

**Bradley Beach Zoning Board of Adjustment
Regular Meeting Minutes – Meeting Held Via Zoom
Thursday, August 20, 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, Raymond Wade, Dennis Mayer, Deidre Phillips, Teresa Rosenberg, David Critelli, Deborah Bruynell, and Harvey Rosenberg

Absent: Dominic Carrea and Robert Quinlan

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 July 16, 2020 is made by Harvey Rosenberg and seconded by Raymond Wade. All eligible members present in favor.

Resolutions Memorialized:

Resolution 2020-12 – Approval of Bulk Variances – Daniel Walsh – Block 25, Lot 8 – 103 Park Place

Resolution 2020-13 – Approval of Bulk Variances – Greg Makkay – Block 20, Lot 7 – 603 Park Place Avenue

Applications Under Consideration:

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 TO ADJOURN TO OCTOBER 15, 2020 – THE BOARD AGREED TO CARRY THIS MATTER TO OCTOBER 15, 2020; HOWEVER, NEW NOTICE IS TO BE PROVIDED – ALL MEMBERS PRESENT IN FAVOR.

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. Stone discusses the prior hearing and some of the dialogue which took place.

Mr. Stone objects to the late notice of objection that had been received and courtesies had not been provided. A far more detailed notice has been provided as well as architectural plans for this hearing. While we feel the original notice was sufficient we did not want any procedural issues raised should a decision be made.

Mr. Stone indicates he has now received a new letter of objection from Mr. Coan either early this morning or late last night who has since changed his title to "Bradley Beach Public Citizen", but again wanted to point out that the record is clear that he objects to the late notice of these objections to the Board, the Board Professionals, and to the applicant, and to the Applicant's Attorney.

Mr. Stone proceeds to indicate he received an unsolicited call earlier in the week from Mr. Coan and indicated to him then that I would inquire if he was represented by an attorney and he had indicated then that he was not, but that he had engaged a Planner. Mr. Stone has not received any record or report from his proposed Planner, but he did go through some detail of items that he objected to. Mr. Stone asks if the list of objections has been distributed to the Board, including Mr. Kitrick, because he has some questions about these things.

It is indicated by the Board Secretary, Kristie Dickert, that due to receiving the documents less than 24 hours in advance of the hearing, they had not been distributed to the Board Members as they had only been distributed to Counsel and posted on the website.

Ms. Dickert asks for a moment in order to try to upload the document so her screen may be shared as we review this letter of objection.

Thomas J. Coan disagrees with Mr. Stone with regard to the timeliness of submitting his letter of objections.

Mr. Kitrick indicates that the Board has not accepted jurisdiction on this matter yet and this is purely a conversation which is taking place.

Mr. Stone indicates the communication in and of itself is not evidential as there are items contained within the document that are hearsay. He has no objection to Mr. Coan discussing each of these items contained in his objection so they can be responded to.

Mr. Stone provides comment on Mr. Kitrick's explanation and indicates the record should reflect the late notice as he expects that these proceedings will be reviewed at a later date and that the objector has continually "drop-shipped" these objections each time and it is being done intentionally so responses could not be prepared to the objections.

Mark Kitrick Esq. explains the procedure for objection. He indicates the objector is extended the same courtesies as the applicant. He indicates the objector in this case has decided to represent himself; however, he will have to follow the same rules as someone who is a licensed attorney. The reality is that whenever those documents came, if we were to determine that it wasn't timely, what really would occur is that the matter would likely be carried. Does not necessarily disagree with Mr. Coan and the notice provided and where the documents need to go, he doesn't think what he has done contradicts what is on the website, but would like to hear why he did that the night before and just as a professional courtesy, as the Board Attorney, I did not get a copy.

Mr. Coan indicates he is following the instructions as indicated on the Agenda. Mr. Kitrick indicates that a common courtesy should be extended. You need to give people more notice. Mr. Kitrick asks that in the future if you have documents in the future that you share it with the Board Attorney and the adversary in a timely manner and not the day of or the night before. Mr. Coan indicates he understands.

Mr. Stone provides comments relative to Municipal Land Use Law. Everyone is held to the same rules as any attorney would be. He provides his view of the late submissions and wants the record to reflect same and he feels that Mr. Coan is intentionally trying to keep this hearing from taking place.

Mr. Coan indicates he has shown up to meetings in the past and handed the Engineer's letter at the meeting.

Mr. Coan's letter of objection is reviewed on the shared Zoom screen.

Mr. Coan objects to "testimony" provided by Ms. Phillips regarding the application at the prior hearing. Ms. Phillips objects. Mr. Kitrick asks that Ms. Phillips allow Mr. Coan to finish his objection. Mr. Kitrick disagrees that Ms. Phillips provided testimony as she was not under oath.

