

**Bradley Beach Zoning Board of Adjustment
Regular Meeting Minutes – Meeting Held Via Zoom
Thursday, October 15, 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 (Arrived 6:50 PM), Raymond Wade, Dennis Mayer, Teresa Rosenberg, David Critelli, Deborah Bruynell, and Harvey Rosenberg

Absent: Dominic Carrea and Deidre Phillips

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 September 17, 2020 is made by Harvey Rosenberg and seconded by Michael Affuso. All eligible members present in favor.

Resolutions Memorialized:

Resolution 2020-14 – Approval of Bulk Variances and the Affirmation of Appeal of Zoning Officer Regarding Front Covered Balcony and Rear Porch – Scott & Enza Isgett – Block 35, Lot 25 – 412 LaReine Avenue

Applications Under Consideration:

ZB20/11 – Marc & Jeannette Sznajderman – Block 88, Lot 16 – 508 Bradley Boulevard –
The Applicant is seeking a variance for the minimum distance between structures in order to construct an outdoor shower.

Marc & Jeanette Sznajderman – Applicants/Owners – sworn in with Board Professionals.

It is explained that the variance being sought is for the distance between the principal structure and the accessory structure for the addition of a proposed outdoor shower to be attached to the principal structure. Currently there is a 12' 6" distance between the principal structure and the accessory structure; therefore, any location other than where the shower is being proposed would exacerbate the non-conformity. The Applicant is proposing to place the shower in an area that will leave a 12' 8" distance from the garage structure which is actually 2" further than the house. It is indicated there is no other place to propose it.

Jerry Freda, Board Engineer – agrees with the applicant's testimony and that they are absolutely correct. There is no better place to place the shower it is a negligible amount with plenty of room between the structures and there really are no other options. Mr. Freda also

makes a notation that the A/C units shown on the plan had received separate approval from the Zoning Officer and have been installed and are not part of this application.

****MR. QUINLAN JOINS AT 6:50 PM****

Based upon the testimony presented, Harvey Rosenberg makes a motion to Approve the application as submitted, seconded by Raymond Wade.

Those in Favor: Teresa Rosenberg, Deborah Bruynell, David Critelli, Michael Affuso, Raymond Wade, Dennis Mayer, and Harvey Rosenberg.

Those Opposed: None.

Those Abstained: None.

Those Absent: Deidre Phillips, Dominic Carrea, and Robert Quinlan

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.

Notice for this meeting was deficient as the notice was not placed in the Newspaper within the 10-day time period; therefore, re-notice will be required and this matter is now scheduled for December 17, 2020.

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. ****PARTIALLY HEARD ON JUNE 18, 2020 and AUGUST 20, 2020****

Board accepts jurisdiction. Chair Rosenberg and Vice Chair Dennis Mayer are recused from this application; therefore, Michael Affuso accepts the duties of Chair for this particular application.

Exhibits B1 through B5 – are marked into the record

Exhibit B1 – Mr. Stone's September 16 brief
Exhibit B2 – Mr. Coan's September 30 brief
Exhibit B3 – Mr. Stone's October 1st reply to brief
Exhibit B4 – Transcript from June 18, 2020
Exhibit B5 – Transcript from August 20, 2020

Mark Kitrick address Mr. Coan's request for a public site inspection and indicates this is not a requirement. Board Members have the opportunity to do that, but not a requirement especially due to the pandemic.

Mark Kitrick indicates that George Waterman has resigned from the position of Zoning Officer with the Borough and therefore to Board does not have the ability to force him to be produced.

Mark Kitrick indicates that the Applicant being a former member of Borough Council does not present a conflict for this Board as the Board of Adjustment Members are Mayoral appointments. He believes all parties agree.

Mark Kitrick indicates the conflict of interest raised with regard to Ms. Phillips, this is no longer an issue as Ms. Phillips is no longer a Board Member, so that issue is moot.

Mark Kitrick indicates the question regarding whether David Critelli's comments made prior to the Board accepting jurisdiction is a cause for recusal – legal decision is referenced and Mr. Kitrick asks Mr. Critelli a few questions with regard to whether or not he can be fair to all parties and make no biased decisions. Mr. Critelli indicates yes and he does not believe there is any reason to recuse himself. Mark indicates he has met the requirements and not necessary to recuse himself.

Mark Kitrick indicates it is the duty of all members present to be objective to all parties, be fair to all, and make no biased decisions.

