

**Bradley Beach Zoning Board of Adjustment
Special Meeting Minutes – Meeting Held Via Zoom
Thursday, December 1, 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, Teresa Rosenberg, David Critelli, Deborah Bruynell

Absent: Dominic Carrea, Dennis Mayer, and Harvey Rosenberg

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

Applications Under Consideration:

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, and maximum impervious coverage. The Applicant is represented by Richard B. Stone, Esq. ****PARTIALLY HEARD ON JUNE 18, 2020, AUGUST 20, 2020, OCTOBER 15, 2020, and NOVEMBER 19, 2020****

Mark Kitrick, Esq. establishes ground rules for hearing and discusses legal arguments presented by both Mr. Stone and Mr. Coan.

Lawrence Murphy – sworn in with Board Professionals.

At the conclusion of the last meeting Mr. Coan and Board Members expressed an issue of dormers. Mr. Murphy indicates he re-examined the definition of dormers as it pertains to this application and believes there is no variance required.

He indicates Ordinance Section 450-26 – R-1 Residential Single-Family Zone, Section D – Area, yard and building requirements had been reviewed and compared to this structure. This is not a principal structure; therefore, it does not meet the definition.

Impervious and Pervious coverage is explained and pool water is included in the area. Lot coverage is being improved and two areas of impervious coverage have been found that can be removed – approximately 3-4 feet wide by 17 feet long for a total of 65 s.f. – another area was found with the Applicant to the west of the garage – approximately 4 feet x 25 feet long (fence to garage) approximately 100 s.f. which is approximately an additional 165 s.f. total area of impervious coverage which can be made pervious.

Coverage is currently 77.5% and can be reduced to 74.8% - the improvement would be closer to the required amount of permitted coverage and better than what is existing.

Jerry Freda – concurs this is an improvement and if the calculations are true and correct there is not much more than can be done to improve other than a drastic nature and it is good consideration the application.

Mr. Murphy double checks calculations and again confirms coverage 77.5% down to 74.8%; whereas, the Ordinance requires 60%

Mr. Coan asks if the plans that were originally approved for Zoning had been reviewed and how was it approved in the first place? Mr. Stone objects as Mr. Coan is asking Mr. Murphy to speculate.

Mr. Coan asks about the dormer. Mr. Murphy does not believe the definition can be applied in this case. Mr. Coan asks if the dormer meets the definition contained in Section 450-4? Mr. Murphy indicates he does not have the exact measurements can cannot say.

Barbara Bascom – 203 Schock Ave, Neptune – Asks if the property is existing non-conforming on the coverage issue? Mr. Murphy indicates yes it was existing prior.

Dr. McGuire – 610 Brinley – Questions the fact it existing prior. Mr. Murphy indicates it happens sometimes and discusses that the Board expressed they wanted a reduction.

Kim Januzzi – 608 Evergreen – Asks if this was totally demolished and rebuilt, what was there before? It is indicated the calculation is for the entire site.

Thomas J. Coan – 612 Third Avenue – Indicates the dormers require a variance. Mr. Kitrick objects.

Mr. Coan requests his 5 videos and his attachments be part of the record. It is asked to clarify submissions:

Exhibit O-1 – Original Zoning Denial

Exhibit O-2 – Approved Plans

Exhibit O-3 – Zoning Approved August 6th

Exhibit O-4 – Approved Zoning Application 9/20

Exhibit O-5 – SDL Portal Approval

Exhibit O-6 – Building Permit - 306 Monmouth Avenue 4/30

Exhibit O-7 – Email Chain of 7/30/2019

Exhibit O-8 – Stop Work Order 8/2019

~~Exhibit O-9 – Complaint regarding 214 Brinley Avenue to establish pattern of behavior.~~ Mr. Stone objects. Mr. Kitrick sustains Mr. Stone's objection as he does not see the relevance of this Exhibit.

Mr. Stone has indicated that Mr. Coan has made unsupported allegations – character is not part of this application and he cannot disparage character of the applicant.

Barbara Ehlen – Beacon Planning – sworn in. Ms. Ehlen's educational background is questioned by Mr. Stone. Mr. Stone asks how many times in the last year Ms. Ehlen has testified. She indicates she cannot say. Mr. Stone asks if she has testified for objectors or applicants? Mr. Stone indicates he does not object to Ms. Ehlen's qualifications.

