

**Bradley Beach Zoning Board of Adjustment
Regular Meeting Minutes – Meeting Held Via Zoom
Thursday, June 18, 2020 at 6:30 PM**

Meeting is called to order at 6:30 PM.

Open public meeting announcement is made by the Board Secretary.

Roll Call:

Present: Michael Affuso, Robert Quinlan, Raymond Wade, Dennis Mayer, Deidre Phillips, Teresa Rosenberg (arrived 6:51 PM), David Critelli, Deborah Bruynell, and Harvey Rosenberg

Absent: Dominic Carrea

Also Present: Mark G. Kitrick, Esq. - Attorney to the Board, Gerald Freda, PE, PP, CME – Board Engineer, and Christine Bell, PP, AICP – Board Planner

Approval and Adoption of Meeting Minutes:

A motion to approve the meeting minutes from the Regular Meeting of May 21, 2020 is made by Harvey Rosenberg and seconded by Dennis Mayer. All eligible members present in favor.

Resolutions Memorialized:

Resolution 2020-10 – Approval of Bulk Variances – Brian T. Smith and Sharon L. Price – Block 49, Lot 13 – 505 Central Avenue

Applications Under Consideration:

ZB19/16 – Paul & Kim Charette – Block 79, Lot 15 – 400 Monmouth Avenue – The Applicant is seeking Use and Bulk Variance relief for construction of a proposed garage apartment with a second-floor porch/balcony on this corner lot. Garage apartments are not permitted uses on corner lots and bulk variance relief is required for the second-floor porch/balcony, existing side yard setback, and existing rear yard setbacks. Applicant is represented by Jeffrey Beekman, Esq. ****This application was partially heard and carried from our Special Meeting of April 30, 2020 and carried to this meeting without the need for further notice.****

Jeffrey Beekman, Esq. – representing the Applicants

Allison Coffin, PP, AICP – sworn in

Paul & Kim Charette – remain under oath.

Paul Charette provides a summation of the changes made to the plan whereas the Board and Public comments were taken into account.

Mr. Beekman indicates the setbacks are now 5.19 feet and 5.29 feet for the rear and sides for the proposed garage apartment addition. Jerry Freda indicates to be sure at least 5 feet off the property lines if approved to build if you are making that representation.

The Board Engineer's Review letter is reviewed as follows:

3b1 – garage floor area is 566 s.f. and that will be added to the plan.

The eave height is 8 feet 6 inches and is compliant.

The width and depth of interior is 19' 6" x 19' 9" deep which is two (2) 8' spaces. There are a total of 7 spaces total being provided when the minimum required is 4.

4.4a – the garage is 7'4" from the side and 10' 2" from the residence.

The Leon S. Avakian Review is clarified.

Allison Coffin, PP, AICP – qualified and accepted – Ms. Coffin indicates there is 1 variance and that is the location of a garage apartment on a corner lot. Ms. Coffin provides the special reasons supporting the request for use variance and indicates there is no increase in existing non-conformities.

Victoria – Park Place – Just afraid more of these will be approved in the future.

Thomas J. Coan – 612 Third Avenue – sworn in – indicates this lot is particularly suited for this as compared to what the Ordinance allows and is in favor of the project.

Steve Perette – 5 Madison Ave – sworn in – echoes Mr. Coan's comments and believes the applicant has done his due diligence and agrees 100%.

Mr. Beekman provides a summation of the application and describes the intent of the Ordinance and asks that the Board approve this application.

Based upon the application submitted, the revisions made to the plan, and the testimony provided, Harvey Rosenberg makes a motion to approve this application as presented with the representation that the garage apartment will have a minimum setback of 5 feet from the property lines, seconded by Deidre Phillips.

Those in favor: Deborah Bruynell, David Critelli, Michael Affuso, Deidre Phillips, Raymond Wade, Dennis Mayer, and Harvey Rosenberg

Those opposed: None.

Those abstained: None.

Those absent: Dominic Carrea

Those ineligible: Teresa Rosenberg (joined meeting at 6:51 PM) and Robert Quinlan (was not able to listen to audio from prior meeting)

ZB20/06 – Daniel Walsh – Block 25, Lot 8 – 103 Park Place Avenue – The Applicant is appealing the zoning officer’s determination that the improvements to a non-conforming lot with the proposed half-story and uncovered deck at the rear of the dwelling will require Board Approval. Should the Board affirm the Zoning Officer’s decision, the Applicant will be requesting approval from the Board to construct a 2 ½-story addition with covered front porch and detached garage apartment. This proposal will require variances for the height of the stoop, building height, and for the pre-existing, non-conforming lot width. Applicant is represented by Thomas J. Hirsch, Esq.

