

**BERGENFIELD ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
MAY 1, 2023**

Chairman Stein called the meeting to order at 8:03 P.M.

**OPEN PUBLIC MEETING STATEMENT**

In compliances with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on two municipal public notice bulletin boards and published on the borough website.

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

**PLEDGE OF ALLEGIANCE**

Led by Chairman Stein.

**ROLL CALL**

**Present:** Shimmy Stein, Richard Morf, Sara Berger, John Smith, Amnon Wenger, Jose Morel, Jason Bergman, Marc Friedman, and Nishant Desai

**Absent:** Jason Bergman (excused)

**Also Present:** Gloria Oh, Zoning Board Attorney, Joseph Kong, Board Engineer, Council Marc Pascual, Council Liaison, and Hilda Tavitian, Zoning Board Clerk

**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 use restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second type of variance is a use variance, where an applicant wants to use the property for a purpose not permitted under the zoning ordinance in that zone.

In these cases, the applicant has the burden of meeting certain criteria set forth in the Municipal Land Use Law, which is available online. We carefully listen to the testimony, including objectors, and review all relevant documents. If a majority of the Board concludes that the applicant has satisfied those criteria for a bulk variance, we must grant the requested variance. Approval of a use variance requires five affirmative votes.

**APPROVE MINUTES OF PREVIOUS MEETING – April 3, 2023**

**Motion By:** Mr. Smith

**Second By:** Ms. Berger

**All ayes. None opposed.**

**CORRESPONDENCE**

Chairman Stein stated on April 14, 2023 notice was received that the Zoning Board of Adjustment was being sued over an approval given to 145 W. Main Street. They will respond to the lawsuit as required. Ms. Oh will be defending the board. The borough of Bergenfield will absorb all costs.

### **PUBLIC COMMENT**

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

No one came forward.

### **OLD BUSINESS**

None.

### **NEW BUSINESS**

1. Parsippany Jewelry Center, LLC  
392 & 400 S. Washington Avenue  
Request for Extension of Approval

Mark Madaio, 29 Legion Drive, Bergenfield, attorney for applicant, stated the applicant is a development entity that would like to start the project. The plan was originally filed in 2016 and approved for the removal of the old dry cleaner. The developer died during his ownership. Mr. Madaio stated his son had appeared before the board for the first extension. The son was not capable of developing the property and COVID made it worse. There is now an applicant who has already closed on the property and thought that the building's approvals had already been extended. Mr. Madaio stated they are now seeking to extend the approvals. N.J.S.A. 40:55E-22 states applicant approvals are viable for two years and those extensions don't have to take place prior to expiration. Mr. Madaio explained the extension in 2019, gave one year from April 1<sup>st</sup>, 2019 to April 1<sup>st</sup>, 2020. The COVID emergency, under the Permit Extension Act, that was declared in March 2020, allowed an additional 1,000 days. Mr. Madaio stated he presented a chart which includes 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023 which shows they are just shy of three years.

Chairman Stein stated there isn't an automatic two-year extension.

Board member Friedman stated he read the letter several times and read all the statutes cited in the letter. Mr. Friedman stated statute N.J.S.A. 40:55D-52C, Mr. Madaio is referring to, only allows extensions to be provided by the Planning Board, not the Zoning Board of Adjustment. He had questions whether the Zoning Board of Adjustment had the authority, under that statute, to extend the site plan approval.

Mr. Madaio stated the Zoning Board of Adjustment, as part of its ancillary power, has the power to grant site plan approvals. If the Zoning Board has the power to grant site plan approval, the board has the power to extend the site plan.

Chairman Stein stated had the current applicant demolished the building, they would not have been before the board tonight. The building was knocked down by the original applicant. Mr. Stein stated by demolishing the building, the work has been started. Chairman Stein stated you have one year to put a shovel to the ground. Once the work has started, regardless of the predecessor, there is no need for an extension.

**Motion that the project has started. No extension is necessary.**

**Motion By:** Chairman Stein

**Second By:** Mr. Smith

**All ayes. None opposed.**

2. Steven Goldfedder  
41 Dudley Drive  
New Single-Family House, Pool, and Patio

Board member John Smith recused himself as he is within 200 ft. of the property.