Mr. Stone indicates that he believes Mr. Coan should be sworn in. Mr. Coan is sworn in by Mr. Kitrick. Mr. Stone objects to the transcript provided by Mr. Coan and asks Mr. Kitrick to inquire as to whether or not he is certified to prepare such transcripts. Mr. Coan indicates he is not certified but prepared to the best of his ability. Mr. Stone indicates it has no place in this record as he is not certified or qualified. Mr. Stone asks if he taped the prior hearing, he indicates no he submitted an OPRA request and received the link. A discussion takes place as to whether or not Ms. Phillips has a conflict. Ms. Phillips explains where her comments came from and indicates she is not biased and feels whether she votes to approve or deny the application she has no preconceived decision and she does not have a personal relationship with the Colter's and she is completely impartial.

A discussion takes place with regard to HIPPA Laws and Mr. Coan's objection to any of the Board Members being clients/patients of Dr. Cotler's and that they should recuse themselves. Mr. Stone indicates that is not information anyone is entitled to.

A discussion regarding conflicts of interest takes place.

Mr. Coan objects to Mr. George Waterman the Zoning Officer not being available in order for the public to ask questions regarding prior applications approvals and/or denials. Mr. Stone does not feel it is necessary as we all know we would not be here now if the structure had been built as to what was approved, so Mr. Waterman's testimony has no bearing.

Mr. Stone wants to know why copies of old invoices and resolutions from when Mr. Stone represented the Board were submitted. Mr. Coan indicates to show the arbitrary and capriciousness of the application/process. Mr. Stone feels it is completely irrelevant to this case and wants to know why this specific bill was provided to the Board. It is indicated because that particular application was for a garage apartment with a bathroom on the lower level and the Board did not approve that. Mr. Stone each application stands on its own merits.

Mr. Coan indicates his recommendation for inspection of the building was dismissed. The building was already built. Mr. Stone indicates a site inspection is not necessary, there has been an as-built plan provided and to have people parading onto the Cotler's property is completely inappropriate. It approaches harassment and the Board has plenty of information in order to make an informed decision about this application.

Mr. Critelli asks why this is going on and why we are not moving forward. Mr. Kitrick indicates we are just going through some processes right now and the Board has not accepted jurisdiction in order to hear testimony on this application yet. We need conclude on some of these issues that have been raised about the case before we can move forward.

A discussion takes place with regard to the issues regarding conflicts being raised and what should be done because any Board Member that recuses themselves would be perceived to be a patient and not legal for everyone to see. Mr. Kitrick indicates that is one of the problems dealing with this issue the night of and having this presented at the eleventh hour. Mr. Kitrick believes it is relevant, but a very unique and sensitive issue.

Mr. Stone provides some background of Dr. Cotler's involvement in Bradley Beach and indicates he wants the same as Mr. Coan, a fair hearing for the Colter's without any conflict now or in the future.

Mr. Affuso suggests a poll be taken of the Board as to whether or not they need to recuse themselves because of political affiliation or doctor/patient affiliation at the same time, this way it is not obvious as to which reason they may or may not be recusing themselves and there is no clear violation of HIPPA laws.

Mark Kitrick, Esq. provides some case law and provides background with regard to another district's Board hearing this case and whether or not that decision needs to be made at this point.

Mark Kitrick, Esq. discusses Board Member appointments and that almost all, if not all, current Board Members were appointed at one time or another while Dr. Cotler served as a Councilman. Mr. Coan indicates he does not feel it presents a conflict and will leave that determination up to the individual Board Members themselves to determine if they have a conflict. Mr. Stone also feels that this issue is not a conflict and is willing to proceed if that were the only issue. He came prepared to begin testimony if Mr. Coan hadn't provided these objections at such a late hour.

It is agreed to by the Applicant to carry this matter to the October 15th meeting with no further notice. It is indicated Mr. Stone will be ordering a transcript and it will be shared with Mr. Coan and Mr. Kitrick, and a brief will be submitted by both parties by September 30, 2020 to Mr. Kitrick and Ms. Dickert will be copied. Mr. Stone, Mr. Coan, and Mr. Kitrick will coordinate prior to October 15th with regard to any legal issues, not the facts of the case.

A motion is made by Chair Rosenberg to carry this matter to the October 15th meeting with no further notice being required with the briefing and communications as outlined, seconded by Mr. Critelli, all members present in favor with the exception of Mr. Mayer who has recused himself from this application.

WITH NO FURTHER BUSINESS BEFORE THE BOARD A MOTION TO ADJOURN WAS OFFERED BY HARVEY ROSENBERG AND SECONDED BY DEIDRE PHILLIPS, ALL IN FAVOR. MEETING CLOSED AT 8:10 PM.

NEXT SCHEDULED MEETING WILL BE OUR REGULAR MEETING ON THURSDAY, SEPTEMBER 17, 2020 AT 6:30 PM VIA ZOOM.

Minutes submitted by Kristie Dickert, Board Secretary