (Design System to Handle All Runoff Coming from Property, Generator will be per code, and Asphalt, Concrete, and Side Path will be Removed)

Motion By: Amnon Wenger

Second By: John Smith

All ayes. None opposed.

A recess was taken at 9:01pm. The meeting resumed at 9:15pm.

OLD BUSINESS - CONTINUED

2. Application:

C.R. Restoration, LLC, 83 Hickory Avenue, Build six town houses (carried from 6/7/21 meeting)

Mr. Stein stated there currently are 7 members. He inquired if everyone here is eligible to vote. Sara Berger is not here and is eligible to vote. All of the board members present are eligible to vote. Five out of seven votes are needed for the application to be approved.

Mr. Rosenberg, attorney for applicant, stated this is an application for 83 Hickory Avenue to demolish the existing structures on the property and construct a six unit townhouse on the site. At the last meeting, Former Fire Chief Naylis had worked with the applicant to address the concerns he had. His testimony was that any issues of concern with site circulation were addressed to his satisfaction. Mr. Rosenberg stated they had presented their last witness, the land use planner Michael Kauker, at the last meeting. Board members had asked their questions. The hearing had ended with members of the public not having the opportunity to ask Mr. Kauker questions.

Questions from residents within 200' and Beyond:

Mary Hernandez, 25 Birch Avenue, stated she doesn't understand why someone would want a compact house and why he was using that term as a positive thing. Ms. Hernandez inquired how six families are going to get their moving trucks in and out of the area. Ms. Hernandez inquired what the width of the driveway is. Ms. Hernandez stated she is concerned about people parking on the pavers and what would happen if there was a fire. Ms. Hernandez inquired if they do not need an HOA due to the number of townhouses. Mrs. Hernandez stated the property was bought for \$425,000 with the knowledge that it was for a one or family space. She inquired if that was the amount it was bought for.

Mr. Michael Kauker, land use planner, stated when he was referring to the compactness of the neighborhood, he was referring to the existing development pattern of the area. He showed an exhibit that showed the existing lots in the area and the existing homes that existed on those lots. The proposed development is going to be consistent with the existing developed pattern of the neighborhood. The lots are all smaller lots and compact form of development in the neighborhood. Mr. Kauker stated all of the families would not be moving in at the same time. If they were, there would have to be some sort of coordination. There is sufficient space on the property to accommodate a moving truck and moving in and out shouldn't be a problem.

Chairman Stein stated Chief Naylis had testified that their largest fire truck can get through. If a fire truck could get through, he's not too concerned about a moving truck getting through. Mr. Stein stated the applicant would have to post a no parking emergency zone sign.

Mr. Rosenberg stated all of that will be done in accordance to the rules and regulations and reviewed by Mr. Fuentes to ensure all of it is properly signed. Mr. Rosenberg stated this will be a homeowner association, a condominium association. There will be an association board. Mr. Rosenberg explained that there being nine units or less, the project does not need to be registered with the state Community of Affairs. There will be a master deed and a condominium association that will manage and oversee the six townhouse project. There will be rules and regulations that you do not have with a single family dwelling. Mr. Rosenberg stated whatever the deed consideration is for, they have every right to try to make an improvement. The assessed value will be close to \$3 million if it is approved.

Joan Compton, 147 N. First Street, asked if Mr. Kauker, being a planner for a town, believed six units being so close to the other properties, is better than three or four units. There would be a lot more space between the neighbors. Two bedrooms still brings in children. She knows that an office often becomes a bedroom. If you have three bedrooms with four units, you would have modest units. Ms. Compton stated six units are too many. The church is no comparison and has nothing to do with the project. She lives within 200 feet and felt that the applicant is pushing it too far and is being unfair.

Mr. Kauker stated he thinks this development is appropriate to the area. The compact form of the area is consistent with the existing neighborhood. It is consistent with a number of the goals and objectives of the borough's master plan, also. It provides a unique form of housing for this location. Even though the applicant is proposing 6 townhomes, they are two bedroom units. If they were to do three or four units, you would probably have at least three, possibly four bedrooms. It does fit on the property, even with the six units.

Board member Friedman asked Mr. Kauker to summarize his opinions of the positive and negative criteria. Mr. Friedman inquired if there would be any material difference of whether the positive and negative criteria are met if it was three or four units instead of six.

Mr. Kauker stated he had testified that the applicant had met the burden of proof, with respect to the positive and negative criteria. He felt the site is appropriate for the proposed use based on the numerous reasons he had stated previously. He Kauker stated there would be no significant impact on the neighboring properties. Mr. Kauker stated they do comply with the height requirement and provide appropriate light air and open space. There would not be any traffic impacted for the six units and the development would not even generate one child. He also went over numerous sections of the master plan that the development is consistent with. There will be no substantial detriment to the master plan. The positive criteria do outweigh the negative criteria. Mr. Kauker stated he is confident that the board can grant the request for a use variance. Mr. Kauker stated you would have to look at the impacts associated with the difference 3-4 units and six units. You would have four bedrooms if there were 3 units with a total of 12 bedrooms, which is exactly what you have here. He didn't think there would be a difference.

They were trying to propose smaller units with smaller bedrooms. One of the objectives of the master plan is to provide diversity in housing.

Mr. Stein inquired if there still would be an issue with the driveway if three single family homes were there. The front can't be widened.

Mr. Kauker stated that is correct. Nothing would change with the driveway.

Ms. Compton, resident, inquired how the office is going to be controlled and prevent someone from changing it into a bedroom.