Thomas J. Hirsch Esq. – representing the Applicant.
Mr. Walsh and Mr. Gorleski are sworn in along with Board Professionals.

Mr. Hirsch discusses the rear landing and living space on the third level.

Daniel Walsh – 41 London Street in Freehold – owns 1003 Ocean Avenue as well as this property which he intends to make his primary residence. They are proposing a single-family home + garage apartment for himself, his wife, and 2 daughters. He indicates they worked with Mr. Gorleski to come up with a home that did not require variances.

The photos of homes with 3rd floor decks are shared with the Board.

Mr. Affuso – indicates there are 12 pictures of homes with decks, do we know what the square footage of the 3rd floor is? It is answered that decks were not included in the square footage – asked builders and the architect may have some specifics on these homes.

Ms. Phillips – asks if they can less the 50% on the third floor?

Gary Winkler asks what has changed for rooftop decks? Jerry Freda provides clarification.

Thomas J. Coan – questions the notice provided for the hearing and the height of the stoop and the building height. It is indicated the building height to be 34 feet.

Leonard Bielory – questions the calculation of living space – Jerry Freda indicates the rooftop deck is calculated into the living space.

Mr. Affuso asks how long Jerry has been the Engineer for the Board – it is indicated for the past 7 years; however, this issue has only cropped up the past few years.

Ed Gorleski, AIA – qualified and accepted – describes the changes made and meeting with the Zoning Officer with regard to front and rear decks. He does not agree with a deck being considered habitable space. He reviews the building code and provides outlines of some of the properties approved which have had similar “decks”:

109 Newark (exhibit A-10) – 45% attic 80 s.f. deck = 56% floor below – permit was issued without variance.

219 Park Place Ave (exhibit A-8) – 37.3% with 150 s.f. deck = 50.6% with deck – permit issued without variance.

218 Third Avenue – with 138 s.f. deck = 53.5% - permit issued without variance

300 ½ Third Avenue – 49.8% attic with 2 3rd floor deck s= 61% floor below – permit issued no variances.

Mr. Hirsch proceeds to review the positive and negative criteria with the Architect for the granting of these variances being requested.

Harvey Rosenberg – reviews the examples – Tom Hirsch indicates the point is there were no variances necessary for these projects.

Thomas Hirsch – indicates there is no ordinance you can point to that does not permit rear decks.

Deidre Phillips – You are proposing a front and a rear deck is it possible to pick one or the other?

Jerry Freda – indicates you can take the back portion all the way to the back of the house to be utilized as an attic – rear decks have been a real problem and there is nowhere in the ordinance that permits a 3rd floor deck.

Thomas Hirsch proceeds to discuss third floor decks.

Mark Kitrick, Esq. confirms the procedure and indicates there are 3 variances being requested.

Tom Hirsch and Jerry Freda have a discussion with regard to 3rd floor decks being calculated into the livable space.

Thomas J. Coan – 612 Third Ave - asks if there is any way to do without the gambrel roof?

Gary Winkler – 1001 Ocean Ave – Wants to know when habitable space changed?

Maryann Spilman – 906 Ocean Ave - Questions the design of the apartment and why there are no windows on the west side and only on the east side as both look onto other properties. She also questions the setbacks – It is confirmed that the setback is compliant and the window locations are clarified and why they are being proposed this way. Ms. Spilman indicates she is concerned with privacy.

Florence Foti – indicates she has a 3rd floor deck and a 2nd floor deck in the rear yard and doesn't understand why this is such an issue.

Maryann Spilman – is it being proposed in the front or back? Harvey Rosenberg indicates both.

Jerry Freda explains the recent events and that people feel violated with the upper level rear yard decks.

Thomas J. Coan – indicates a stoop is one and the deck is another.

THE BOARD TAKES A 5 MINUTE BREAK AT 8:40 PM – ROLL CALL IS TAKEN AND ALL MEMBERS ARE STILL PRESENT.

Thomas Hirsch indicates he discussed some options with his client and he said the rear deck is important for sunsets – trying to suggest ways to get close to 50% but would rather get rid of the front deck and doesn't understand why the rear is such an issue and what adverse impact it would have.

Jerry Freda – indicates he is correct about the rear; however all along the east side, houses abut the property there is at least 4.

