

**BERGENFIELD ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
February 5, 2024**

Chairman Ben Cabrera called the meeting to order at 8:05 P.M.

**OPEN PUBLIC MEETING STATEMENT**

In compliance 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 Board member Smith.

**ROLL CALL**

**Present:** Sara Berger, John Smith, Amnon Wenger, Jose Morel, Ben Cabrera, Yitz Novak, Nishant Desai, and Oriole Familia

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

**Absent:** Jason Bergman (excused)

**INTRODUCTORY STATEMENT**

Read by Chairman Cabrera. 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'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 – January 8, 2024**

**Motion By:** Mr. Smith

**Second By:** Mr. Wenger

**All ayes. None opposed.**

**CORRESPONDENCE**

None.

**PUBLIC COMMENT**

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

Barry Doll, 97 Highgate Terrace, stated at the present time, a few town residents and himself are appealing the decision made by the Zoning Board last year for the 145 W. Main Street variance application. He had to go to Superior Court to appeal the decision made. Mr. Doll stated the Zoning Board has no checks and balances. The appeal is going forward as expected and awaiting a date to be set by the judge. Mr. Doll stated this is a costly and timely process. It is very costly for an ordinary person to hire an attorney to appeal a decision. There should be a process in place for residents, who do not agree with decisions made by the Zoning Board, to go to the council for assistance.

**NEW BUSINESS**

1. Application: Eliezer Gewirtz  
44 Glenwood Drive South  
Paver Patio

Eliezer Gewirtz, owner of 44 Glenwood Drive South, stated he purchased his home in July 2023 from the builder, BSI Investments LLC. He was shown the home by their realtor with the paver patio already there. He was not aware that the patio was not in compliance with zoning. Mr. Gewirtz stated the first time he was made aware of it was the day of their closing when the builder applied for the Certificate of Occupancy. The building department has been very accommodating allowing him to obtain temporary Certificate of Occupancy until the issue is resolved. He stated he is aware there are some concerns about the stormwater runoff from the paver patio, also. He stated since he's been living in the house, there have been no complaints from the neighbors about stormwater running off into their properties.

Michael Hubschman, 263 South Washington Avenue, Bergenfield, NJ, licensed engineer, stated he designed the small drainage system to provide any additional runoff created by the patio. It is level with the grade and is not a raised patio.

Board member Smith mentioned that Mr. Hubschman had stated in his drainage report that the project doesn't qualify as a major project. Board member Smith read into the record, "Land development regulations in New Jersey and across the US have changed significantly in the recent past with a much greater focus on low impact design (LID), runoff quantity 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 water courses.
5. Reductions in groundwater recharge.

However, this only applies to developments classified at "Major Developments" projects that ultimately disturb one acre or more of and or add ¼ acre of new impervious surface (equivalent to 67 standard parking stalls). Many land development projects in the state of New Jersey 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 cover 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 the community." Mr. Smith presented pictures of the property showing water gushing out by the telephone. Water that is going

out to the road is wider than 3 ft. It is affecting the neighborhood. Mr. Smith inquired where the closest stormwater drain is. He stated the building department didn't catch this issue. He walked the property today and there is a problem with the water runoff because of the pavers. No water can be pumped into the road.

Mr. Hubschman stated the water is flowing down to the curb. They are designing the drainage to mitigate the runoff.

Chairman Cabrera stated that is not related to what is being discussed tonight.

Board member Smith stated he spoke with the neighbor next door and had told him he was concerned the water coming from the property turning into ice.

Board engineer Kong stated he doesn't disagree. There is a separate issue that is not related to the patio. He stated it looks like there is a sump pump leading to the sidewalk.

Mr. Gewirtz stated the builder did all of this and had told him that he did everything according to the town codes.

Mr. Kong stated he is not sure where his jurisdiction ends and is not familiar with the codes of code enforcement. There are two separate issues. The application is for the patio, however, the water running into the street requires additional input from the building department and the borough engineer.

Mr. Smith inquired if they can reduce the size of the patio.

Board member Wenger inquired if a 10% bonus was given for paver coverage and was already calculated.

