

The Regular Meeting of the BERKELEY TOWNSHIP ZONING BOARD was held on July 9, 2014 at the Municipal Building's Meeting Room, Pinewald-Keswick Road, Bayville, New Jersey.

Roll call was taken. Present were Chairman Richard Elliott, Larry Borio, Edward Cammarato, Gerard Reuter, Anthony Granberg, Edward Gudaitis, Jerome Bollettieri, and Lee Gashlin. Also present were Alexander Pavliv, Esq., Zoning Board Attorney, John J. Mallon, PE, Zoning Board Engineer, Darlene Selittoe, Court Reporter and Kelly Hugg, Secretary to the Zoning Board.

Chairman Elliott led the flag salute, moment of silence, read the public announcements and started the meeting.

1. Podesta, John BOA #14-5599
Application: Legitimize Construction of a Raised Paver Patio and Hot Tub with a Setback Variance to the Bulkhead
Block: 1628 Lot: 8
Location: 64 Harbor Inn Road
Denial Reads: "Applicant proposes to construct a raised paver patio and a hot tub that will leave a 3.2' setback where 15' is required"
Attorney: Kim Pascarella
Action: Public hearing, discussion and consideration of application.

Received request from applicant's attorney requesting the application be carried to August 13, 2014 regular meeting because Engineer for case was unavailable.

Mr. Mallon stated that no further notice would be necessary and that Attorney for applicant did send notice to be carried to all the neighbors prior to meeting.

Chairman Elliott and Alexander Pavliv stated that Zoning office made effort to notify objectors.

Attorney Pascarella was present to represent Attorney Brady.

Objector for Podesta stated she was notified only one hour before meeting.

Chairman Elliott explained no legal obligation to notify owners within 200'; but Board did request Attorney to notify owners.

The neighbor, Mr. Degroot said he was notified and he did notify some neighbors; how long can this go on? Previous meeting Attorney made error in notices. Is there a limit to how long continuances can occur?

Chairman Elliott explained there are legal issues involved.

Attorney Pavliv stated to Attorney Pascarella to advise Attorney Brady there will be no further adjournments; the case will be heard that night.

Attorney Pascarella stated case would have been heard tonight if they had Engineer.

Mr. Degroot questioned Attorney Pascarella after he stated that "if possible" to be heard at August 13, 2014 meeting.

Attorney Pavliv said we would turn down if not heard on August 13, 2014.

Chairman Elliott said we are here for residents. He is trying to make situation right.

Mr. Degroot and neighbors stated they were not upset with Board members but frustrated for delays.

Neighbor questioned notice saying that the work on the site was already completed.

Chairman Elliott explained that from the beginning the work was not completed correctly; they were turned away; his understanding was the original meeting for this case was November 2013.

Mr. Degroot and Mr. Mallon stated original meeting was actually heard in August, 2013.

Neighbors and Mr. Degroot said that since matter was denied, they thought what had been constructed should have been removed because of the denial. Neighbors stated that Mr. Podesta was claiming that he will be adding 15 foot trees in an illegal spot of the property as well.

Chairman Elliott stated he was not in attendance of original case. He explained that they were turned down and told to remove structures but once they make legal appeal, everything stops and cannot make them remove the structures.

Attorney Pascarella took exception to Chairman Elliott's statement; claimed that he hasn't even heard the application and turning it down.

Chairman Elliott stated he never said that he would turn down the case and let him finish his explanation.

Attorney Pascarella said that he did say he just said, and takes exception to that.

Chairman Elliott stated again he never said that.

Attorney Pascarella said maybe you should recuse yourself from this application because you stated to turn this matter down.

Chairman Elliott stated again he never said that.

Attorney Pavliv and Mr. Gudaitis stated Chairman Elliott said the first time. Not this current application.

Attorney Pascarella stated that Chairman Elliott said once they are turned down and remove it, should not be the words the Chairman of this Board should be saying.

Chairman Elliott stated once the original application was turned down and applicant told to dismantle it, they made an appeal. Once they make the appeal, everything has to stop. The Board's actions; everybody's actions have to stop. Questioned Attorney Pascarella to this being said.

Attorney Pascarella agreed to above statement, but claimed that's not what he originally heard.

Chairman Elliott said he would have record re-read.