He asks if there is any reason for anyone to have to recuse themselves. The remaining members indicate no.

The basis to move this application to another jurisdiction is discussed by Mark Kitrick and he is confident with legal research that this application should remain here and before this Board.

Mark Kitrick mentions Piscitelli vs. Garfield Board of Adjustment and the right to privacy. Mark also describes the procedure utilized in speaking privately to each member to determine if there is a doctor patient relationship with regard to themselves or a family member as that would be a basis for recusal; therefore, we will not be releasing specific information relative to why members may have to recuse themselves. Mr. Stone further elaborates on this decision and process. It is noted for the record that Mr. Mayer and Chair Rosenberg will be recusing themselves for certain reasons.

Thomas J. Coan, Gerald Freda, and Christine Bell are sworn in.

Lawrence Murphy – Engineer, Alison Coffin – Planner, Alfred Trevino – Architect are also sworn in.

Mr. Stone discusses the notice and original discrepancy which has been rectified and the Use Variance is no longer needed as they are removing the bathroom from the first floor and the third level is not a 3rd floor as it is not habitable. The Plans have been modified and access to same has been eliminated and it is solely for possible mechanicals which now allows for c2 variances.

Lawrence Murphy, PE Principal at Green Site Engineering & Consulting– qualified and accepted by the Board. Mr. Murphy provides testimony with regard to the existing conditions. Other

applications for permits were obtained and architectural approved. There were existing non-conformities and some non-conformities can be eliminated/abated – front & side yard setbacks, coverage, prior garage too close to the rear and left property lines and the pool was too close to the garage. A prior survey from May 29, 2009 and subsequent survey of August 7, 2019 were reviewed. The rear variance which existed has been eliminated with the new construction and also made less non-conforming by 2”, the intent was to be conforming. Coverage has been improved but not fully conforming. The distance to the pool is now closer, but not significant.

The Applicant received building permits; however, field changes were made causing a stop work order to be issued. The field changes were thought to be de minimus; and now we are here.

The dormers caused the accessory structure to be higher than permitted by Ordinance, but feels this was an easy error during construction as not the entire dormer exceeds the height. Mr. Murphy does not feel that 9.6” at 25 feet up is noticeable due to the current grade – it is not perceptible to neighboring properties and does not believe this is objectionable.

Parking, size of garage, and number of parking spaces are discussed.

The Leon S. Avakian review of August 12, 2020 is reviewed with regard to engineering issues.

Mr. Coan cross-examines Mr. Murphy with regard to his comment that he believes the coverage is de minimus. Mr. Murphy indicates it is not significant. The coverage is not unheard of on existing sites. .

June 18th - Objector’s Exhibit 2 marked – September 13, 2018 Architectural Plans shared and reviewed as approved plans (original) – various items are discussed with regard to height/grade, use, garage doors.

Mr. Coan asks if Mr. Murphy has seen these Zoning Approved plans? Mr. Murphy is not certain as to whether he has seen these exact plans being referred to. Ms. Dickert brings the plans up to share on screen from the Borough website. Mr. Murphy indicates he has seen these plans. The dormers that are currently on the constructed building did not appear on the approved plans, does that happen often? Mr. Murphy indicates sometimes field changes are made in the field and people believe they are not of significance, but sometimes they are. Mr. Coan asks the method of determining the height when building. Mr. Murphy indicates all contractors work differently. The garage doors and purpose of garage areas are discussed. Mr. Coan asks if the plans should be revised to reflect what the area is to be used for and would it operate better if there were a second garage door? Mr. Murphy indicates it depends on what the space is intended to be used for. A discussion takes place with regard to whether or not having a garage door vs. a man door would make it easier to convert the area behind into living space.

Mr. Coan asks if the plans prepared by Mr. Trevino were reviewed. Mr. Murphy indicates yes. Mr. Coan wants to know what the height reflected on these plans is. Mr. Murphy indicates the height reflected on the plan is 26’ 3.5”. That is from the slab? Yes. How do you get your 25.8 number then? Mr. Murphy explains the definition in the ordinance and how he calculated that number. Mr. Coan asks since the grade of the property goes up toward the rear, then it appears visually higher to the neighbors does it not? Mr. Murphy indicates in comparison to what? If it wasn’t graded up so high. Mr. Murphy further clarifies where the measurements are taken from in accordance with Borough Ordinance.

Mr. Stone objects to the building being substantially higher question posed by Mr. Coan.

