

**Bradley Beach Zoning Board of Adjustment  
Regular Meeting Minutes – Meeting Held Via Zoom  
Thursday, December 17, 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, Teresa Rosenberg, David Critelli, Deborah Bruynell, and Harvey Rosenberg

Absent: Dominic Carrea

Also Present: Mark G. Kitrick, Esq. - Attorney to the Board, Jillian McLeer, 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 November 19, 2020 is made by Dennis Mayer and seconded by Michael Affuso. All eligible members present in favor.

**Resolutions Memorialized:**

**Resolution 2020-16** – Approval of Bulk Variances – Frank & Stacey Caponegro – Block 56, Lot 15 – 510 Fourth Avenue

**Resolution 2020-17** – Approval of Bulk Variances – Richard & Michelle Lee – Block 21, Lot 5 – 507 Park Place Avenue

**Applications Under Consideration:**

**ZB20/11 – Steve & Linda Perrette – Block 85, Lot 17 – 5 Madison Avenue** – The Applicant is seeking approval for the installation of an in ground swimming pool which will require bulk variances for rear yard setback, distance from the primary structure, distance from the accessory structure, as well as distance from the seasonal high water table to the bottom of the pool. **\*\*THIS APPLICATION WILL NOT BE HEARD THIS EVENING AS NOTICE DID NOT PUBLISH IN THE NEWSPAPER WITHIN THE REQUIRED TIME PERIOD; THEREFORE, THIS APPLICATION HAS BEEN RESCHEDULED FOR JANUARY 7, 2021 AND NEW NOTICE WILL BE PROVIDED\*\***

**ZB20/19 – Joseph & Jane Miller – Block 71, Lot 16 – 600 Evergreen Avenue –** The Applicant has requested an amendment to Resolution #411-1-14-07. Said resolution required the Applicant to deed restrict the property to state the second floor kitchen is to be removed when the parents of the applicant no longer reside at the premises. The Applicant has indicated they have removed said kitchen and in order to move forward with the sale of their home, they need to file a new deed removing said restriction which requires an Amended Resolution from this Board. **\*\*HEARD AT SPECIAL MEETING OF DECEMBER 3, 2020\*\***

Joseph Miller and Christine Bell are sworn in.

Mr. Miller summarizes the events which took place at the prior meeting and presents the following exhibits:

Exhibit A-1 Prior Photo of 2<sup>nd</sup> Kitchen

Exhibit A-2 Existing Condition Photo of the Area with Kitchen Removed.

Mark Kitrick, Esq. explains the procedure and indicates the document requested by the Title Company will be dated with today's date and the Chairman and Secretary to sign and forward to appropriate parties. Mark indicates he will also follow-up with a resolution in order for the Borough records to reflect the events which took place.

**Based upon the application submitted and the testimony provided, Harvey Rosenberg makes a motion to approve the removal of the Deed Restriction, seconded by Robert Quinlan.**

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

**Those Absent:** Dominic Carrea

**Those Abstained:** None.

**Those Opposed:** None.

**ZB20/17 – David Marco Ochy – Block 80, Lot 22 – 514 Monmouth Avenue –** The Applicant is seeking a bulk variance for the distance between a proposed spa (hot tub) and detached accessory structure.

David Marco Ochy, Declan Murphy, Christine Bell, and Gerald Freda – sworn in.

Mr. Marco Ochy describes the proposed project and how they are proposing a 0 foot setback to the accessory garage where 10 feet is required; however he feels this was the best placement for the proposed spa/hot tub as it will be placed on an existing impervious area in the yard and provides the furthest distance to neighboring properties.

Jerry Freda indicates he also feels the applicant picked the best location as it is being placed on top of an area already containing lot coverage and also it is the maximum distance from the neighbors.

Dennis Mayer asks if it is a 1-story or 2-story garage? It is indicated to be 1-story.

Robert Quinlan asks about lot coverage. It is indicated it is not changing with this proposal.