Mr. Walsh discusses the houses abutting the property in the back there is no impact, there is 60-70 feet before a house. The deck doesn't affect the surrounding properties and he would be willing to bring the inside of the house out 2 feet to reduce the size of the rear deck.

Jerry Freda – states he is struggling with the Ordinance as it is. Anything that has been suggested is a positive for the application, but the Board has to decide.

Tom Hirsch asks for Board feedback as they are trying to find a way to utilize and compromise. We can extend the third floor out and reduce the depth of the rear deck as discussed. We are trying to find a way to get some enjoyment out of that view. We do not believe there is any real impact with the homes the way they are situated.

Deidre Phillips asked if a window can be put in where Ms. Spilman suggested. Mr. Gorleski indicates they can put the window in the garage apartment on the west side.

Michael Affuso – indicates the rear deck is a non-starter for him. You are up at least 20 feet and you can look down onto some people's backyards. Harvey Rosenberg and Raymond Wade agree. Shrink or remove the back deck.

Mr. Walsh asks if a smaller rear deck is proposed would it be acceptable? Harvey indicates to listen to the comments. Mr. Hirsch states some members don't want any kind of a rear deck and he appreciates they are stating what their position is and appreciates that. Suggests it is best to carry to another meeting and discuss options with the Architect and come back.

David Critelli – comments the area is in need of improvement and feels that this home is an improvement and that should be taken into some consideration.

It is indicated this matter will be carried to the July 16th meeting; however, comments will be accepted.

Kim Januzzi – 608 Evergreen – sworn in – asks for clarification on what is being requested and urges the Board to renote so people are clear that there is an upper deck being proposed. Ms. Januzzi indicates upper story decks are not permitted as per a recent application and the Ordinance is very clear that you cannot have a rear deck more than 3 feet above the ground in a rear yard, they are an incursion on privacy and just not allowed – clear standards need to be met and those were not even touched upon tonight.

Robin Deflice – 111 Park Place Ave – comments sometimes decks need to be in the back especially on windy days. If the deck were smaller and could not accommodate 15-20 people, at least the homeowner would have a place to go out and sit. This this will beautify the neighborhood and does not feel the Board should be able to say you cannot have a deck.

Mike Kretzer – 122B Park Place Ave – Indicates he has been here for 41 years and that monstrosity that was there, he has taken the time to take it down and it has been going on for 2 years now. It is time and money, there is no backyard right up against his. Feels there should be clearer standards.

John Boyle – 904 Ocean Ave – 15 years this site has been an eyesore – he shares the backyard property line and is looking at this as an improvement from what is there now. And feels Mr. Walsh should be supported by his neighbors.

Gary Winkler – Shelly Palumbo – sworn in supports home and if all neighbors are in support the Board should approve.

John Naples – 1009 Ocean Avenue - sworn in – lives around the corner from this property. This property was conforming when they purchased the property, but because of recent changes to the ordinance their lot is now non-conforming. They could not possibly make enough noise compared to what Ocean Avenue generates. Indicates you cannot compare a deck 2 blocks from Ocean Avenue to 4 or 5 blocks back not an equal comparison. He feels they have invested a lot of money here for something that is not clear in our ordinance.

Thomas Coan – 612 Third Ave – sworn in - Everyone wants the house but he feels they can remove the 3rd story deck in the rear of the home and there are other alternatives to make the house compliant.

Maryann Spilman – 906 Ocean Ave – sworn in – echoes that this has been an eyesore and doesn't think the proposal needs to be changed very nicely designed.

Cindy Kwiatkowski – 200 Ocean Park Avenue Unit 4D – sworn in - echoes Mr. Coan – disagrees with the need for 3rd story decks not only are they a safety hazard but they do cause

noise to travel, feels that just because they have been approved in the past does not mean they should be now and it should not be approved the rear deck should be eliminated.

Florence Foti – 118 Park Place Avenue – sworn in - indicates this will be a tremendous improvement to the area and wishes the Board would grant what is existing in town and the noise level would be minimal.

Gary Winkler – sworn in – This is not going to be a summer rental, this is going to be their primary residence and hopes the Board takes that into consideration.

It is agreed to by the Applicant and the Board to carry this matter to the July 16th meeting without the need for further notice. Will submit revised plans at least 10 days prior to the meeting.

ZB20/07 – Greg Makkay – Block 20, Lot 7 – 603 Park Place Avenue – The Applicant is seeking variances to construct an addition to the front of the dwelling, new front porch with an open uncovered deck leading to the second floor, and a covered porch at the rear of the dwelling.

Greg Makkay and Dan Fortunato, Architect are sworn in with Jerry Freda and Christine Bell.