Attorney Pascarella said if that is what was said he would retract his statements if that is what Chairman Elliott said. However, there still is some due process and hopes the Board keeps an open mind. He stated his client went out of his way to minimize the variances they are applying for and applicant heard the objections from previous application. Attorney Pascarella hopes that they get a fair hearing.

Chairman Elliott agreed about due process and stated he felt the applicant would get a fair hearing. He also stated he would step down from Board and did not have problem doing so.

Chairman Elliott explained again the procedure of appeal for denial.

2. Lucas, Justin & Tina BOA # 14-5601

Application: Construct 6' High Solid Wood Fence Between a Principal Structure and a Public Street.

Block 426, Lots 1-3

Location: 347 Seabrook Avenue

Denial reads: "Applicant proposes to install a 6' high fence between a principal structure and a public street."

Action: Public hearing, discussion and consideration of application.

Mr. Lucas stated he proposes to put a 6' high solid fence on property. The Asbury Park Press had made an error in his publication notice. Because of the error, he was told matter was to be carried to the July 23, 2014 meeting.

Attorney Pavliv said would be carried to next meeting.

Mr. Mallon stated no further notice necessary and requested that public notice be submitted to Board

Chairman Elliott questioned Newspaper publication error and agreed with Board members to carry this matter until July 23, 2014 without further notice.

3. Kosovich, Gary & Marienna BOA #14-5608

Application: Construct a 3-Season Room Requiring a Rear Setback Variance.

Block 4.230, Lot 57

Location: 347 Jamaica Boulevard

Denial Reads: "Applicant proposes to construct a 3-season room that will leave an 8.64 foot rear yard setback where 14 feet is required."

Action: Public hearing, discussion and consideration of application.

Mr. Kosovich, the applicant, explained project and would like to put sunroom on back of their property that requires a variance.

Chairman Elliott question if area of proposed addition was a patio. Yes

Mr. Mallon questioned the following: need rear yard setback; requesting 10.7 ft. where 14 ft. is required; putting a 20 ft. x 10 ft. room on existing patio; homes behind your property have larger setback? Yes - Are you going to heat the addition - No - Mr. Mallon verified that just to be used as three season room? Yes - Can you put roof runoff into a drywell to recharge the ground water? Yes

Attorney Pavliv and Ms. Adamson had no questions.

Mr. Granberg, Mr. Bollettieri, and Mr. Gudaitis had no questions.

Mr. Borio questioned is there vegetation/trees, etc. between you and your neighbor to the rear? Yes.

Chairman Elliott noted for the record that Mr. Tuminaro arrived at meeting.

Mr. Reuter, Mr. Cammarato, Mr. Gashlin and Chairman Elliott had no questions.

Chairman Elliott opened this matter to public.

No public comments regarding this matter.

Mr. Gudaitis motioned to close to public; seconded by Mr. Bollettieri.

Motion to approve by Mr. Borio, seconded by Mr. Gudaitis to approve this application. Motion carried.

4. McMahon, Brian & Amy BOA #14-5607

Application: Construct a Detached Accessory Structure in the Front Yard Area of a Corner Lot.

Block 794, Lots 1-8
232 West Broadway

Denial Reads: "Applicant proposes to construct a detached structure closer to the street than the front building line of the principal building on a corner lot."

Action: Public hearing, discussion and consideration of application.

Mr. McMahon was sworn in. Mr. McMahon stated that he would like to build a garage/storage area on side yard which is closer to the street to the side property. The structure will be used to store ATV's , tools, boat.

Chairman Elliott questioned about having two lot frontages; applicant stated he had three frontages.

Mr. Mallon questions regarding following: Technically do not have back yard. You have three frontages? Yes – you want to have a front setback for the building of 20 ft. where 35 ft. is required? Yes, he was told he could not build closer to road – You are requesting a waiver for sidewalks and curbs, any in your area? No – Is structure going to be a garage? Storage only – Will you have any utilities? Maybe electric at later date – Can you change roof runoff into drywells – did not have problem with that; suggested using rain barrels – no fill – stone flooring – roadway encroaches on your – applicant was aware of the encroachment – applicant will stay outside of site triangle.

Attorney Pavliv had no questions.

Ms. Adamson questioned the pole barn less than 15' high – yes.

Mr. Gashlin questioned what will be in stored in pole barn.