**Based upon the application submitted and the testimony provided, Harvey Rosenberg makes a motion to approve the application as submitted with variance being requested, seconded by Dennis Mayer.**

**Those in Favor:** Deborah Bruynell, David Critelli, Michael Affuso, Raymond Wade, Robert Quinlan, Dennis Mayer, and Harvey Rosenberg

**Those Absent:** Dominic Carrea

**Those Abstained:** None.

**Those Opposed:** None.

**ZB20/15 – Allen & Marilyn Levine – Block 48, Lot 2 – 413 Brinley Avenue –** The Applicant is seeking Bulk Variances and Use Variances to construct a new single family dwelling and garage apartment. Applicant is represented by Mark R. Aikins, Esq. **\*\*PARTIALLY HEARD ON SEPTEMBER 17, 2020 AND CARRIED TO NOVEMBER 17, 2020, FURTHER CARRIED TO THIS DATE WITHOUT FURTHER NOTICE\*\***

Mark Aikins, Esq. representing the Applicants.

Applicants Dr. & Mrs. Levine are sworn in along with Bill Sharfenberg, Brian Leff, Christine Bell, and Gerald Freda.

Mr. Aikins provides a summary of the prior hearing, plan revisions are discussed and it is indicated coverage will be reduced.

Marilyn Levine – provides testimony regarding 2-story apartment in the rear. The ground floor has 1 bedroom with a closet, utility area, laundry area, a closet and a small finished room. The Bedroom is 12' x 10 ½', storage area is approximately 6' x 16', room is approximately 7' x 7 ½', and laundry 10' x 4 ½' behind stairs. Upstairs there is a bathroom 4' x 11' and kitchen 12' x 7' 8", master bedroom 17' x 9', living room 9' x 11' and a sunroom. The lower floor has a storage area that is accessed only from the outside.

Mr. Wade asks about number of bathrooms, it is indicated there is only one bathroom upstairs.

Brian Leff – Professional Planner and Landscape Architect – qualified and accepted by the Board – Mr. Leff provides planning testimony with regard to the use and bulk variances. He further describes the property and the proposed project. Two (2) principal structures are proposed on 1 lot, the existing front structure will be reconstructed and will conform to the current requirements. For more than 50 years this structure has existed at this site. The rear deck and small balconies at rear are discussed. The entire footprint is proposed within the required setback area and the balconies are not for entertaining. The Master Plan and Municipal Land Use goals and objectives are reviewed.

Mr. Quinlan asks if there are pictures of the existing. It is indicated no.

The Levine's show a photo of existing apartment and indicate the building is 18' wide x 32' long.

**\*\*MARK KITRICK, ESQ. LEAVES AT 7:15 PM AND HIS ASSOCIATE JILIAN MCLEER, ESQ. ASSUMES ROLE OF BOARD ATTORNEY\*\***

Ms. Bruynell asks what is going to happen to the existing trees? It is indicated the trees belong to the next door neighbor and they do not own the trees. What condition is the apartment in now? Ms. Levine indicates interior has been upgraded and the exterior has been sided. The neighbor, Ms. McAlister requested the entire building be sided which has been agreed to and it may need a new roof in the future. The height of the dormers are questioned. Jerry Freda indicates he did not take exception to the height as he felt it was measured correctly and it is overall under 35 feet.

Ms. Bruynell is concerned that the back house needs more than 50% rehab than indicated.

Mark Aikins, Esq. – indicates the applicant agrees to reside and reroof the back structure.

Christine Bell, PP, AICP – comments that this is not a garage apartment – Mark Aikins indicates they are not calling it a garage apartment, but it is a pre-existing/non-conforming apartment structure.

Ms. Bruynell asks if it could be turned back into a garage? It is indicated no it cannot due to its age.

Jerry Freda indicates because of its narrowness you can only get 1 car and does not think it could be easily done and parking is not an issue with this particular site.

Michael Affuso – asks if the back deck presents a problem.

Jerry Freda – indicates there is a debate on both sides of this subject regarding the ordinance which is a much bigger issue. There is a roof over the bottom deck (4x9 area which is now reduced from the prior proposal; therefore, it is much more of a balcony not a deck.

David Critelli – are there issues with the 2<sup>nd</sup> floor deck?

Ray Wade – asks if there are full-time residence in the rear? It is indicated yes, they have been there for over a year.

Teri Rosenberg – Questions that there is a roof over the first floor deck, but not the second floor deck.

Thomas J. Coan – sworn in – 612 Third Avenue – questions Mr. Leff if this is a use variance? Mr. Leff indicates yes it is. It is asked when this apartment became conforming? It legally exists. Mark Aikins and Mr. Coan have a discussion with regard to use variance and front house is going from a 2-family to a 1-family which makes a less non-conforming condition. Mr. Leff is asked questions with regard to density.

