

**BERGENFIELD ZONING BOARD OF ADJUSTMENT
REORGANIZATION & REGULAR MEETING MINUTES
TELECONFERENCE VIA ZOOM
March 7, 2022**

Chairman Shimmy Stein called the meeting to order at 8:02 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 February 22, 2022 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.

PLEDGE OF ALLEGIANCE

Led by Mr. Friedman.

Chairman Stein expressed his sorrow for the passing of Charles Steinel. He was friends with him and many of the board members for many years. He served on the Zoning Board multiple terms and was the fire expect. He will be sorely missed. He was a dedicated fireman and husband and a good friend to everyone who knew him. It's a big loss for his family, friends, and the town.

OATH OF OFFICE TO APPOINTED/REAPPOINTED MEMBERS

Sara Berger
Marc Friedman
Jose Morel
John Smith

Oath of office was administered to board members by Board Attorney Gloria Oh.

ROLL CALL

Present: Shimmy Stein, Richard Morf, John Smith, Amnon Wenger, Jose Morel, and Marc Friedman

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

Absent: Sara Berger

Nomination of Chairman:

Shimmy Stein

Motion By: Marc Friedman

Second By: Amnon Wenger

All ayes. None opposed.

Nomination of Vice-Chairman

Amnon Wenger

Motion By: Shimmy Stein

Second By: Marc Friedman
All ayes. None opposed.

Nomination of Secretary:
Marc Friedman

Motion by: Shimmy Stein
Second by: John Smith
All ayes. None opposed.

Nomination of Board Attorney:
Gloria Oh

Motion by: Shimmy Stein
Second by: John Smith
5 ayes. 1 Abstain.

Nomination of Board Engineer:
Pennoni Engineering

Motion by: Shimmy Stein
Second by: John Smith
All ayes. None opposed.

Nomination of Board Clerk:
Hilda Tavitian

Motion by: Shimmy Stein
Second by: Amnon Wenger
All ayes. None opposed.

Accept By-Laws as Presented:
Motion By: John Smith
Second By: Shimmy Stein
All ayes. None opposed.

Accept 2022 Meeting Dates Subject to Change:
Motion By: John Smith
Second By: Richard Morf
All ayes. None opposed.

Liaison to the Planning Board:
No one was appointed.

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 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 – December 13, 2021

Motion By: John Smith

Second By: Richard Morf

All ayes. None opposed.

Chairman Stein stated it's time the board starts to consider going back to borough hall for in-person hearings. He stated if any board member has an objection, he/she should contact him. He stated unless there is any opposition, they will be back in-person for the May meeting. Some of the applicant's being heard at the April meeting had already noticed the meeting will be on Zoom.

Mr. Stein stated if members of the public are calling in and want to ask a question or make a comment, they have to press *9 to raise their hand and *6 to unmute themselves.

CORRESPONDENCE

Chairman Stein stated there's been a lot of communication going back and forth regarding pending, present, and future applications. There has been no other correspondence.

Ms. Oh stated the application for 16 Glenwood Drive North is not complete. The publication was not timely and one day late. They will be able to do the publication again. The application will be heard at the next meeting. If anyone is here for that application, it is not going to be heard tonight. The notices to residents will be waived.

Avram Zamist, applicant, stated he had followed all the procedures as per his conversations with the town and should be heard tonight. He spent a lot of money on attorney, experts, and noticing. Every single procedure as written was followed.

Chairman Stein stated the one thing that wasn't done was to make sure the publication would be published 10 days prior to the hearing. The ten days expired on February 25, 2022 and the notice did not appear in the newspaper until February 26, 2022. Mr. Stein stated this leaves the board wide open for appeal and they would lose. All you need to do is to re-publish. No need to re-notice.

Mr. Zamist stated he's altered his plans and will be traveling abroad. The initial letter with the instructions doesn't state 10 days.

VERBAL COMMUNICATIONS

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

OLD BUSINESS

1. Resolutions:

Valerie Van Clief, 122 N. Prospect Avenue, Change of Use from One-Family to Two-Family Home

All ayes. None opposed.

Ari Moskowitz, 234 S. Washington Avenue, Construct Two Story Building, Used Car Lot

All ayes. None opposed.