Mr. Rosenberg stated any resolution is going to make it clear that is a requirement and restriction of the approval. Secondly, because this is a condominium, those restrictions can be integrated into a master deed and condominium requirements that can be reviewed and approved by the board attorney. You would not have that, if you have three single family homes.

Board member Smith asked Mr. Kauker to explain where in the master plan does it say the development will be consistent with the fit in the neighborhood. Mr. Smith stated the master plan doesn't tell you where the undeveloped land is. Mr. Smith stated it does and asked if Mr. Kauker looked at the zoning ordinance. Mr. Smith inquired if this affects the fair share housing agreement with the borough.

Mr. Kauker stated he had presented a number of goals and objectives from the master plan in his previous testimony that the development is consistent with. There were five, which included: 1. to preserve existing neighborhoods and offer a variety of housing types. Mr. Kauker stated what they are proposing here is a different type of housing and does meet the goal. 2. Maintain diversity of housing and encourage infill and stabilization of current residential areas. This is exactly what they are proposing. 3. To encourage residential development in areas whose densities are compatible with existing development. Mr. Kauker stated he presented exhibits and explained it was a compact form of development consistent with the area. 4. Bergenfield has a program to identify the development potential of underdeveloped or vacant parcels. Mr. Kauker stated this property is an underdeveloped parcel. Mr. Kauker stated the zoning ordinance stated it does not permit multiple family use in the district. They are encouraging that the zoning ordinance be amended. They are being proactive in proposing property for the redevelopment of an undeveloped property in the borough that is consistent with the master plan. 5. Housing options – provide diverse mix of housing. Mr. Kauker stated they are consistent with the five goals and objectives of the master plan.

Ms. Oh stated she could not answer Mr. Smith's answer as she does not represent the town regarding the fair share housing matters.

Mr. Rosenberg stated they don't believe it adversely affects the borough's affordable housing settlement. It's more than five, but not more than eight.

Board member Morf stated in the R5, you are allowed one and two family houses. He suggested eliminating unit three and four and build two duplexes instead. It would be more consistent with the zoning ordinance. Mr. Morf stated once you start going into residential areas with commercial development, it sets a bad precedence.

Mr. Rosenberg stated they would not need a variance from this board. The applicant has the opportunity and they have met the burden for the relief based on the testimony presented. Mr. Rosenberg stated they are only six residential homes.

Board member Steinel stated this is an R5 zone. It is 300 feet away from the overlay zone, where multi-family housing can be built. The borough wants to encourage commercial development there. This is not an appropriate place for this type of housing. Four different properties are going to have residential housing in their backyards and he doesn't see how that is good in any neighborhood.

Mr. Kauker stated they provided extensive testimony that what they are proposing is consistent with the existing neighborhood pattern. They are providing sufficient light air and open space to the property.

Mr. Stein stated the property is not going to remain vacant forever.

Board engineer Fuentes stated there will be circulation throughout the property. The applicant has demonstrated and worked with the borough fire officials to demonstrate it can be accomplished with this design. The applicant has presented plans, reports, and calculations backing up their statement that there will be no negative impact from the improvements regarding stormwater.

Mr. Rosenberg thanked the board for hearing the application in the zoom virtual format. He thanked the board for their time and efforts. He thanked the board professionals for their quick and expeditious review of the application. The application has gone through several reiterations. They tried to address the concerns raised by the fire code officials. The building will be in accordance with the requirements asked to provide for. There is uncontrolled stormwater coming from the site currently. The project will control that with no water runoff. The project is designed to be aesthetically pleasing and is not an over intensification of the site. It will not generate a large number of school children. The condominium design of ownership and management will enable them to control issues having to do with any concerns the board may have for use, occupancy, and maintenance. Mr. Rosenberg stated none of those are in place with single family homes. The applicant has met its burden of both the positive and negative criteria. This use is a good transition between the single family residences in the neighborhood. It will provide a different type of housing the borough's master plan calls for.

Approve Application with Engineering Stipulations

Motion By: Shimmy Stein

Second By: Amnon Wenger

3 Ayes, 4 Nays

Chairman Stein asked the board if they should continue the August meeting using zoom.

Board member Wenger deferred to the decision of the board.

Board member Friedman stated his preference is in person.

Board member Steinel stated he is opposed to having it in person. The numbers are going up and he has a lot of medical conditions. He inquired who is going to enforce wearing a mask. It's not an enforceable matter. You are putting people at risk for no reason. Zoom is not the best but it is working.

Board member Smith stated his preference is back in person.

Board member Morf stated his preference is in person.

Board member Nunez state he prefers meetings to be on zoom.

Board member Wenger stated in light of Mr. Steinel's statement, he changed his vote to zoom.

Chairman Stein stated Sara Berger had told him she prefers to meet on zoom. He stated there are still enough people on the board that feel uncomfortable meeting in-person. The August meeting will be on Zoom.

Ms. Oh stated she prefers virtual.

Mr. Fuentes stated either one works for him.

PUBLIC COMMENT

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

No one came forward.

Mr. Smith stated a liaison is needed for the Planning Board.

Mr. Stein stated he will speak with Sara and Jose and see if one of them will be the liaison to the Planning Board.

MOTION TO ADJOURN MEETING

Motion By: John Smith

Second By: Shimmy Stein

All ayes. None opposed.

Meeting was adjourned at 10:01PM.

Respectfully Submitted,



Hilda Tavitian, Clerk

Zoning Board of Adjustment