

## MINUTES

### BOARD OF ADJUSTMENT

### TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

June 27, 2019

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

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 in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. 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. Sylvester, Mr. Ringwood and Mr. Coviello. Mr. Steve Warner, Board Attorney, was also present.

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

May 23, 2019 Regular Meeting

A motion was made by Mr. Coviello, seconded by Mr. Ringwood, and carried by unanimous voice vote to adopt the minutes of the May 23, 2019 Regular Meeting as presented.

#### **Request for Extension and Consideration of Resolution:**

App. #8-18: Maximilian & Laura Blum, 131 Cornell Ave., Bl. 1712, L. 1 (R-15 Zone)

Mr. Warner explained that the original application was approved in June 2018; however the applicants were unable to commence construction within the one-year time period following approval as required by ordinance. The one-year period expired in June 2019. Mr. Blum wrote a letter to the Board requesting a one-year extension through June 2020. The proposed resolution would give the Blums until June 14, 2020 to commence construction.

**Adoption of Resolutions:**

**Resolution for Case 8-18A granting one-year extension of approval for App.#8-18: Maximilian & Laura Blum, 131 Cornell Ave., Bl. 1712, L. 1**

A motion was made by Mr. Delia, 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. Sylvester, Mr. Ringwood, and Mr. Coviello voting in favor. There were none opposed.

**Information and Education : Boards of Adjustment**

Mr. Warner took a moment to give a general explanation about boards of adjustment as quasi-judicial bodies whose members should be considered similar to a panel of judges. Mr. Warner explained the canons that govern the actions of judges in the State of New Jersey and how that code of judicial conduct also applies to boards of adjustment and planning boards. He also reviewed the way meetings are conducted for hearing applications of development, including the rules of evidence, the opportunity for people to comment and question witnesses, and the rules governing testimony and presentation of documents.

**Applications for Review:**

**App.#12-19: New Cingular Wireless PCS, LLC ("AT&T), 47-53 Industrial Road, Block 1301, Lots 3.01 and 3.02 (LI-Zone)**

*Proposal to install antennas and equipment in an existing telecommunications facility. AT&T is seeking a waiver of site plan approval for this upgrade pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.*

Judy Fairweather, attorney for New Cingular Wireless, explained they are under the Federal Law and meet the Federal Law. Because they meet the Federal law and because this is a non-substantial modification to a tower, they have the right of approval.

Mr. Alec Norris, civil engineer, was sworn, gave his educational and professional background, and was accepted as an expert witness.

Mr. Norris stated that the existing tower is 104 ft; AT&T is adding a 10 ft. extension to the monopole. The top of the proposed extension would be at 114 feet but the top of the lightning rod would be at 119 ft. The equipment cabinetry is going in an existing building very close to the compound that's on site right now. The only outdoor equipment for AT&T is the proposed generator which will be placed on

gravel that is already there. They are not disturbing any gravel, and there is no increase in impervious surface. Ms. Fairweather explained that the proposed upgrade is considered a de minimus change under federal law, not a substantial change.

In response to questions from the Board, Mr. Norris stated that there are 3 existing carriers on the 104-ft. pole; AT&T is proposed to be the fourth carrier on the pole. Mr. Norris also confirmed that the absolute highest point would be the lightning rod.

Mr. Warner mentioned the Structural Integrity Report submitted by the owner of the tower. Ms. Fairweather confirmed the report had concluded there was sufficient structural integrity for the fourth carrier addition. Ms. Fairweather also stated that AT&T's coverage area would increase as a result of the upgrade.

Discussion took place about the memo from the Berkeley Heights Fire Department and their recommendation that the proposed generator be powered by diesel fuel. Mr. Norris felt that a natural gas generator would work better.

The meeting was opened to the public. There were no members of the public present who had an interest in the application.

Mr. Warner confirmed the requirements for a site plan waiver. A motion was made by Mr. Delia, seconded by Mr. Coviello, to approve the site plan waiver and App.#12-19: New Cingular Wireless PCS, LLC ("AT&T), 47-53 Industrial Road, Block 1301, Lots 3.01 and 3.02 (LI-Zone). The motion was carried 7 - 0 with Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Sylvester, Mr. Ringwood and Mr. Coviello voting in favor. There were none opposed.