2. Application: Triple J. Family, Inc. D/B/A Dunkin Donuts Baskin Robbins
275 S. Washington Avenue
Carried from December 13, 2021 Meeting

Board member Morf recused himself from this application as the objector is his insurance agent.

Chairman Stein stated there are only 5 members that can vote tonight. If a use variance is to be approved, a yes vote from all 5 members is required.

Mark Madaio, 29 Legion Drive, Bergenfield, NJ, attorney for applicant, stated Mr. Delaney would like to enter an appearance on behalf of his client, as well. Mr. Madaio stated the threshold issue is of res judicata. Mr. Simon's office was briefed that he had sent a short memo today. Res judicata means this application has already been decided. Mr. Madaio stated that reference is to a 2002 application in which it was a different configuration and was denied. The zoning board was supplied with copies of the 2002 site plan with both pdf and 15 paper copies so the board can compare the 2002 site plan with the current site plan to determine if it is similar and/or the circumstances regarding drive throughs in town have changed in the last 20 years. Mr. Madaio explained if the board decides it is res judicata, that means this will end tonight and they will not be able to submit an application. If the board decides it is not res judicata, it doesn't mean the application will be approved, it just means that they will be allowed to be heard.

Jay Delaney, Lindabury McCormick, Estabrook and Cooper, Westfield, NJ, stated he is covering for Mr. Simon tonight who had a previous commitment. They are representing Mr. Howard Peters who is the neighbor at 7 Tulip Street. Mr. Delaney stated the issue of res judicata was raised by Mr. Simon in his December 13, 2021 letter to the board. This afternoon Mr. Madaio submitted a letter to the board setting forth his position on the res judicata. Mr. Delaney stated he believes the matter shouldn't go forward with the late submission. The board should allow his client the opportunity to respond to the letter received today at 1:00pm and then proceed with witnesses with the reservation that the decision on res judicata and the discussion to be done at a later date. In all fairness, they should have the opportunity to reply to the information submitted earlier today.

Chairman Stein stated he is in full agreement and will put it before the board if they should it put it off until the April 4th, 2022 meeting. Mr. Stein stated he doesn't like voting on a use variance with only five members present.

Board member Wenger stated he would like to hear from Mr. Madaio whether or not he agrees it should be pushed off for that purpose.

Mr. Madaio stated they are not going to reach a vote tonight. The res judicata issue in Mr. Simon's letter was very little. His response today was only because they would not be able to resolve the case and was under no obligation to submit the letter. Mr. Madaio stated res judicata does not apply because the configuration is different and the town has changed over the last twenty years. His letter shouldn't confuse or delay anyone. He stated they can commence with both parties reserving their rights to continue the arguments about res judicata and doesn't expect to complete the review of the application tonight. He was expecting to start with just two witnesses. Mr. Madaio stated they can reserve the issue until the next meeting.

Chairman Stein inquired if they are not going to vote tonight to determine if it is res judicata or not.

Mr. Delaney stated that's fair. The board has a chance to review Mr. Madaio's letter. The board might want to hear some of the testimony.

Board member Friedman stated there shouldn't be a hearing until the res judicata issue is decided. There may be hours of hearing only to find out that they should have not been hearing the application. Mr. Friedman stated, as a member of the board, he is prepared to vote tonight on the issue of whether this is res judicata or not. He stated his own view is in no way was influenced by Mr. Madaio's letter of earlier today. He formed his view based on the letter submitted by the objector's lawyer which inspired him to look into the law to see whether res judicata applied. Mr. Friedman stated he does not believe that res judicata applies and they should hear the application.

Chairman Stein stated hearing the application doesn't mean that it will be approved. He knows the application well as he heard it the first time. Mr. Friedman made a very good point. He inquired if the two attorneys had any objection in dealing with the res judicata issue now.

Mr. Madaio didn't have any objection.

Mr. Delaney stated he would like to have the opportunity to make an additional submission in response to Mr. Madaio's submission at 1:00 pm today. It makes sense to give his client the opportunity to respond as there might be an appeal one way or another.

Chairman Stein stated all they are doing is saving the board hours of time. He feels strongly the res judicata issue be decided tonight. If they decide it doesn't apply, then they start fresh.