Dr. Tom McGuire – sworn in – 610 Brinley Ave – asks about lower portion of the structure. It is indicated it is for the use of the tenant of the apartment and the bottom is not occupied separately it is just an extra bedroom. It is asked if it would be the same cost to turn into a garage rather than add one.

It is indicated this proposal does not involve work to the back house at all.

Carl Schopfer – sworn in – Indicates there are 3 people and 3 cars that come and go – confused about the rear deck shown on the plans. Mr. Leff indicates it is very small and it is more of a balcony than a deck facing south 1 on top of the other. Mr. Schopfer indicates he is concerned about the number of cars.

Brigitte McGuire – sworn in – 610 Brinley Ave – Is there a variance for another structure? The plans don't show the second structure. Mark Aikins indicates because it legally exists and there are no changes proposed. Mr. Aikins indicates the only structure that requires a variance is the front house. Ms. McGuire indicates that they should provide plans on the existing apartment.

Jerry Freda indicates in light of the points brought up by the last resident it could be suggested that as a condition of approval an as built of the interior and elevations of the existing apartment be provided.

Dennis Mayer – questions the rear deck and Mr. Coan's point if there is a 1<sup>st</sup> floor bedroom in the apartment building, if agreed to be removed it would be 1 step closer to conformance.

Mr. Aikins indicates they enjoy certain rights under the law.

Mike Affuso – discusses these points and doesn't think it is unreasonable to ask to see plans before the Board takes a vote.

David Critelli – feels it is a positive going from 3 units to 2 units and the back apartment building is grandfathered. As far as the 2<sup>nd</sup> floor deck, this is a beach town and multiple houses have them. There have been a number of meetings on this issue and he does see this as deck as being significant. Where do we draw the line?

Jerry Freda indicates the decisions must be rendered on a case by case basis. This is tucked in and very small and he would consider this a balcony vs. a deck; however the covered deck is an issue as the ordinance is unclear.

Marilyn Levine – indicates they have decided not to have a deck and scaled it back to a balcony and there are no issues with the back house.

Harvey Rosenberg – Asks about taking out the bottom deck?

Jerry Freda indicates it would eliminate a variance.

Mark Aikins – indicates there is nothing to hide and they have no issue with photos of the 2<sup>nd</sup> structure.

**AT THIS TIME IT IS AGREED BY THE APPLICANT AND THE BOARD TO ADJOURN THIS MATTER TO THE REGULAR MEETING OF JANUARY 7, 2021 IMMEDIATELY FOLLOWING THE REORGANIZATION MEETING WHICH BEGINS AT 6:30 PM AND WILL BE HELD VIA ZOOM WITH NO FURTHER NOTICE BEING REQUIRED BY THE APPLICANT.**

**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. **\*\*THIS MATTER WAS ORIGINALLY SCHEDULED FOR JUNE 18, 2020 AS PER THE APPLICANT'S REQUEST, THEN AUGUST 20, 2020, THEN OCTOBER 15, 2020, THEN THIS DATE DUE TO DEFICIENT NOTICE BEING PROVIDED IN OCTOBER\*\***

James T. Hundley, Esq. – describes appeal and Exhibit #6 the Denial of the Zoning Permit dated 1/24/2020 indicating the use had been abandoned.

Mr. Hundley refers to Ordinance which eliminated the RT Zone in June 2019. He indicates the hotel was not abandoned.

Mr. Hundley believes it is important to provide some additional background on the property. In 2015 there was a fire after which his client applied to the Planning Board to replace the building with 4 townhouses which was ultimately denied and the denial upheld in Superior Court.

Lisa Patruno – witness sworn in with Board Professionals.

It is indicated the structural report will have to be handled at another meeting in order to provide the Board Professionals time to review.

Ms. Patruno indicates she has lived at 413 Evergreen since 2001. She indicates this property has been used as a hotel as long as it has existed. There were 3 other bungalows in the rear used for summer rentals. The prior structures and uses are further described. The prior historic of the property is reviewed as well as prior licensure.

The history of the prior applications was discussed. A brief discussion of the decision takes place and it is indicated during the time this matter was in court, no repairs were made, but continued to remain a registered hotel. Mercantile Licensure was applied for every year and the history of same is discussed. Has never been informed as to why licenses were never issued for 2019 or 2020. The plan is to maintain the hotel license and operate as a hotel.

