

# **MINUTES**

## **BOARD OF ADJUSTMENT**

### **TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY**

Regular Meeting

January 28, 2021

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM via Zoom virtual meeting service.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted on the Township website. The Agenda for the meeting, as well as instructions for public participation in the meeting, have also been posted on the Township website and sent to the newspaper of record. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

#### **Roll Call:**

Members present were Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello, Mr. Sylvester and Mr. Ringwood. Mr. Steven Warner, Board Attorney, was also present.

#### **Adoption of Minutes:**

January 7, 2021

A motion was made by Mr. Ringwood, seconded by Mr. Sylvester, and carried 7-0 to adopt the minutes of the January 7, 2021 Reorganization Meeting as amended.

**Adoption of Resolutions:**

**App.#26-20: Keyvan Gharehtapeh, 129 Hamilton Ave., Block 1106, Lot 8.02**

Proposed installation of an in-ground swimming pool with pool surround and fencing to be located in the rear yard. Variances are needed for exceeding the maximum other and total lot coverage percentages permitted. Existing nonconforming issues are lot width, principal side- and combined side yard setbacks, other coverage, and existing shed location. (R-15 Zone)

A motion was made by Mr. Coviello, seconded by Mr. Siburn, to adopt the above Resolution. The roll call vote was 7-0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello Mr. Sylvester and Mr. Ringwood voting in favor.

**App.#18-20: Ciraco Construction, 243 Lincoln Street, Block 205, Lot 9 (R-10 Zone)**

Proposed construction of a new, single-family dwelling on this vacant property. Relief is needed from Section 6.1.1B. “Schedule of General Regulations” for insufficient rear-yard setback and combined side-yard setbacks. (The ordinance requires a 30 ft. rear-yard setback and combined side-yard setbacks totaling 30 ft.) Variances are also needed for exceeding the maximum 20% building coverage allowed, the maximum 10% “other” lot coverage allowed and the maximum 30% total lot coverage allowed.

A motion was made by Mr. Delia, seconded by Mr. Ringwood, to adopt the above Resolution. The roll call vote was 4-0 with Mr. Sullivan, Mr. Delia, Mr. Coviello and Mr. Ringwood voting in favor.

**App.#25-20: Jose Rodriguez, 307 McMane Ave., Block 4601, Lot 18 (R-20 Zone)**

Proposed construction of a second story addition, side entry foyer, and expansion of the garage into space occupied by an existing enclosed porch. Relief is needed from Section 6.1.1B “Schedule of General Regulations” for insufficient front yard setbacks along both street fronts (corner lot), insufficient principal rear yard setback, and exceeding the maximum permitted building and total lot coverage percentages. A variance is also needed from Section 3.1.3 “Fences & Walls” for exceeding maximum allowed fence height. Existing nonconforming issues are lot area, lot depth, principal front yard setback along both street fronts, principal rear yard setback, building, other and total lot coverage, driveway location.

A motion was made by Mr. Siburn, seconded by Mr. Sylvester, to adopt the above Resolution. The roll call vote was 7-0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello Mr. Sylvester and Mr. Ringwood voting in favor.

**Applications for Review:**

**CARRIED FROM DECEMBER 10, 2020 WITH NO FURTHER NOTICE REQUIRED:**

**App 28-20: Jason Liu, 182 Briarwood Dr. E., Block 1401, Lot 20 (R-15 Zone)**

Proposed installation of a back-up generator. A variance is needed because 1) accessory structures must be at least 10 ft. from a side property line, whereas the proposed generator would be 4.9 ft. from the side property line, and 2) the existing other and total lot coverage numbers are nonconforming, and the proposed generator would result in a slight increase in the percentages. Nonconforming issues are lot area, principal side- and combined side yard setbacks, pool and appurtenances side yard setbacks, existing other and total lot coverage.

Mr. Warner confirmed that the hearing was carried without further notice required and the Board has jurisdiction to hear the application.

Jason Liu, previously sworn, presented Exhibit A-1 – photographs showing the proposed location of the generator. Mr. Liu stated that the survey of the property is incorrect.

It was noted that the Board can only consider the most recent certified survey.

In response to a question regarding the location of the generator, Mr. Liu stated that he would not consider any other location because of the cost and work involved.