Mr. Cammarato, Mr. Reuter and Mr. Tuminaro had no questions.

Mr. Borio questioned Mr. Mallon about the three frontages and questioned Mr. McMahon about changing location of pole barn – Mr. McMahon said if he relocated structure there would be no back yard.

Mr. Gudaitis questioned drawing does not coincide with a pole barn structure – applicant said plan came from Pole Barn representative – Mr. Gudaitis said bottom of pole barn structure is open at bottom. Applicant's plan fully enclosed.

Mr. Mallon agreed with Mr. Gudaitis.

Mr. Bollettieri, Mr. Granberg and Chairman Elliott had no questions.

Chair Elliott opened the matter to the public.

Mr. Gudaitis made a motion to close to public; Mr. Bollettieri seconded the motion.

Motion to approve by Mr. Borio, seconded by Mr. Gudaitis to approve this application. Motion carried.

5. Lagrosa, James M. & Wilda D BOA # 14-5592

Application: Construct a Two-Story SFD on an Undersized lot with a Side Yard Setback & Combined Side yard Setback, Rear Yard Setback, Step Setback and Front yard Setback Variances.

Block 1551, Lot 25
Location: 252 Pine Drive
Attorney: Michael Paxton, Esquire
Engineer: John Kornick, PE

Denial reads: "Applicant proposes to replace a storm Sandy affected SFD with a 2-story 1680sf SFD with conforming side entrance stairs and stoops and exterior stairway to an elevated deck. The new SFD will have a rear setback of 14.2 (20' required), a side setback of 5' (7 required), a combined side setback of 12' (18' required), a front setback of 19' (25' required), and a front entrance stoop and stairs less than 12' from the front property line and in excess of 10' of their perimeters."

Action: Public hearing, discussion and consideration of application.

Attorney Paxton was sworn in and is representing Mr. and Mrs. Lagrosa. Attorney Paxton stated that the applicant's home was damaged by Sandy and they propose to replace with new SFD. Mr. Kornick, PE will be engineer for applicant.

Mr. Kornick stated his credentials and educational background.

Attorney Pavliv accepted credentials.

Mr. Kornick stated prior plan was revised per new AIA plans. Testimony covered the existing condition of lot and location of the adjoining structures.

Changes were made to the plans after the attorney and engineer for the applicant received the review letters from the Professionals which resulted in eliminating the front yard setback variance.

Ms. Adamson questioned the dimension of rear set back variance 9.23 to deck per existing plan? Have the Professionals seen this plan? No

Chairman Elliott questioned the new review letter from Remington, Vernick & Vena.

Ms. Adamson explained she had only received the revised plan a week ago. There was only a week to review the new plan submitted.

Mr. Mallon explained that the revised plan came in only 10 days ago.

Chairman Elliott questioned Mr. Kornick about the plan that he was presenting to the Board and Professionals was never reviewed by the Professionals.

Mr. Mallon stated that revised plan had less information. With the changes, more variances were created.

Mr. Gudaitis stated at last appearance, the Board wanted proper paperwork. All information submitted does not agree, so how can the Board make a proper decision regarding this matter? Many errors exist.

Chairman Elliott recommended waiting until proper submittal of paperwork is done.

Attorney Paxton agreed.

Attorney Pavliv and Mr. Mallon agreed to carry matter to August 13, 2014 meeting.

Mr. Bollettieri requested that all previous paperwork be removed and new submitted so there is no confusion.

Chairman Elliott agreed and without further notice having to be done.

Attorney Pavliv made announcement to audience requesting any objectors – no one responded.

Mr. Mallon requested revised plans be submitted by August 1, 2014.

Motion by Mr. Tuminaro and seconded by Mr. Cammarato to carry until August 13, 2014 meeting with no further notice; unanimous motion carried.

6. Perreman Development LLC BOA 13-5555

Application: Preliminary/Final Major Site Plan with Use and Bulk Variances

Block: 1014 Lot: 7 & 8

Location: U.S. Highway Route 9 at Harbor Inn Road West

Attorney: John Devincens, Esquire

Engineer: John Kornick, PE

Denial Reads: The Denial letter issued on August 16, 2013 by the Zoning Official states "Applicant proposes to convert a non-conforming residential use to Landscaping and Residential Remodeling Commercial Use which are non-conforming commercial uses in the RHB Zone."