Board attorney Oh stated she has a different point of view and opinion on this matter. Mr. Friedman is an attorney and could do his own research. Ms. Oh stated they need to give the other board members a chance to read the letter and understand what it says. The opponent needs to be given a chance to respond to the brief. Ms. Oh stated it is her opinion that the board needs to take their time especially after what happened 20 years ago. It was approved, appealed, and then there was a remand. Now, they are back here again.

Chairman Stein stated Ms. Oh makes a lot of sense. All they are trying to do is see if the application should be heard. After 20 years, the applicant has the right to have his application heard. He stated the board will be polled to see if they should vote on the res judicata issue tonight. If they say yes, then the board will vote again on whether it is res judicata. There are only five members voting.

It was 5-0 vote that the board should vote tonight to determine whether it's res judicata or not.

It was 5-0 vote that res judicata does not apply.

Mr. Delaney stated they do not have in the file the resolution that denied the application in 2002 or 2003 nor any minutes.

Mr. Madaio stated he did an OPRA request for many documents. He supplied the board and Mr. Simon's office with all of the relevant minutes of the prior application from 2002. The minutes from the night of the vote are missing. Mr. Madaio stated he was able to get the 2002 site plan. He requested the 2002 resolution through an OPRA Request and it was unavailable. Everything he has was sent to the board and to Mr. Simon's office.

Mr. Delaney stated they submitted the newspaper article reflecting the denial from 2002.

Chairman Stein stated old stuff over 25 years gets boxed and is stored offsite.

Board clerk Tavitian stated it does get boxed up. She stated the building department and herself did an extensive search through the boxes as well as the digital records and did not find any of the records requested.

Mr. Friedman stated given the fact the board unanimously decided res judicata does not apply, this is a fresh application. Mr. Friedman stated any of those documents from 20 years ago, whether it exists or doesn't, may be irrelevant to this application.

Chairman Stein stated this application is carried over to the April 4th, 2022 meeting. No further notice is necessary.

A recess was taken at 8:56pm. The meeting resumed at 9:05pm.

Mr. Madaio stated they prefer to have Mr. Stein announce the application be carried to the April meeting. They will also extend the time the board has to hear this matter.

Mr. Stein stated the Dunkin Donuts application is being carried to the April 4th, 2022 meeting via zoom without any further notification.

NEW BUSINESS

1. Rick Russell
39 E. Central Avenue
An addition

Wayne Guskind, architect, 26 Central Avenue, Hillsdale, NJ, stated drawings consisting of 8 sheets along with the proposed plans were submitted to the board. The house is an existing single-family home. The homeowner is looking to do an addition in the rear which fits with the house. It's also for the garage which is in disrepair and will be rebuilt and reduced to 220 sq. ft. to be a 1 car garage. Mr. Guskind stated the homeowners enjoy living in Bergenfield and want to expand the small home to make it more functional and modern. The only variance sought is for lot coverage being over 40%. The size of the garage is being reduced and they will be using pervious pavers. They will comply with all regulations. This is an undersized lot, that is 40 ft. wide lot. If the lot was 50x100 and wider, they would not be before the zoning board and would be below the 40% threshold. Mr. Guskind stated there's a living room, dining room, and kitchen on the first floor. The proposed plan shows a bedroom with a bathroom, walk-in closet and an expanded kitchen on the first floor. On the second floor, there are three bedrooms, one of which is quite small. The proposed second floor plan adds a nice master bedroom with a walk-in closet and bathroom. The left side of the house is similar to the right side. Mr. Guskind stated this is an improvement to the neighborhood. It's a nice project for these people who enjoy living in Bergenfield and will have a more normal, useful home.

Chairman Stein stated the plans are excellent. There are egress windows in the basement. It's a nice layout for a small house.

Board engineer Fuentes stated they are seeking variance for lot coverage. There's an additional variance for building coverage that's required. The zoning schedule that's included with the plans is outdated. The maximum allowable building coverage for a one-family home in the R5 zone is 30%. Improved coverage is 40%. Mr. Fuentes shared on the screen schedule B.

Board member Smith stated it's 40%. Mr. Smith stated the architect is using the old schedule. The building department is giving out the wrong schedule B.