Dan Fortunato – Architect for the project discusses the Zoning Requirements with regard to setbacks and the Stop Work Order being issued.

3a1 – front porch 11 feet – never increased the setback it was torn down and rebuilt 9 feet from the property line which apparently is in violation.

3a2 – 2-story deck on the 1st and 2nd levels.

Jerry Freda indicates we can discuss both of these but the fact is the front walls are different. He suggests doing 1 and 2 together and then the following individually.

Michael Affuso – how are we here for what was already built? Deidre Phillips asks if there are pictures of what was built already?

Mr. Fortunato indicates no, nothing as of today. We filed all of the permits and everything and began and now here we are. He asks Mr. Makkay if he was issued a stop work order.

Greg Makkay – indicates there was never a stop work order issued. Plans were all submitted, permits were all issued, work began and then months into it after the footing inspections passed got a call from who he believes was the “Main Building Inspector” and he said that he noticed that something was missed and that the plans included the additions which were on the plans and told us we needed a variance which brings us here today. No stop work order; however, we have to get past this. From interpretation when we went into this we thought we were

conforming. Ordinance states that if I am further back than my neighbors, I am allowed and I am further back than all of my neighbors.

Michael Affuso – so, if we negotiate on anything on here, we are talking demolition because of the phase we are at.

Dan Fortunato – There is a porch roof over the deck and short of putting the flooring on the second level we are complete.

Dan Fortunato indicates the applicant is proposing a roofed deck to the rear of the dwelling, the roof over the porch is not permitted and that he is not sure why because we are within the setback requirements. Jerry indicates it is not permitted, you are not allowed a covered roof on the back on a deck. It is indicated the roof is built approximately a 230 s.f. roof, but it can be taken off – but not looking to do that, looking to keep what we have. Jerry indicates you need to provide some testimony of why what you have should be left. It faces south and there is too much sun in that area.

Christine Bell – indicates they are before the Board of Adjustment to seek variances. These are 'c' variances and she asks if they can meet the proofs necessary in order for the Board to grant these variances being requested. Are you prepared tonight to provide testimony as to how you can meet those proofs?

Mr. Fortunato indicates he doesn't think so. He just thought he was here to present what had happened and to rectify the current situation.

Greg Makkay – asks if he should get an attorney. Harvey indicates it is always good to be represented by counsel. Jerry indicates you should probably consider a planner as well.

Jerry Freda – indicates we have to react to the ordinance so whether it is built or not it has no bearing, so that is how the letter is generated – not sure how you got permits or how we got to where we got to.

Jerry Freda indicates there is not much in the way of plan submission required, it is a matter of placing the proper proofs on the record.

Michael Affuso – indicates he would like them to also present the building permits etc. Would like to see a timeline of events, because either we are getting snowed or he is being treated very poorly.

Greg Makkay reiterates he wants copies of the permits and photos of the house in its current state.

Mark Kitrick, Esq. – reminds the applicant that testimony will need to be provided why the variances should be granted.

Jerry Freda – indicates that the setbacks listed in #1 and #2 could possibly go away if a Licensed Surveyor could prepare a survey demonstrating that you are compliant with the permitted setback based upon the setback of the other homes within 200 feet of your site. It is to your advantage to do that.

It is agreed to by the Applicant and the Board to carry this matter to the July 16th meeting without the need for further notice.

ZB20/04 – Irvington Manor, LLC – Block 37, Lot 2 – 217 McCabe Avenue – The Applicant is seeking an Appeal of the Zoning Officer's Determination with regard to adding a Hotel Use to the property. Applicant is represented by James T. Hundley, Esq. ****RECEIVED REQUEST FROM THE APPLICANT'S ATTORNEY TO ADJOURN THIS MATTER TO OUR AUGUST MEETING WITH NO FURTHER NOTICE BEING REQUIRED. THIS MATTER IS NOW SCHEDULED FOR HEARING ON AUGUST 20, 2020 AND WILL NOT BE HEARD THIS EVENING****

ZB20/05 – Beth and Harold Cotler – Block 78, Lot 14 – 306 Monmouth Avenue – The Applicant is proposing to demolish an existing garage and construct a 2-story accessory structure having a 2-car garage on the first floor and a residential apartment above requiring variances for the height of the detached garage, minimum side yard setback for accessory structure, living accommodations on both floors, and maximum impervious coverage. The Applicant is represented by Richard B. Stone, Esq.

Mr. Dennis Mayer is Recused from this Application.