Action: Public hearing, discussion and consideration of application.

Mr. Granberg stepped down and Mr. Macmoyle took his place.

Attorney Gasiorowski decided not to call Traffic Consultant. Since the Zoning Officer, John Battisti, is present at meeting, he commented he would prefer the Board Members to question Mr. Battiste.

Attorney Devincens agreed to this request.

John Battisti, Zoning Officer was sworn in.

Chairman Elliott questioned following to Mr. Battisti: Why trees were cut and other things done on property and why there was no stop order under the court injunction was made? Prior testimony from Applicant stated that you claimed it was alright to do the changes.

Mr. Battisti stated that they were allowed to cut trees. The existing property was in conformance at the time of the request because it was considered a pre-existing single family residential property.

Mr. Mallon once the applicant bought additional lot; the lots were joined under common ownership which is how the applicants applied under this manner as single family home, they would be able to remove the trees.

Mr. Battisti stated that as far as issuance of tree removal permit, there is not a permit for removal of trees on single family residential property required.

Chairman Elliott questioned if they were allowed to do business on property?

Mr. Battisti stated that only in front building could be used office purposes. If they went in front of Board and made application then if approved they could use both structures. No equipment or storage could be done on site.

Mr. Bollettieri questioned about removal of trees. Are they seeking a variance to change the zoning on the property?

Mr. Mallon responded that they are going for a use variance. Technically, the affect is the same.

Ms. Adamson stated that changing the use that is not allowed in the district.

Mr. Battisti stated that if it was commercial, they would have to come in for a permit.

Mr. Cammarato needed clarification on the second road after listening to prior testimony.

Chairman Elliott stated that he wanted to have all questions to Mr. Battisti at this time so that he could be dismissed.

Mr. Gashlin stated that during prior testimony, Trixies had repaired boat motors, etc., at the same location. Were you aware of that? No

Mr. Tuminaro questioned about tree removal. If they wanted to do a business would a tree removal permit be required? A site plan would have to be submitted – Were trees taken down on business part? Not sure about time frame of when trees were removed but they were removed before the site plan was submitted.

Mr. Gudiaty what is your jurisdiction where the trees were taken down on Lot 7; do you have any authority over request for retaining wall because of runoff? Grading plan would have to be submitted through my office and then the Engineer would review.

Mr. MacMoyle questioned did the applicants approach you before they purchased the property? Almost sure it was before they bought the property – If a potential buyer for property approached you regarding property, all zoning requirements would have been furnished at time? Yes

Attorney Gasiorowski questioned that prior to purchase of property, applicant's met with you and outlined what they intended the uses for the property? Yes – From recollection of prior testimony, the applicant's claimed you said they could do what was proposed? Only if they were doing what they presently were doing on site. If they wanted to change use, they would have to appear in front of either the Planning or Zoning Boards.

Attorney Devincens questioned about complaint issued on the use of the property; did you issue a stop work on the property? Mr. Anderson from Code Enforcement issued stop work order – Did you tell applicants they would have to go for site plan? Yes – Was denial issued for the appeal? Yes – Can a business continuing while appeal is being made? – Not sure.

Mr. Borio questioned about two lots being combined? Not sure

Chairman Elliott questioned if not combined, would they need permit? They would need permit for Lot 8 and if still not combined what would that mean?

Mr. Mallon stated that they were combined for zoning purposes now; only for tax purposes.

Mr. Cammarato questioned of the existence of road? Not a road.

Mr. Bollettieri said would be hard to use; only wide enough for a car.

Attorney Pavliv stated it was not a dedicated road.

Attorney Gasiorowski gave closing arguments questioning the integrity and behavior of applicants. Applicant claimed to have approval from Zoning Officer, John Battisti. However, after testimony of Mr. Battisti, the claim of the applicants differs from Mr. Battisti's testimony. The operation of the business continued during the time of appeal. He feels that the applicants haven't proven both the positive/negative criteria and feels that they have done neither of the two.