Since the denial in 2020 there have been no permits issued as application to reframe the roof was denied. Ms. Patruno owns other properties and she describes the additional 5 units owned with bungalows and multi-family on one lot.

Has been involved in construction in the past and is concerned the current structure needs to be enclosed so as not to damage any remaining structure elements, etc.

Harvey Rosenberg – asks when they wanted and made application for townhouses isn't that an intent to abandon the hotel use? Also, this building has been vacant for 6 years, what is the condition today? It is indicated the structural report was not delivered until today which will be presented at the next meeting.

Debbie Bruynell – Do you plan on going back to 14 rooms? If so, do you need 14 spaces? Mr. Hundley indicates he thinks at that point it is a prior non-conforming condition with no parking being provided.

How large is the lot? Mr. Hundley indicates the plan submitted for the roof repair indicates the property to be 50 feet wide by 150 feet deep.

David Critelli – indicates if the property burned 5 years ago, has it been exposed to the elements since then? It is indicated yes. Mr. Critelli indicates he believes 5 years of weathering is above and beyond just a roof. It is indicated it will be addressed at the next meeting.

Michael Affuso – disappointed we do not have the report now, the site is absolute blight. It had 2 fires on the site – both being caused by electrical in such a short period of time. Are there residents year round? It is indicated the average stay is 1 day to 3 months. Do you plan on following the same model? It is indicated they would follow the Ordinance and hotel rules. Plans on renting through sites such as VRBO and Air B&B

Mr. Hundley describes the ordinance conditions for hotels indicated no more than 30 days.

Mr. Affuso indicates that the Applicant has already violated the ordinance. Mr. Hundley refers to Chapter 258 and Chapter 450 Section 5 and indicates he does not know when they were adopted or amended.

Dennis Mayer – questions the issuance of a Mercantile License? Mark Kitrick explains it is a license to do business in town. Are there records to support the use?

Deb Bruynell – asks if the individuals who stayed for 30 days were people from out of town? Ms. Patruno indicates she does not discriminate, if they need a room, I rent it to them.

Mike Affuso – asks how many times law enforcement officers were called to the site? Ms. Patruno indicates she does not know. Were there any citations? She indicates there was a recent citation to board up; however doesn't know if there were any issued while it was being used as a hotel.

Bud McCormick – asks if there will be parking for all 14 bedrooms. Lisa Patruno indicates the Board denied the townhouses for parking when tried to provide therefore it will remain with no parking. He asks if she plans on renting to Section 8 again? It is indicated no.

David Cariani – 216 LaReine – asks if she is aware of the effects the fire had on the neighbors. She indicates she has no idea.

Thomas J. Coan – 612 Third Ave – indicates the date of the denial brought here is January 15, 2020 were there any other zoning permits for roof repair? It is indicated no. Was there an onsite manager? It is indicated yes. Did he keep a register book? It is indicated yes he did. Was there car information in each guest? It is indicated no.

Harvey Rosenberg – asks where that register book is today? Ms. Patruno indicates the Manager had it – all paperwork burned in the fire.

Bud McCormick – Questions the presence of a Manager? John Kerr who lived between 217 and 212 McCabe.

**AT THIS TIME IT IS AGREED BY THE APPLICANT AND THE BOARD TO ADJOURN THIS MATTER TO THE REGULAR MEETING OF JANUARY 7, 2021 FOR SCHEDULING PURPOSES ONLY AND THEN FURTHER ADJOURN TO FEBRUARY 18, 2021 WITH NO FURTHER NOTICE BEING REQUIRED BY THE APPLICANT.**

**WITH NO FURTHER BUSINESS BEFORE THE BOARD A MOTION TO ADJOURN WAS OFFERED BY HARVEY ROSENBERG AND SECONDED BY DENNIS MAYER, ALL IN FAVOR. MEETING CLOSED AT 9:12 PM.**

**NEXT SCHEDULED MEETING WILL BE OUR REORGANIZATION MEETING IMMEDIATELY FOLLOWED BY OUR REGULAR MEETING ON THURSDAY, JANUARY 7, 2021 BEGINNING AT 6:30 PM VIA ZOOM.**

**Minutes submitted by Kristie Dickert, Board Secretary**