**App.#9-19: Jennifer & Steve SanAntonio, 36 Delmore Ave., Bl. 401, L. 27**

*Proposed construction of a one-story principal addition to rear of home. An existing patio will be removed and replaced by a new one. Variances are needed for exceeding building, "other" and total lot coverage limits. Relief is also needed because the ordinance requires a garage to be constructed if the total area of the dwelling would exceed 1,700 sq. ft. including the addition. (Proposed total area: 1,708 sq. ft.) Nonconforming issues are lot width, lot depth, lot area, principal front yard setback, side and combined sideyard setbacks, existing "other" and "total" lot coverage, and driveway less than 5 feet from the side property line. (R-15 Zone)*

Mr. Warner confirmed that the Notice was sufficient in content and proper notice had been given.

Jen and Steve San Antonio were sworn. Ms. San Antonio stated that her home was no longer big enough for her family and they were looking to expand the kitchen and living room area by way of a single-story addition.

Marc Marion, architect, was sworn, gave his educational and professional background, and was accepted as an expert witness.

Mr. Marion stated that the proposal was for a laundry room and family room off the rear of the house. They tried to maintain the required setbacks for this zone. The lot is about half the size required by ordinance which creates the hardship for the coverage issues. Mr. Marion explained the coverage variances needed. The very large existing outdoor patio is being replaced with a smaller patio.

Mr. Sullivan mentioned that the project triggers the requirement for a garage, and the San Antonios are seeking relief from that requirement. Part of the reason is the hardship caused by the undersized lot.

Discussion took place about building a deck rather than a patio; Mr. Marion stated that a deck would not work with this property.

The meeting was opened to the public.

Christian Engell, 154 Princeton Avenue, inquired as to why the town is concerned about impervious coverage, whether the concern was about water, and why those rules were established. Mr. Sullivan and Mr. Warner explained the requested variances, the reasons for towns establishing limits on coverage ratios, and the connection between stormwater management and impervious coverage.

The meeting was closed to the public.

Mr. Coviello stated that the existing driveway is located too close to the property line so it would need to be mentioned as a pre-existing condition.

Discussion took place about ways to decrease the impervious coverage to a more acceptable level. Mr. Marion presented Exhibit A-1 -- replica of the drawings that were submitted with markings -- and explained that the brick area behind the shed could be removed and replaced with gravel, and reductions could be made to the size of the side-yard walkway and the driveway. The Board was in agreement with the suggested reductions in impervious coverage.

Mr. Warner reviewed the standard conditions that would be included in the resolution of approval, the required reduction in coverage numbers discussed at the meeting, and the required variances.

A motion was made by Mr. Ringwood, seconded by Mr Nappi, with respect to App.#9-19: Jennifer & Steve San Antonio, 36 Delmore Ave., Bl. 401, L. 27 (R-15 Zone) to approve the application with requested variances, subject to the 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. Sylvester, Mr. Ringwood, and Mr. Coviello voting in favor. There were none opposed.

**App. #8-19: Michael Pashkow, 130 Overhill Way, Bl. 3507, L. 3 (R-20 Zone)**  
*Proposed construction of a sports court (26.5 ft. x 31.5 ft.) with an in-ground basketball hoop. Relief is needed from Section 6.1.1B "Schedule of General Regulations" for exceeding the maximum allowed "other" and "total" lot coverage limits and for insufficient side yard and rear yard setbacks for the proposed sports court. Nonconforming issues are existing "other" lot coverage and principal front yard setback.*

Mr. Warner confirmed that the language in the Notice was sufficient and the Board has jurisdiction to hear the application.

Mr. Pashkow was sworn and described the desired sports court. His driveway is too slanted and the backyard is safer. Variances are required for insufficient setbacks and exceeding coverage limits.

Mr. Sullivan questioned locating the sports court in close proximity to the neighboring properties. Mr. Pashkow explained the rationale for the location of the proposed court. The hoop would be installed permanently, and there would be no lighting provided for the court.

Discussion took place about centering the court in the yard rather than the proposed location. Many Board Members expressed agreement with having setbacks closer to 15 ft. in the rear and 12 ft. on the sides.

Mr. Pashkow explained the slope of the yard; if he brings the court closer to the house more regrading of the property would be required; more soil would need to be disturbed. Mr. Pashkow agreed to submit a drainage plan acceptable to the Township Engineer in the event his application is approved.

Mr Coviello mentioned that sports courts are not permitted in Berkeley Heights; only tennis courts are permitted.

The meeting was opened to members of the public.

Christian Engell, 154 Princeton Avenue, asked about the reason for not allowing sports courts in backyards. Mr. Sullivan and Mr. Warner gave explanations about the Berkeley Heights zoning ordinance which does not recognize sports courts as a permitted use in Berkeley Heights.