Attorney DeVincens gave closing arguments regarding credibility of the people who came before the Board. The campsite locations were moved per Ms. Fleming and planner, Mr. Thomas, for campground said they were behind the Roto Rooter. He said there were engineering issues in having the plan submitted which caused delays of the application submittal. There still is a tremendous amount of vehicles entering the campground area. He felt that this type of business would have less intensity than other proposed businesses based upon Mr. Thomas's testimony. Mr. Maczuga's testimony said this would be a substantial esthetic improvement to area. With purchase of Lot 8, that reduced pre-existing non-conforming condition. Mr. DeVincens testified that his client's would be improving the site with their business.

Attorney Pavliv stated that the Board could vote separately and give their statements or have discussion among them; no executive session.

Attorney Devincens who is eligible to vote?

Attorney Pavliv stated the two alternates cannot vote. Mr. Bollettieri and Mr. Gashlin; however they can participate in discussion. Designate and list findings of approval or denial prior to vote.

Attorney Pavliv stated that according to list that Mr. Bollettieri can vote since he is first alternate and sat for Mr. Granburg. Mr. MacMoyle could not vote since he is third alternate.

Mr. Bollettieri questioned if lots are still separated?

Attorney Pavliv stated that was correct. If it was approved then you could make a condition that the lots be combined.

Mr. Gudaitis commented about concern of size of property for amount of business presented. If applicant granted will there be loss of revenue that may occur in the area.

Mr. Borio commented about size of property being too small for what is proposed. Not having the DOT approval is a major concern.

Mr. Tuminaro commented about size of property not being able to support two business. Not having the DOT approval is concern.

Mr. Reuter commented that was difficult case. His main concern is use variance. What kind of impact will that have on existing business? Does realize we should make Route 9 more attractive, but still concerned about use variance.

Mr. Cammarato commented concerned about use variance but feels that the business would be good overall Town improvement.

Mr. Gashlin commented that this business would make area more attractive. He felt traffic would not be excessive. This business is comparative to other businesses in the area. He felt application should be approved with conditions such as something regarding to noise restrictions.

Mr. Macmoyle commented that Route 9 does need to be revitalized. Site in question well kept. However, a lot of work was done around the Town requirements. He does not feel that the applicant went through the right procedure of obtaining the approval.

Mr. Gashlin questioned Mr. Macmoyle if the applicant applied for variances before they did any work, would that change your opinion? No.

Mr. Macmoyle would still have concerns about the size of property and what is proposed.

Chairman Elliott stated disappointed with the Board that they did not make any comments regarding how this site plan could be improved. He felt very busy business for the site; DOT approval also a concern.

Mr. Gashlin questioned about noise restriction.

Chairman Elliott stated that the objectors would become responsible for reporting to authority's when the noise occurred.

Mr. Gudaitis said there was a noise ordinance existing in Berkeley ordinance – only minimal fine.

Mr. Reuter commented on prior campers being affected by noise.

Mr. Bollettieri commented about neighbors not being so good. Site size a concern.

Chairman Elliott commented regarding relationship of neighbors.

Mr. Borio stated that he felt was just to make comments about application. He felt property could support one business but not two.

Mr. Bollettieri agreed with Mr. Borio.

Mr. Cammarato questioned Attorney Pavliv – could the Board consider the approval of one of the business or does the applicant have to resubmit a new application?

Attorney Pavliv stated that the applicant would have to resubmit new application for one use.

Mr. Cammarato questioned Attorney Pavliv - What happens to the property from this point on? He feels that nothing for that area will be approved because of not being neighborly.

Attorney Pavliv that restraining order from the Court remains in full affect. If they have violations, this must be removed.

Attorney Pavliv stated that findings for reasons of denial.

Chairman Elliott stated that general consensus is that property is too dense for what is proposed there.

Motion to deny application by Mr. Gudaitis; seconded by Mr. Bollettieri, motion carried with Mr. Cammarato voting yes and Chairman Elliott abstaining.

DISCUSSIONS

Attorney Pavliv discussed Benco stating they are in process of submitting new application.

RESOLUTIONS

Shawn & Ileana Penn, BOA #14-5602

Deborah Nowakoski, BOA #14-5597

VOUCHERS

Motion to approve vouchers by Mr. Gudaitis, seconded by Mr. Bollittieri to adjourn the meeting.

ADJOURNMENT

Motion adjourn the meeting by Mr. Gudaitis, seconded by Mr. Bollittieri to adjourn the meeting.
Unanimous affirmative vote.