Mr. Kong stated he doesn't believe they are pervious pavers and can not be given credit. He stated they are ok with the design but there are some requirements that have not been met yet. If the application is approved and the applicant is agreeable to the conditions, the issues can be resolved with resolution compliance. Mr. Kong stated, based on the design, they are trying to bring it back down to the 40% that is required. They do want to see additional spot grades.

Mr. Hubschman stated they have no problem with doing test kit. They are agreeable with all of Mr. Kong's comments.

Chairman Cabrera stated Mr. Smith brings up some valid points, but these are two separate issues that need to be addressed.

**Questions from Residents Within 200' & Beyond:**

Barry Doll, resident, inquired if the pavers were pervious or impervious. He inquired why they couldn't use pervious pavers to absorb the water. He inquired about the 10%.

Board member Smith stated the builder had sold the property with the patio already built with impervious pavers.

Board member Wenger stated the 10% won't apply.

**Motion to Approve Variance Application Subject to Comply with the Board Engineer's Comments**

**Motion By:** Mr. Wenger

**Second By:** Ms. Berger

**7 Ayes. None opposed.**

Board member Smith stated he would like something to be done with the water coming up along the road. They submitted a drainage report stating there won't be runoff and there is runoff. He can correct it easily.

Mr. Kong stated the building department has leverage that prior to issuing the permits, they can look at the sump pump and make it contingent upon issuing the permits.

Board member Smith stated he had contacted the building department and the code enforcement officer had gone to the property. There was no one there and had left his card. The building department is aware of the problem.

Kaiser Pathan  
51-59 Bedford Avenue  
Request an Extension

Douglas Bern, Bern Associates, Bern & Associates, LLC, 90 W. Palisade Avenue, Englewood, attorney for applicant, stated they are requesting an extension of a variance approval that was granted in 2023. They had received a six-month extension in April 2023. Mr. Bern stated the building permits are paid, but there have been some issues with the excavation. He stated they had requested a one-year extension back in April but was only granted a six-month extension. The building is for seven units, one being a affordable housing unit. The applicant is requesting a three-month extension.

Board member Berger inquired why they don't request a six-month extension.

Mr. Bern stated it was very difficult getting an extension when they were before this board previously.

Chairman Cabrera stated this extension could possibly be the last extension the board may give.

Board member Smith stated the board was previously assured the project would be started. They had all summer to break ground. He inquired why wait until now to ask for an extension. The board had said no more extensions would be granted. He inquired what month and year were the permits approved. He inquired if the property is for sale.

Kaiser Pathan, managing member of the Bergen Regency, LLC, stated permits were received June 2003. The soil permit was not issued until July 2003 and there were issues with the lenders. No, it is not. They are trying to proceed with the contractor.

Board member Wenger pulled up the resolution and stated they did not make it a condition to make it the final grant for extension.

**Questions from Residents Within 200' & Beyond:**

None.

**Motion to Grant 6 Month Extension with Condition of It Being the Final Grant for Extension**

**Motion By:** Mr. Wenger

**Second By:** Ms. Berger

**6 Ayes. 1 Nay.**

A five minute recess was taken at 8:51pm. The meeting resumed at 9:00pm.

**OLD BUSINESS**

1. Application: DP Bergenfield, LLC  
21 West Church Street  
3 Story Residential Building  
Carried from November 2023 Meeting

Board member Wenger recused himself.

Brian Chewcawski, attorney for applicant, stated they were last before the Zoning Board November 2023. The project is for an 3 story development with 8 units. Mr. Hubschman and the architect had testified. Board member Smith had requested additional traffic study be done. According to the Affordable Housing ordinance, set aside is 20%. Two out of the eight units will be Affordable Housing and will be worked out with Mr. Schettino. There has been no change in the traffic report.

Chairman Cabrera requested clarification regarding access to the building in case of fire. He inquired what would happen if the property is sold.

Mr. Chewcaski stated the applicant owns the property behind the building and would be able to access the building through a gate. It would be documented.

Board member Morel inquired if the affordable housing units would be one bedroom or two-bedroom units.

Mr. Chewcaski stated now it will be one one-bedroom unit and one will be two-bedroom. One will be low income and the other will be a moderate income.

Board planner Caroline Reiter confirmed there should be two affordable housing units, one being a low income and the other moderate income that will be finalized in the developer's agreement.