Mr. Coan asks questions regarding the foundation location plan and whether or not Mr. Murphy is aware when the Stop Work Order was issued. He indicates he does not have that in front of him.

June 18th – Objector’s Exhibit 8 marked - Stop Work Order issued by the Borough of Avon

Mr. Coan refers to the Foundation Plan submitted by the Applicant as drawn by DPCSS and asks if it is standard procedure to have a Foundation Location Survey before you frame the building, use lumber, and exert manhours? Mr. Murphy indicates it varies. Part of the challenge with staking out any building is because you have to do offsets and there is limited room on this property because any excavation would disturb stakes. Mr. Murphy indicates in his experience the markers are not set in the excavated area. Mr. Coan questions the date the Stop Work Order was issued and the date of the plan which was prepared after the fact. Mr. Stone objects to that comment.

Was there a Grading Plan prepared to establish the height of this building? Mr. Murphy indicates this is an existing condition plan, as-built with elevation shots. A grading plan is a proposed plan, that is why this is an as-built because it is existing. He believes this information is sufficient to make the current height assessment.

George Januzzi – 608 Evergreen Avenue – questions the garage doors and 2 doors vs. 1 and safety. Mr. Murphy indicates he prefers 1 large door over 2 smaller individual doors. Mr. Januzzi questions deminimus – Mr. Murphy indicates it is a zoning issue many would miss. From a building perspective should have mentioned 2-car to 1-car.

Brigitte McGuire – 610 Brinley – how does this mistake happen? Mr. Murphy indicates it depends on the contractor and varies by contractor. A whole 3rd level? It is indicated it does and can happen. So the owners lived and observed a whole level go on? Mr. Murphy indicates the average owner/person may not understand. Ms. McGuire asks if that isn’t the purpose of submitting for permits? Mark Kitrick indicates that is a hypothetical question. Ms. McGuire indicates we have to trust it will be fixed and constructed properly moving forward? Can the roof be chopped down? Mr. Murphy indicates yes, but it would be less attractive. Ms. McGuire asks if a 2-car garage is supposed to have 2 doors and if that is what is going on? It is indicated no, it is not 16 feet wide.

Kim Januzzi – 608 Evergreen – Questions if the bathroom has been built? It is indicated there are partial studs and the plumbing will be removed. Once removed nothing is preventing it from being returned? Mr. Murphy indicates there is a wall. Ms. Januzzi changes made is it the case for this example the builder made changes without their approval? Mr. Murphy indicates that is unknown.

Thomas J. Coan – if this happens all of the time would the materials list be different? Mr. Murphy clarifies this would require more material.

Chair Affuso – questions if the dormers required additional windows? Mr. Murphy indicates they would have had to order, but not sure of the relationship between the owners and the contractor.

Thomas J. Coan – what is the current state of the building? Mr. Murphy indicates there is sheathing, Tyvek, studs, and roofing. It is mentioned it is possible to lower the roof now, but substantially completed.

Thomas J. Coan – Questions that the loft area was habitable, but now it is not? Mr. Murphy indicates he will leave that to the architect with regard to building code etc. but it wasn't habitable previously.

Mr. Stone – indicates reaching unnecessary argumentation and hypotheating.

Mark Kitrick, Esq. spells out the procedure moving forward you are to ask questions and you do not get to ask what you want again.

Mr. Stone can ask re-direct – Thomas J. Coan disagrees.

Thomas J. Coan – based upon testimony a lot more applications – Mr. Stone indicates it is not relevant.

Joe Jankiewicz – Questions maneuverability of in/out and can they perform a K-turn? Mr. Murphy indicates it is similar to existing homes and you generally back out all the way which is what was there prior and now. Is it possible? Probably not. You can fit 5 spaces in the driveway? They would have to move to let somebody out of the garage? Mr. Murphy indicates it is generally family related and their personal preference how it is done. It is rare to move the 5th car in the garage. Mr. Murphy indicates there is available room for 7 cars.

Jerry Freda – confirms with Mr. Murphy if he agrees with variances noted. Mr. Murphy indicates yes. Mr. Stone defers to Mr. Murphy that yes they are bulk variances.

*****8:53 PM – 5 MINUTE BREAK – BOARD RETURNS, ROLL CALL TAKEN, AND ALL MEMBERS STILL PRESENT ****

Chair Affuso – suggests after Mr. Murphy we call the Architect, then complete, then adjourn and carry.