The meeting was closed to the public.

Mr. Sullivan recommended the applicant agree to a 15 ft. rear-yard setback and a 12 ft. side-yard setback. The Board was in agreement with the revised location of the sports court which would eliminate the need for setback variances.

Mr. Warner reviewed the variances being granted and the conditions of approval to be included in the resolution.

A motion was made by Mr. Nappi, seconded by Mr. Delia, to approve App. #8-19: Michael Pashkow, 130 Overhill Way, Bl. 3507, L. 3 with the revised 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. Sylvester, Mr. Ringwood, and Mr. Coviello voting in favor. There were none opposed.

**App.#10-19: Susan & Peter Pangis, 144 Rutgers Ave., Bl. 1705, L. 2**

*Proposed installation of an in-ground pool with waterfall, patio surrounding the pool, and a firepit. In addition, a portion of the existing accessory residential storage structure would be converted to a cabana with changing room, toilet, and sitting area. The applicant is also seeking approval for a sports court. The lot is a "through lot" and fronts on Rutgers and Princeton Avenues. Several variances are needed, including for exceeding the 10% "other coverage" and 25% "total" lot coverage permitted; for the location of the proposed sports court; and for not adhering to the Board of Adjustment resolution adopted previously which required that the accessory structure be used exclusively for residential storage with no water service, sewers, heat, etc. (R-15 Zone)*

Mr. Warner stated that he reviewed the content of the Notice that was sent and found it to be sufficient and sent in a timely manner. The Board therefore has jurisdiction to hear the case.

Ms. Susan Pangis, Mr. Peter Pangis, and Mr. Bill Hollows, were sworn.

Ms. Pangis explained that their original submission was too ambitious and they revised the plans to improve the numbers. They are looking to install an in-ground pool, pool surround, add a toilet to the detached garage, and install a sports court (720 sq. ft.). The project brings them over the coverage limits and requires a variance from the restrictions placed on the detached garage by a previous resolution. Ms. Pangis described a hardship issue in that the front of the house is steep and Rutgers is a big through-street between Mountain and Hamilton with lots of cars going back and forth. Ms. Pangis further described the project, the reasons for the sports court, and the variances needed. They are zoned as two front lots because they front two streets.

Ms. Pangis stated that they had the yard fenced recently and went through the permitting process with the town. They want a safe, quiet back yard.

Discussion took place about the vegetation to be planted on the inside of the fence, the one-person gate in the back on the Princeton side, and the issue of no vehicular access from the back of the property. Ms. Pangis stated that their landscapers access the property from the front.

Ms. Pangis explained that the purpose of the back gate is more for when an errant ball leaves their property; they will have full-size trees in front of the gate.

Ms. Pangis described the type of pool they plan to install, the pool spa, and the pool surround.

Mr. Warner questioned Mr. Hollows, professional civil engineer as well as professional planner, about his professional and educational background, and Mr. Hollows was accepted as an expert witness.

Mr. Hollows gave figures on the size of the proposed pool, the surrounding deck, and the spa. They have reduced the size of the pool decking from the original plan.

Mr. Hollows presented Exhibit A-1 -- existing conditions topography colorized map, last revised date 9/20/18 -- and Exhibit A-2 -- dated 6/17/19, two-page exhibit, proposed plan, Design Option A (colorized) -- and described the topography and existing conditions of the property and the proposed landscaping plan.

Mr. Hollows described the proposal including the proposed landscaping which would provide screening from Princeton Avenue. In response to questions from the Board about the height of the proposed trees at installation, Ms. Pangis

confirmed they would installing mature trees (7 - 8 feet in height at the time of installation). - as depicted on page 2 of Exhibit A-2.

Asked about stormwater management, Mr. Hollows described the proposed system with two drywells for stormwater management. Discussion followed about whether a stormwater management system would be needed for the pool, separate from the stormwater system for the garage and the sports court.

In response to questions from the Board about the use of the accessory structure, Ms. Pangis explained they want to install a toilet and a small sink for the children to wash their hands. They currently use the building for storage, but for convenience and safety when they use the pool, they would like a place for the kids to use the bathroom and wash their hands.

There was further discussion about the size of the accessory structure and why it is shown on the proposed plans as larger than was depicted on the plans submitted at the time of the Dellomo application.

The meeting was opened to the public.

Mr. Vautin, 134 Rutgers Avenue (Lot 1 on the plan), was sworn. Mr. Vautin said he has lived there for 55 years and never had a water problem on his property prior to the new house being built at 144 Rutgers. Mr. Vautin stated that during the construction of the house, he worked with the builder who built a swale between the two homes. There is no problem as a result.