Keven Garcia, contractor, was sworn and accepted as an expert witness. Mr. Garcia stated that it would not be feasible to locate the generator on the other side of the house. The generator could be located on the proposed side of the house if a non-operable window is installed.

Mr. Liu stated that he would not consider the non-operable window option.

Steve Johnson, 190 Briarwood Dr, was sworn and stated that he is the adjacent neighbor and he does not have any issue with the proposed generator as long as it meets code and does not represent a safety issue.

**Open to Public**

The hearing was opened to the public for comments or questions with regard to the application. There were no members of the public with comments or questions.

Mr. Warner reviewed the application and the proposed motion of denial.

A motion was made by Mr. Delia, seconded by Mr. Ringwood, with respect to App.#28-20: Jason Liu, 182 Briarwood Dr. E., Block 1401, Lot 20 (R-15 Zone) to deny the application and requested variances. The roll call vote was 7-0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello, Mr. Sylvester and Mr. Ringwood voting in favor and none opposed.

**CARRIED FROM DECEMBER 10, 2020 WITH NO FURTHER NOTICE REQUIRED:**

**App.#27-20: Jon Fehleison & Christal McElroy, 20 Rosegate Ct., Bl. 3201, L. 47.02**

Proposed deck expansion, roof structure over a portion of existing deck, pergolas over deck areas, outdoor kitchen and exterior fireplace on raised deck. Relief is needed from Section 6.1.1B “Schedule of General Regulations” for insufficient rear yard setback and exceeding the maximum permitted building and total lot coverage percentages. Existing nonconforming issues are deck rear yard setback, other coverage and total coverage. (R-15 Zone)

Mr. Warner confirmed that the notice is sufficient and the Board has jurisdiction to hear the application.

James Ramentol, architect, was sworn and accepted as an expert witness. Mr. Ramentol stated that the applicant is seeking approval for a deck expansion and roof and pergola coverings over the deck. The applicant previously obtained approval for a pool with a paver patio. The patio was at that time considered pervious but now the zoning officer has deemed it to be impervious. The construction of the roof and pergolas will increase the coverage to over 30%.

Tina Vaska, architect, was sworn, provided her educational and professional background and was accepted as an expert witness. Ms. Vaska described the proposed roof and pergolas and the improvements including an outdoor kitchen and fireplace. She stated that the improvements will not cause a detriment to the public or impact the zoning ordinance.

Sean McAleer, expert in deck design and construction, was sworn, provided his professional background and was accepted as an expert witness. Mr. McAleer discussed the design and layout of the covered decks.

Jon Fehleison and Christal McElroy, applicants, were sworn and stated that the purpose of the deck coverings is to protect the decks from the sun and make the outdoor space more usable.

### **Open to Public**

The hearing was opened to the public for comments or questions with regard to the application. There were no members of the public with comments or questions.

Discussion took place regarding the coverage calculations and the size of the pool. It was suggested that the applicant find a way for the impervious coverage to be decreased. A recess was taken to provide time for Mr. Ramentol to meet with the applicants and professionals.

Following the recess, Mr. Ramentol presented Exhibit A-1- autocad version of the plans, and Exhibit A-2 – specifications for proposed pervious pavers that could replace the existing pavers in a portion of the driveway.

Discussion took place regarding the proposed paver replacement. It was suggested that the Township Engineer and Zoning Officer be consulted and asked to provide their opinion on whether or not the proposed pavers would be considered pervious. The consensus of the Board was in favor of approving the application with the paver replacement if the Township Engineer and Zoning Officer advise that the pavers would be acceptable.

The hearing of the application was carried to February 25, 2021 with no further notice required. The applicant granted an extension, if needed, of the time for which the Board to act on the application.

### **App.#29-20: Paul Genua, 36 Hampton Drive, Block 3204, Lot 13 (R-20 Zone)**

Proposed 3-season room (12' x 24') over an existing deck. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for exceeding the 15% maximum building and the 25% maximum total lot coverage percentages allowed. Existing nonconforming conditions are lot area, lot depth, principal front and side yard setbacks.

Mr. Warner confirmed that the notice is sufficient and the Board had jurisdiction to hear the application.

Paul Genua, applicant, was sworn and stated that he wants to put a three-season room on top of his existing deck.