Ms. Ehlen provides testimony with regard to this application and indicates they are asking for forgiveness and provides similar case law background.

Mr. Stone objects indicating Ms. Ehlen is not an attorney, she is referencing legal opinions and feels questions and answers are more appropriate.

Mr. Kitrick indicates it is common to cite case law and will afford Ms. Ehlen some latitude.

Ms. Ehlen continues and Mr. Stone objects indicating the case being cited does not apply as that refers to c1 variances and the applicant is seeking c2 variances, this is not a hardship application. Ms. Ehlen indicates that doesn't come into play – Mr. Stone objects.

Ms. Ehlen recites the Avakian Review for variances. She also recites Cox regarding c2 variances and the proofs required. She indicates she does not feel the proofs have been provided by the Applicants.

Mr. Coan questions ordinance changes regarding garage apartments and that this specific Councilman voted in favor of these changes. Mr. Kitrick asks what Ms. Ehlen's expertise is in this area. Mr. Coan indicates he will save his question.

Mr. Coan questions if this approval was legitimate in the first place? Mr. Stone objects and indicates Mr. Coan is leading the witness. Mr. Kitrick sustains Mr. Stone's objection.

The history of events are reiterated and the existing conditions discussed. Mr. Coan comments regarding air/light/open space impacts. Mr. Stone objects and indicates he is providing testimony.

Ms. Ehlen discusses air/light/open space and how the current project impacts same.

Mr. Stone asks Ms. Ehlen if Beacon Planning has any lawyers? She indicates no. He asks if there is a law library? She indicates no. Mr. Stone discusses Cox and the case reviewed and indicates Ms. Ehlen has not read the entirety of the case. Mr. Stone indicates only excerpts have been referred to which discuss hardship variances. Mr. Stone asks about the types of variances and the standards required for each. Mr. Stone asks if Ms. Ehlen had listened to all 5 hearings on this matter and Ms. Ehlen indicates she missed the first meeting. Mr. Stone questions Ms. Ehlen with regard to requesting forgiveness or permission to retain she agrees. Mr. Stone asks if she has had the opportunity to visit the site on land? Ms. Ehlen indicates no she did not enter the property and did not go into the building. Ms. Ehlen is asked further questions - she indicates she does not agree with Ms. Coffin; however, she is ok with the solar panels but does not believe the height of the building is needed to achieve. He further questions the prior testimony of Ms. Coffin and whether Ms. Ehlen agrees with the current plan. C2 variances are again discussed, garage apartments are discussed, it is agreed the rear yard setback being an existing non-conformity has been eliminated. The positive and negative

criteria are discussed and the impediment of light/air/open space. Off-street parking is discussed and objections take place. Mr. Stone asks if you can fit 1 car and 1 motorcycle in the garage – Ms. Ehlen indicates yes, correct.

Mr. Stone indicates he has nothing further, Mr. Coan redirects, and Mr. Stone objects.

Robert Quinlan – is there anything that can be done to improve coverage? This is the wrong witness.

Michael Affuso – what would be the end result here? Lower the roof and replace man-door with garage door and shift the structure and prove the coverage permission?

Barbara Bascom – asks regarding more than 50% - Ms. Ehlen disagrees.

Kim Januzzi – questions if c variances or flexible c variances – Ms. Ehlen indicates both.

Dr. McGuire – questions the intent of the 2-car garage and if anyone can clarify the intent of the ordinance. Christine Bell recites the Ordinance and indicates a 2-car garage could be a very large door or 2 doors for 2 cars to pull into the garage.

Jerry Freda – clarifies first review report and now that the walls have been removed it is not ideal, but it does meet the spirit of 2 cars in there.

Christine Bell – if you have a garage apartment with 2 cars underneath and you can do that now.

Jerry Freda – indicates each case is reviewed on its own and this particular case provides for 6 onsite spaces.

Mr. Coan questions Mr. Freda.

Joe Jankewicz – questions why he was required 2 doors and a K-turn for his garage apartment.