Chairman Stein stated improved coverage is 40% in an R5 zone.

Board clerk Tavitian stated she will double check with the building department tomorrow and will email everyone the newest schedule.

Mr. Fuentes stated there are two bulk variances that are required for these improvements. Building coverage or lot coverage defined in the borough ordinance for 32.7% building coverage, where 30% is allowed and 44.08% improved lot coverage is being sought, where 40% is allowed in the R5 zone. Mr. Fuentes stated, in addition, there is a minimum driveway setback ordinance. The minimum driveway setback to adjoining properties is 2 ft. In this case, they are modifying an existing driveway that's already within the 2 ft. of the adjoining lot, almost a continuation of the non-conforming condition. The paver system is crucial to the application. The calculation presented are for a paver that would provide 50% pervious coverage. Mr. Fuentes stated stormwater management will not be an issue. A seepage pit would not be necessary in this case.

Board member Smith inquired if this is in a minimal flood zone area.

Mr. Fuentes stated it is in flood zone x, which is minimal. Anything with minimal flood hazard is considered that it is going to happen is a rare occurrence.

Board member Smith inquired if landscaping would improve some of the lot coverage.

Mr. Fuentes stated the landscaping comes into play with the driveway variance. The borough ordinance requires a 2 ft. buffer between the driveway and the property line. Mr. Fuentes stated that section should be landscaped or fenced off. The applicant is proposing neither one since there is no room for landscaping and doesn't see any space to mitigate the driveway issue.

Board member Friedman inquired with the proposed construction that the lot coverage was going to be reduced by 300 sq. ft.

Mr. Guskind stated that is correct. He stated the addition is going to be built, pre-dominantly, over an existing deck and the house has a bump out in the back with steps.

Chairman Stein stated they are going from 51% to 44%.

Board member Morel stated the current requirement for this zone is 30% for lot coverage. The letter received from the zoning officer to the resident was that the only issue with the application was a lot coverage of 40%. Mr. Morel stated not only were the documents provided were inaccurate, they need to make sure the zoning officer is referencing the right documents, as well. He inquired if the adjacent neighbor to the driveway also has a driveway.

Chairman Stein stated should the application be approved, the resolution will include the two variances as well as the driveway issue.

Mr. Russell, applicant, stated the neighbor's driveway is on the opposite side of the house. Mr. Russell stated the neighbor has a grass area at the side of their house with an entranceway, which is where Mr. Russell's driveway ends. The opposite side of their house is their neighbor's driveway which is similar to Mr. Russell's layout.

Board member Smith stated the whole street is non-conforming because the ordinance didn't exist when the homes were built.

Questions from residents within 200 feet:

Patricia McEniry, 18 Phelps Avenue, wished her neighbor the best of luck with getting their variances. She inquired if there is any indication she would have any flooding issues in the back corner of her property. She thanked Mr. Fuentes and stated she is for any improvements in the area.

Mr. Fuentes stated most of the work they are doing is going to affect drainage on E. Central Avenue. Mr. Fuentes stated what they are proposing is not going to affect any existing drainage issues.

Questions from any residents beyond 200 feet:

No one came forward.

Motion to approve application and all variances needed including the driveway:

Motion By: Amnon Wenger

Second By: John Smith

All ayes. None opposed.

2. Michael & Rivka Zauderer
438 Wildrose Avenue
An addition

Chairman Stein stated the applicant is before the board for a side yard variance for an existing non-conforming condition. They are also going to expand the driveway to allow two cars park side by side, which was not in the denial letter.

Rivka Zauderer, applicant, stated they have been living in Bergenfield close to 20 years. They love their community and their block. Their family has grown and they need some more room. They are looking to extend the non-conforming side yard for a small one-story addition and for lot coverage for their driveway to be able to park two cars side by side for their teenage drivers. Mrs. Zauderer stated they will be expanding their wall in the dining room and kitchen by 6 ft. to make the dining room and kitchen more adequate for their family.

Chairman Stein stated they will be continuing with the existing non-conforming.