Mark Madaio, 29 Legion Drive, Bergenfield, attorney for applicant, stated the house has already been built. Mr. Madaio stated the sole variance they are seeking is improved coverage, where 40% is permitted in the R5 zone and 35% in the R6 zone, and they are seeking a total of 43.9%

Chairman Stein stated Mr. Ravenda had told him the applicant had gone to the building department last June for permits to build the house. It was approved as of right and is not part of the application. A month later they came back for the pool and patio.

Sean McClellan, licensed engineer with Lantelme, Kurens & Associates, stated he prepared the pool plan, Exhibit A1, dated 10/6/22 and revised 3/8/23. The pool is 640 sq. ft. and there's a small area of permeable pavers for the patio. Mr. McClellan stated they are seeking variance for 736 sq. ft. of coverage, 900 sq. ft. more than currently allowed. The pervious pavers are being counted as 50%. The pool is 640 sq. ft. of the improved coverage. A pool helps collect water and doesn't add to runoff. He stated 6 inches will be contained in the pool. The existing dwelling that was there had side yards of 4.7 ft. and 4.3 ft., where 7.5 ft is required. The new house eliminates the non-conformities. The existing house didn't have a drainage system. The new construction has a seepage pit along with permeable pavers around the pool. The surrounding patio meets the rear and side yard requirements. There are no detriments. The grass area is now covered by the house and they will be putting a 2 ft. retaining wall. There are other pools in the area. There are no negative runoff impacts to the neighbors.

Chairman Stein stated the pool is not 10 ft. from the rear property line. He inquired if it's possible to move the pool up to make sure the pool is 10 ft. from the property line. The drawing is Exhibit A2 and the application is Exhibit A1.

Mr. Madaio stated they can move it to 11 ft.

#### **Questions from Residents within 200 Feet**

John Smith, resident, 50 Hallberg Avenue, inquired about how many trees will be cut down. He stated he counted 5 trees that will be cut down. He stated the same builder built the house next to his and he has to pump water out of his home because of the water runoff coming from his neighbor's house. He stated the measurements are wrong and need to be verified. He inquired how big the retention basin is.

Board engineer Kong stated a variance is needed for the lot width. There is a 1,000 gallon seepage pit proposed, however calculations show 2,200 gallons. He is not sure where the 2,200 came from.

Mr. McClellan stated the tank is 1,000 gallons and there is stone around it, making it 2,200 gallons. He can provide the calculations.

Board member Morel inquired if there were any prior seepage requirements.

Mr. McClellan stated his inspection occurred after the new house was built. The new construction has a seepage pit. The one shown is for the dwelling only.

**Comments from Residents**

John Smith, 50 Hallberg Avenue, read the following into the record: Land development regulations in NJ and across the US have changed significantly in the recent past with a much greater focus on low impact design (LID), runoff quantity and runoff quality control. This focus is meant to protect the public from the environmental hazards of overdevelopment like erosion, flooding, pollution, and loss of groundwater.

The State's Stormwater Rule (NJAC 7:8) is meant to combat environment threats, such as:

1. Increased stormwater runoff volume
2. Increased runoff velocity
3. Increased erosion
4. Increased total suspended solids and nonpoint source pollution of watercourses
5. Reductions in groundwater recharge

However, this only applies to developments classified as "Major Development" projects that ultimately disturb one acre or more of land and or add ¼ acre of new impervious surface (equivalent to 67 standard parking stalls), Many land development projects in the state of NJ do not meet this "Major Development" criterion and the state's stormwater control ordinances do not apply. This legal exemption does not mean that non-major developments don't have a negative impact on the environment and the local community. Small projects can increase flooding events, surcharge sewers in larger storms and have detrimental effect on the neighborhood and the environment.

I believe that impervious coverage of more than required, on a residential lot where 40% is permitted is an example of overdevelopment. If you add the extreme lack of parking, small projects will negatively effect the environment and community.

Mr. Smith stated he was at the building department today and a woman who has lived her entire life on Glenwood Drive was complaining of now having water on her property due to a variance application granted to her neighbor that she did not have before. Mr. Smith stated it's not the board's fault. It's the DPW, the building department, and Mayor and Council's fault for not passing the right ordinances. The small projects have an impact to the neighbors regardless of what the engineers say and the residents need relief.