Mr. Quinlan – questions if impervious coverage can be brought down? Mr. Murphy indicates it would be challenging to bring down to 60%, but no substantial change is possible.

Chair Affuso – indicates the foundation was constructed in good faith, the height is questionable but in good faith; however, impervious and other structures would trigger zoning – new drawings should comply with what is being proposed.

Mr. Stone indicates the suggestion is fair and reasonable. Wants permission to seal the building and remove the plumbing on the first floor.

Ms. Bruynell – suggests a photo be provided of the attic to show it is not livable space which will help people see.

Alfred Trevino – Architect – 32 years experience - qualified and accepted.

Mr. Stone asks Mr. Trevino if he had the opportunity to review the original plans and the asbuilts. He indicates yes as well as revised plans with regard to no attic access. There are

two areas of inquiry – 1st floor – removing bathroom and 3rd level – 6'5" under rafters is not livable space by Code. It is indicated it is an attic with access through a hatch in closet. This space will be for mechanical equipment with duct work feeding the 2nd level. The 2nd level rooms are described. The outside of the building is described including the dormer and awning windows – dormers are a preference they are set far back and not the full length of the roof.

Robert Quinlan – questions the square footage of the 2nd and 1st levels – it is indicated they are almost identical, the 1st floor is 600 s.f. and the 2nd floor is slightly less.

Jerry Freda indicates the first floor is permitted to have 800 s.f., but if they utilized that they would be pushing up on everything else; therefore, he feels this is appropriate.

Mr. Stone – Is there a cathedral ceiling in this building? It is indicated no.

Chair Affuso – Is it necessary to have windows in a non-livable space? It is indicated it is for aesthetics and there was a ladder, not steps before.

Jerry Freda requests possibly removing a window? Understands their value but maybe 1 on each side? Mr. Stone indicates he clients will agree to that.

Mr. Trevino indicates the mechanicals will be on the floor in the attic along with duct work.

Chair Affuso – indicates he agrees a picture of the existing area would be helpful.

Thomas J. Coan – questions the height of the 3rd level. It is indicated it will be shown in the revised plans. The sliding glass doors are questioned – Mr. Trevino indicates he is not familiar with what was approved, but they were probably installed to allow more light and access.

Thomas Daniels – 411 Brinley – questions the washer and dryer? It is indicated they are staying where they are. Where is the pool relative to sliding doors? It is indicated the pool is 7 ½ feet away.

Chair Affuso – questions the width of the 3rd level. It is indicated it is 10'4" x 19'2" – approximately 200 s.f.

Brigitte McGuire – Questions the bathroom on the first floor. Jerry Freda indicates it is not permitted in a common space on the 1st floor.

Joe Jankewicz - 507 Fourth Ave – How do we know it will be removed? It will be inspected and confirmed.

Mr. Stone indicates he has been informed there is no plumbing there now and they are not putting in a bathroom.

George Januzzi – 608 Evergreen – Is a pool house permitted by Ordinance? It is indicated it is not a pool house without changing the area.

Thomas Daniels – 411 Brinley – Questions the Laundry Room – it is indicated there are no walls.

Cindy Kwiatkowski – 200 Ocean Park Ave – Questions if there is a solid wall down the center? It is indicated no.

Thomas McGuire – 610 Brinley – can the dormers be removed? Of course, anything can be removed, but we still want to keep it aesthetically pleasing. Mr. Trevino indicates more dormers add more interest in his opinion. It provides more air and light? Correct.

Thomas J. Coan – questions whether his planner should be available on November and December dates.

Richard Stone asks if they have prepared a Planner's report? Mr. Coan indicates not at this time. Mr. Stone requests that a report be provided in advance.

DUE TO THE LATE HOUR, AT THIS TIME IT IS AGREED BY THE APPLICANT AND THE BOARD TO ADJOURN THIS MATTER TO THE NOVEMBER 19, 2020 MEETING WITH NO FURTHER NOTICE BEING REQUIRED.

WITH NO FURTHER BUSINESS BEFORE THE BOARD A MOTION TO ADJOURN WAS OFFERED BY ROBERT QUINLAN AND SECONDED BY MICHAEL AFFUSO, ALL IN FAVOR. MEETING CLOSED AT 10:00 PM.

NEXT SCHEDULED MEETING WILL BE OUR REGULAR MEETING ON THURSDAY, NOVEMBER 19, 2020 AT 6:30 PM VIA ZOOM.

Minutes submitted by Kristie Dickert, Board Secretary