Richard Stone, Esq. – representing the Applicant along with Larry Murphy, Engineer, and Allison Coffin, PP, AICP – Professionals are sworn in with Board Professionals.

Mr. Stone indicates during construction field changes expanded construction as permitted, it was felt they were de minimus alterations. Although variances are needed, most of them are pre-existing non-conformities.

#1 issue with 2-car garage – construction accommodates 2 cars – there is a uniqueness of the property – requirement of applicant would be 4 parking spaces off-street where the applicant can accommodate 7 maybe 8 spaces off-street – in addition the original approval was for the height of 24 feet on the back garage unit. The builder added onto the construction, two (2) things - dormers which do not increase the living space. It is set aside for storage or mechanicals, the second reason the dormers were put on was to accommodate solar panels. By doing this it amended the height to be 25 feet 8 inches versus the original 24 feet proposed.

Mark Kitrick, Esq. – Addresses the Council Members in Attendance and indicates that Council Members are not permitted to attend and explains why. Mr. Kitrick also addresses Mr. Coan's objections with regard to the notice provision.

Mr. Stone – has a question on before comment on objection. Mr. Stone indicates the letter is signed T.J. Coan "Public Advocate" He indicates is not aware and asks if Bradley Beach has a "Public Advocate" Mr. Kitrick indicates he does not know the answer to that. He feels that Mr. Coan is really presenting this as a citizen which he is entitled to do, but he has used the caption "Public Advocate" which means he is speaking on behalf of all of Bradley Beach. He feels it is in appropriate unless of course he is an appointed representative of the Borough. Mr. Stone indicates we are required to provide information in advance of a hearing to address any issues that may arise and so that the public is aware. An objector has a similar obligation and I was not advised until late this afternoon. So as far as the written objection I have objection as far as a verbal objection I think he has the right as a citizen not as an advocate. I don't know his qualifications.

Mr. Coan – sworn in – indicates he will strike "public advocate" from the record as it is self-proclaimed and he places his objections on the record with regard to the notice provided. He indicates there is no mention of a loft or dormer and it states 2-car – it is not a 2-car garage, it is clearly a 1 car garage and therefore it appears fictional as it would appear if driving past the existing garage were being proposed to be torn down and it is not. He would appreciate this be renoticed.

Mr. Stone – requests to get off timing as there is a reason for that and it is spelled out by the Municipal Land Use Law. Objectors who are familiar with the process can provide their objections ahead of time – Notice public and paper is sufficient per Mr. Stone and he explains why.

Mark Kitrick, Esq. asks for clarification on the 'd' variance.

Mr. Stone – discusses off street parking

Mark Kitrick, Esq. indicates it was noticed for a 2-car garage? It indicates yes, we have if deemed 1 car you would need a use variance and catch all would cover? Yes. Mark Kitrick, Esq. – suggests if you do require a use variance, his view is that the catch all phrase would not cover use.

Mr. Stone confirms professionals can hear.

Mark Kitrick and Richard Stone discuss use variances. Mr. Stone indicates he mis-spoke. I do not need a 'd' variance for the garage, I need a 'c' variance for the garage. That was an error on my part. I do not need a use variance for the garage, that was a mistake on my part. Mr. Kitrick indicates he follows.

Mr. Coan indicates there is no notice with regard to the loft and that this is a 2 ½ story structure, not a 2-story structure, so again he feels the notice is deficient. The public needs to know what exactly is going on.

Mr. Stone agrees this is a 2 ½ story structure. Mr. Stone indicates he does not agree with Mr. Coan and requests this matter be carried to assure no jurisdictional issue and he will renote due to the late hour.

Deidre Phillips – 1 door 2 cars go in there now, because they wanted lighting and safety to get in. You are going to have to have 2 doors.

Thomas Coan – appreciates Mr. Stone’s professionalism and looks forward to the new notice and the continued hearing.

It is agreed to by the Applicant and the Board to carry this matter to the August 20, 2020 meeting with renote and this matter will be placed 1st on the agenda.

WITH NO FURTHER BUSINESS BEFORE THE BOARD A MOTION TO ADJOURN WAS OFFERED BY HARVEY ROSENBERG AND SECONDED BY MICHAEL AFFUSO, ALL IN FAVOR. MEETING CLOSED AT 10:12 PM.

NEXT SCHEDULED MEETING WILL BE OUR REGULAR MEETING ON THURSDAY, JULY 16, 2020 AT 6:30 PM VIA ZOOM.

Minutes submitted by Kristie Dickert, Board Secretary