Ari Blech – Requests Ms. Ehlen provide an example where a variance would be a benefit. Ms. Ehlen indicates if there is a grade change it could affect height and coverage – restricts driveway variance to permit a U-shaped driveway to be able to get out safely.

Marilyn Rosen – Tinton Falls – What is a desirable visual environment? Ms. Ehlen responds referencing Cox and dilapidated structures.

Debbie Bruynell – asks if she has ever known of a building being moved? It is indicated as unknown.

****9:25 PM – THE BOARD TAKES A BRIEF RECESS AND RETURNS AT 9:30 PM – ROLL CALL IS TAKEN AND ALL MEMBERS STILL PRESENT****

Open to Public Comments:

Eddie Bader – 302 Bradley Boulevard – Comments he is in favor.

Brigitte McGuire – 610 Brinley - provides comment and indicates she just wants fairness.

Dr. Tom McGuire – 610 Brinley – wants the right thing and objects to the variances being requested.

Loren Asch – 312 Monmouth – in favor and wants it done.

Osna Haller – 316 Monmouth – provides comment and history and is in favor of the project.

Brittany Sisak – 412 ½ McCabe – in favor.

Ira Shulman – 307 Evergreen – in favor and the back of his hard abuts this property and it hasn't degraded the neighborhood.

Kim Charette – 400 Monmouth Ave – long-term neighbors and feel it is a beautiful structure and in support of the project and feels the Applicants have been responsive to the Board.

Helen Zakaria – 404 Burlington Ave – in support.

Tom Crader – 203 Evergreen – in support of the current structure.

Eileen Shissias – 112 Fourth Ave – feels the application should be denied and they should follow the rules.

Jim Shissias – 112 Fourth Ave – feels the application should be denied as this is an egregious departure from that which was approved.

Anita Nazario – 116 Newark – not in favor.

Marilyn Rosen – 704 North Shore – Tinton Falls – in favor.

Jack Gentempo – 103 Fourth Avenue – not in favor.

Norman Goldfarb – 406 Fourth Avenue – in favor.

Jane DeNoble – 612 Third Ave – not in favor.

Leonard Bielory – 204 Bradley – in favor overall and commends the Board.

Kim Januzzi – 608 Evergreen – not in favor.

Barbara Bascom – 203 Schock Ave – Neptune – in favor of the project.

Julie Nutaitis – 605 Newark – not in favor of current proposal and feels they should make it right.

Brett Cotler – 214 Brinley – in favor – responds to some of the comments made – requests everyone be respectful and don't attack people personally.

Joe Jankewicz – 507 Fourth Ave – not in favor – standards should be the same for everyone.

Ari Blech – Beach Avenue – in favor.

Sarah Strasser – 409 Second Ave – in favor.

Sara Shulman – 211 Fourth Ave – in favor.

Rich Despina – 600 Third Ave – thanks the Board, but can't dismiss what initiated this situation. The Cotler's had to have known and he further provides his opinion with regard to existing and potential conditions.

Public Portion Closes at 10:42 PM

Thomas J. Coan – provides his summation and recommends the Board deny this application.

Richard Stone, Esq. – provides his summation and recommends the Board approve this application.

BASED UPON THE APPLICATION SUBMITTED AND THE TESTIMONY PROVIDED, A MOTION TO APPROVE WITH THE CONDITIONS AGREED TO REGARDING THE REDUCTION OF IMPERVIOUS COVERAGE, IS OFFERED BY TERESA ROSENBERG, SECONDED BY RAYMOND WADE.

Those in Favor: Robert Quinlan, Raymond Wade, David Critelli, Deborah Bruynell, Teresa Rosenberg, and Michael Affuso

Those Absent: Dominic Carrea

Those Recused: Dennis Mayer and Harvey Rosenberg

Those Opposed: None.

WITH NO FURTHER BUSINESS BEFORE THE BOARD A MOTION TO ADJOURN WAS OFFERED BY MICHAEL AFFUSO AND SECONDED BY ROBERT QUINLAN, ALL IN FAVOR. MEETING CLOSED AT 11:14 PM.

NEXT SCHEDULED MEETING WILL BE A SPECIAL MEETING ON THURSDAY, DECEMBER 3, 2020 AT 6:30 PM VIA ZOOM.

Minutes submitted by Kristie Dickert, Board Secretary