Harold Maltz, Hamal Associates, Inc., licensed professional engineer, stated he was out at the site on June 2, 2023 in the middle of the afternoon when school had let out and November 30, 2023 from 5:00-6:00 pm. There were three trains that went by, two were going southbound and one was going northbound. They caused blockage along Church Street for a few minutes, but once the arms went up, the street cleared quickly. Mr. Maltz stated the proposed building is two floors of residential over a garage level, with one access drive on the north side of Church Street. The trip generation during the peak hours showed 1 vehicle in and out of the site every 15 minutes during the peak hour. In comparison to an existing two-story building, the trip generation is 1 trip in the am peak hour and 1 in the peak hour. The net impact is 1 vehicle in the peak am and 3 in the peak pm. Mr. Maltz stated 15.6 (16) units are required for RSIS. There are 2 electric spaces being proposed, 1 regular space and 1 handicapped space. There is a total of 15 parking spaces being proposed. There is a 24 ft. wide parking aisle that is in conformance with RSIS.

Mr. Smith inquired what time of day was Mr. Maltz at the site. Mr. Smith inquired if there were any line of sight problems traveling east with the buses and people pulling out of the driveway. Mr. Smith stated at 6:00pm in the summer and now at 7:00pm, you can't see anything on Washington Avenue from the sun glare. He inquired from where is the data in the book gathered from. He's quoting from a book that is supposed to be used as a guideline. There wasn't any mention of any left hand turns into and out of the site or any mention that there isn't overnight parking. There will be other vehicles parked. He inquired about the accuracy of the traffic report when he was only there in the afternoon and not in the morning.

Mr. Maltz stated the first time on June 2, 2023 was between 2:30pm-3:30pm and the second day, November 30, 2023 was between 4:00-5:00pm. He saw public buses make a right at the railroad as well as school buses in the area. His response was no. Mr. Maltz stated the data is gathered from various places. Mr. Maltz stated for an increase of 3 cars in the morning and 4 cars in the afternoon, there is no need for a traffic count and was surprised he was asked for something so small. Traffic varies day to day. Mr. Maltz stated he had purposely gone out to the site before the sun went down, there was a glare over the building, but didn't see it as a problem.

Mr. Smith stated he doesn't agree. There will be traffic issues if the application is approved. There are more NJ Transit buses in the am than in the pm. There is traffic on Washington Avenue with people making a right turn. A traffic study can't be done in one day. The police department did a traffic study for five straight days.

Mr. Maltz stated it had to be for a different purpose if they did it for five days. He's never had an issue with glare raised. There's nothing you can do.

Board engineer Kong stated the issues there are with the application would not make it worse or correct them.

**Questions from Residents Within 200' & Beyond:**

Barry Doll, resident, inquired if the fire house would be affected by additional traffic.

Mr. Maltz stated there would be no impact to the fire house.

Mary Sullivan, resident, inquired if they considered putting a no left turn sign, right turn only.

Mr. Maltz stated there is no reason to impose turning restrictions. The traffic is nominal.

**General Comments from Public**

No one came forward.

Mr. Chewcaski stated they have to look at the application for what it is. Density and use variances are needed. There are two affordable housing units that serves the public good. Coverage and setback variances are needed. The site can accommodate the use and is suitable to the area. There won't be any substantial detriment. There is significant residential development in the area and there is hardly any traffic generated even if the number of trips in and out is doubled. It is in accordance with the master plan and zoning ordinance. Mr. Chewcaski stated they will provide additional information to Mr. Kong.

Mr. Kong stated he didn't receive revised plans. The property is impervious. They will wait for the next submission to review.

**Motion to Approve Variance Application**

**Motion By:** Ms. Berger

**Second By:** Mr. Morel

**6 ayes. 1 Nay. 1 Recused.**

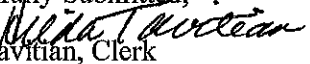
**MOTION TO ADJOURN MEETING**

**Motion By:** Mr. Smith

**Second By:** Mr. Morel

**All ayes. None opposed.**

Meeting was adjourned at 10:00 pm.

Respectfully Submitted,  
  
Hilda Tavitian, Clerk  
Zoning Board of Adjustment