Board engineer Fuentes stated he agrees that the improved lot coverage variance is required. They are requesting 37.3% lot coverage, where 35% is allowed. The other variance needed is a driveway setback variance. A 2 ft. distance setback is required from the adjoining lot and it's about a foot and a quarter from the adjoining lot. Mr. Fuentes stated the one difference from this application and the previous one was that the previous application was for an existing driveway that was just being reconfigured to the paver driveway. This will be an expansion closer to the property line. Mr. Fuentes stated they would require an onsite retention system because the proposed improvements push it over the improved lot coverage. There have been previous applications in the area with drainage issues. If the applicant chooses, they can try to reduce the proposed impervious coverage with the use of pavers similar to the previous application.

Chairman Stein stated the drainage system would be better for everybody.

Board member Smith inquired if the driveway can be moved over to the left. Mr. Smith stated some of the roots from the tree go under your current driveway now and there is going to be some kind of damage either way. The driveway is not level and is being pushed up by the roots already.

Mrs. Zauderer's response was no. There is a big tree there. She stated most of the houses on their block have already expanded their driveway and have done it the other way. Their house would look funny if they moved the driveway to the left.

Board member Smith stated he is trying to help her get rid of the 2 ft. variance.

Board member Morf inquired if the driveway is pavers. He inquired if there is a lot coverage problem. The pavers could reduce the lot coverage.

Chairman Stein stated it was not listed in the denial letter. According to the drawing, the lot coverage is 20.73% currently, and the proposed is 22.06%, both under. There is no lot coverage here. The problem is it's not in the letter.

Board member Smith stated according to Mr. Fuentes' letter, she's over what is allowed. He had suggested moving over the driveway and use pavers which would help with getting rid of two variances.

Mrs. Zauderer stated she doesn't want to move over and has to think about it. She wants the house to look like the rest of the houses on the block and thinks it will stick out too much.

Board member Wenger stated it will be changing the character of the street.

Board member Morel inquired if the back deck was added to the lot coverage values. It's not reflected on the schedule and inquired if it is an existing deck.

Mr. Fuentes stated the deck is there now. It's existing.

Mrs. Zauderer stated there isn't a deck now.

Mr. Fuentes stated that should have been included in the calculations. The variance for lot coverage will jump up from 37% to some other number.

Chairman Stein stated the best thing to do is to go with the pavers. It will solve a lot of problems.

Mrs. Zauderer stated she would consider it but has to think about it. She doesn't want her house to stick out.

Questions from residents within 200 feet and beyond:

No one came forward.

Motion to Approve Application & Grant Variances with the Homeowner's Option to Put in Seepage Pit or Use Pavers as Per Engineer's Suggestions

Motion By: Amnon Wenger

Second By: Marc Friedman

4 Ayes. 2 Nays.

Chairman Stein polled the board for moving the meetings back indoors. There were no objections by the board attorney, board engineer, and all board members to meeting indoors going forward. The April 4th, 2022 meeting will be on a Zoom and the May meeting will be indoors.

Jay Maleno, resident, stated he thinks Zoom should continue to be an option and it would make it more accessible for residents.

Chairman Stein stated he's been told by the governing body on many occasions that they want the board back indoors.

Mr. Smith stated people that attend zoom are there only for the application that is being heard that night. They don't come to any other meetings whether it is on zoom or in-person. It is better to be in-person so everyone can see the plans correctly. There are a lot of problems seeing the plans on the computer screen.

Mary Sullivan, resident, inquired if they will ever have the opportunity to make comments about anything else. The borough administrator and Mayor and Council were informed back in November about the schedule B limiting errors on the borough website. The zoning board link still has the schedule B limiting from five years ago. They were supposed to notify you and the zoning board attorney. Ms. Sullivan inquired when will she see the 2021 annual report.

Chairman Stein stated they will do that once they start meeting in-person again. Mr. Stein stated he was not notified.

Ms. Oh stated the 2021 annual report was emailed to the board clerk today. The board clerk will make it available to the public.

Board clerk Tavitian stated she will post it on the borough website on the zoning board page.

MOTION TO ADJOURN MEETING

Motion By: John Smith

Second By: Amnon Wenger

All ayes. None opposed.

Meeting was adjourned at 10:00 pm.

Respectfully Submitted,



Hilda Tavitian, Clerk

Zoning Board of Adjustment