Barry Doll, resident, stated there are regulations in place to protect the community. They have to protect the residents in town. Outsiders come in only to make money.

Chairman Stein stated runoff is a major issue and inquired how the drainage can be improved.

Mr. Madaio stated they can dramatically increase the drainage. They will follow the town's permeable pavers instructions. He stated more than ½ of their coverage is the swimming pool that holds water.

Motion to Approve Application Subject to: Moving pool so it is a minimum of 10 ft. in the back, significantly increase drainage, and comply with ordinance.

**Motion By:** Mr. Wenger

**Second By:** Mr. Friedman

**All ayes. None opposed.**

3. Michael Friedman  
9 Hallberg Avenue  
Conversion of Existing House to Two-Family

Board member John Smith recused himself.

Mark Madaio, 29 Legion Drive, Bergenfield, NJ, attorney for applicant stated they are before the board for a permitted use. A two-family home is permitted use in the zone on 10,000 sq. ft. lot. It's not a conditional use. The applicant has a lot area of 9,600 sq. ft. Mr. Madaio stated if the applicant's property was 400 sq. ft. larger, he would not have to be before the board. It is a simple bulk variance. The lot is closer to a two-family home than a one-family. It's for rental purposes.

Piero Gabucci, project licensed architect, Axis Architectural Group LLC, 16 Highwood Avenue, Englewood, NJ stated the house has a natural layout. There will be no architectural changes to the house. There is a vestibule on the first floor to separate the suits. There is one bedroom on the first floor and two bedrooms on the second floor. Total lot size is 9,600 sq. ft. Two-family homes require 10,000 sq. ft.

Board engineer Kong stated the side yard setbacks on the bulk table need to be corrected.

Mr. Madaio mentioned the footprint of the house is not being changed.

Board member Morel stated the apartment has a one bedroom and the other will have three bedrooms.

Mr. Gabucci stated that was correct.

### **Questions from Residents Within 200 Feet and Beyond**

Barry Doll, resident, inquired about parking.

Mr. Gabucci stated there is a 2 car garage and a 2 car driveway.

Michael Friedman, applicant, 9 Hallberg Avenue, stated he has been residing there since August 2022 and has owned the house since May 2022. He resides there with his wife and doesn't have any children. He will live in the upstairs apartment that has the three bedrooms.

David Spatz, planner, stated houses #5, #10, and #31 are all two-family homes on the block. The street is a mixture of one and two family homes. Two-family homes are a permitted use in this zone. Mr. Spatz stated the variances needed are lot area and lot width. The side yards are pre-existing conditions. He stated looking at the positive criteria, the lot is slightly less than required in the area. The lot is double the depth of what is required for the area. The property on either side is fully developed. There is no need for expansion. Houses #5 and #10 are two-family homes that are smaller in area than the applicant's. The structure meets the rear yard and front yard setbacks. There is nothing substantially negative. The yard doesn't impair light area and open space. The rear yard is twice what is required for two-family homes. Mr. Spatz stated there is sufficient open space for the additional unit.

Board member Friedman inquired if they are applying for C1 or C2 variances. Mr. Friedman stated he didn't hear any testimony about the benefits to the neighbors, area, and the municipality.

Mr. Spatz stated they are applying for both C1 and C2 variances. The zone permits it. It brings consistency to the specific neighborhood and meets the town's ordinances and master plan.

### **Questions and comments from residents within 200 feet and beyond**

No one came forward.

Chairman Stein stated all that is being done is putting a wall and making interior renovations only.

**Motion to Approve Application**

**Motion By:** Mr. Morel

**Second By:** Mr. Morf

**All ayes. None opposed.**

Chairman Stein stated they are putting window wells in side yards which leaves no space if there is an emergency. He asked Councilman Pascual to request from the Mayor and Council to amend ordinance to restrict window wells in the front or back of the house only in the R5 zone, unless you have at least 7 ft. on each side. It's a safety concern.

**MOTION TO ADJOURN MEETING**

**Motion By:** Mr. Wenger

**Second By:** Mr. Friedman

**All ayes. None opposed.**

Meeting was adjourned at 9:31 p.m.

Respectfully Submitted,



Hilda Tavitian, Clerk  
Zoning Board of Adjustment