Mark Swanson, expert in sunroom design and construction, was sworn and accepted as an expert witness. Mr. Swanson described the proposed room and in response to questions from the Board stated that the room will not be heated and the coverage will be 26%. He stated that the lot is undersized, there is no way

to alleviate the problem and he does not believe there will be any detriment to the zoning ordinance.

The applicant agreed to consult with the Township Engineer regarding storm water management.

### **Open to Public**

The hearing was opened to the public for comments or questions with regard to the application. There were no members of the public with comments or questions.

Mr. Warner reviewed the application and the conditions of approval.

A motion was made by Mr. Coviello, seconded by Mr. Ringwood, with respect to App.#29-20: Paul Genua, 36 Hampton Drive, Block 3204, Lot 13 (R-20 Zone) to approve the application with requested variances, subject to the conditions discussed and subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 7-0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello, Mr. Sylvester and Mr. Ringwood voting in favor and none opposed.

### **App.#30-20: Cory Rotkel, 174 Maple Avenue, Block 1501, Lot 13 (R-15 Zone)**

Proposed installation of an above-ground pool (15' x 26' x 52" high). Relief is needed from Section 6.1.1B "Schedule of General Regulations" for exceeding the 10% maximum other and 25% maximum total lot coverage percentages allowed. A variance is also needed as the 52" height of the proposed pool would exceed the 48" limit (as per Section 3.7.7D "Swimming and Wading Pools"). Nonconforming conditions are lot area, existing other coverage, driveway too close to the side property line.

Mr. Warner confirmed that the notice is sufficient and the Board has jurisdiction to hear the application.

Cory Rotkel, applicant, was sworn and stated that the proposed above-ground pool would exceed the height limit and would be over on lot coverage. In response to a question from the Board, Mr. Rotket stated that there will be no trees removed and no lighting is proposed. He agreed that storm water management will be subject to the discretion of the Township Engineer.

### **Open to Public**

The hearing was opened to the public for comments or questions with regard to the application. There were no members of the public with comments or questions.

Mr. Warner reviewed the application and the conditions of approval.

A motion was made by Mr. Coviello, seconded by Mr. Siburn, with respect to App.#30-20: Cory Rotkel, 174 Maple Avenue, Block 1501, Lot 13 (R-15 Zone) to approve the application with requested variances, subject to the conditions discussed and subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 7-0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello, Mr. Sylvester and Mr. Ringwood voting in favor and none opposed.

### **App.#31-20: Roger Walker, 47 Summit Road, Block 4901, Lot 3 (R-20 Zone)**

Proposed installation of gas backup house generator to be located in the northeastern side yard. Relief is needed from Section 6.1.1B. "Schedule of General Regulations" because the location of the generator would not meet the minimum setback requirements.

Mr. Warner confirmed that the notice is sufficient and the Board has jurisdiction to hear the application.

Roger and Rhonda Walker, applicants, were sworn and stated that they want to install a generator due to the number of power outages they have experienced. A variance is required due to side yard setback where 12' is required and the proposed generator is 8.8' from the property line. There is a wooded area beyond the property line and the neighbor's driveway so the generator would be far from the neighbor's house.

In response to questions, Mr. Walker stated that back of the house is all windows so the generator cannot be located there, the noise control ordinance will be complied with and no trees will be removed. Mr. Walker presented Exhibit A-1 – photographs of views of the house and adjacent properties.

### **Open to Public**

The hearing was opened to the public for comments or questions with regard to the application.

Andrew Egan was sworn and stated that he lives behind the applicants and has no issue with the generator.

Mr. Warner reviewed the application and the conditions of approval.

A motion was made by Mr. Sylvester, seconded by Mr. Nappi, with respect to App.#31-20: Roger Walker, 47 Summit Road, Block 4901, Lot 3 (R-20 Zone) to approve the application with requested variances, subject to the conditions discussed and subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 7-0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Coviello, Mr. Sylvester and Mr. Ringwood voting in favor and none opposed.

**Open to Public**

The hearing was opened to the public. There were no members of the public who had comments or questions.

**Adjournment:**

A motion was made by Mr. Siburn, seconded by Mr. Ringwood, to adjourn the meeting. The voice vote was unanimous, and the meeting was adjourned at 10:35 PM.

Regina Giardina, Secretary Pro Tem