Mr. Vautin presented three photographs which were marked as Exhibits 01,02 & 03. The photos show the applicants' house and drain pipes as well as the grade of the properties. Mr. Vautin mentioned the proposed drywell and the slant of the property. In response to comments from Mr. Vautin, Mr. Hollows stated they are proposing a retaining wall.

Mr. Vautin is concerned about fill dirt on his side of the fence which might obstruct the flow of water. There was further discussion about the topography of the property, the dirt that would need to be removed due to the pool installation, and the fence that would be required for the pool.

Mr. Vautin also expressed concern about the sports court, potential noise and how it would affect his property.

Mr. Sullivan explained that the stormwater management system for this project would be worked out between Mr. Hollows and the Township Engineer.



Mr. Donald Davignon, 184 Princeton Avenue, was sworn. Mr. Davignon expressed concern about trees that were removed from 144 Rutgers and using Princeton Avenue for access to the property to remove the trees. He would like to keep Princeton the quiet street it has always been and is concerned that visitors to 144 Rutgers Avenue might park on Princeton to use the proposed pool because it is more convenient. Mr. Davignon is also concerned about construction vehicles and cement trucks using Princeton Avenue to park their vehicles during the construction project.

In response to Mr. Davignon's comments, Ms. Pangis stated that a truck did park on Princeton while fixing the back section of the fence, but she did not think that was an issue because other neighbors' landscapers park on Princeton on a weekly basis. Ms. Pangis added that their landscapers do not park on Princeton Avenue. For tree removal, they may require one-time access from the rear of the property but it would not be a regular thing.

Mr. Coviello stated that the prior resolution stipulated no vehicular access from Princeton. Ms. Pangis stated it was their interpretation that the resolution refers to a driveway from Princeton into the garage and prohibits vehicles from coming onto the property from Princeton. Ms. Pangis commented that it is difficult to tell someone not to park on Princeton Avenue, especially since they are not always home when workers arrive at the house. Ms. Pangis presented photos \*

Ms. Pangis stated that they do have an issue now regarding access to their property because of the location of their new generator. Ms. Pangis requested permission for one-time access from Princeton for the proposed project because the generator is in the way. Otherwise, they'd have to drive onto Bob and Carol Vautin's lawn and come around in order to clear the tree.

\*Mr. Warner referred to the photographs which will be marked as A-3, a compendium of 7 photographs (Photos 1 - 7). Ms. Pangis stated that one of the photographs shows the landscaping trucks of the neighbors parking on Princeton. They park there every Wednesday. In response to questions from Mr. Warner, Ms. Pangis stated that the photographs were taken within the last few weeks.

Nicole and Matthew Torstrup, 164 Princeton Avenue, were sworn and stated that they live directly behind the applicants' property. Mr. Torstrup stated that the residents of 144 Rutgers used the back of the property for access. Ms. Torstrup commented that she is concerned about the proposed construction and using Princeton as an access point for the construction. She also stated there was a violation that wasn't corrected.

Mr. Warner explained that if there were any open violations with respect to the subject property, in the event the Board should approve the application, the Board would require, as a condition of approval, that the violation be satisfied in full prior to construction or whatever time frame the Board would decide. Discussion took place about a violation for an opening in the natural growth that kept getting bigger and forsythia that needed to be put back. Ms. Pangis stated that she received one citation and they have every intention of putting back all of the forsythia; however, they want to be able to correct it once the construction is completed. Ms. Pangis stated there is only one outstanding citation and they would be happy to rectify it within the time frame stipulated by the Board.

Discussion took place about the citation and how long that citation could remain open. Ms. Torstrup was also concerned about the location of the sports court.

Mr. Hollows pointed to A-2 and the landscaping that would be installed. Discussion took place about the setback for the sports court and the landscaping buffer.

Ms. Pangis reiterated that they did not want to plant anything now that might be damaged from the work they are doing; they intend to take care of the opening.

Mr. Engell, 154 Princeton Avenue, was sworn. Mr. Engell is concerned about the amount of impervious surface that is being added and the water management on the property. He's also worried about his children, who play on the street, being safe during the period of construction.

Michael Fair, 152 Rutgers Avenue, was sworn. Mr. Fair was very pleased with the plan presented for 144 Rutgers. He supports the project and believes it will be very good for the neighborhood.

Shauna Williams, 145 Rutgers Avenue, was sworn. They live across the street. She stated that the size of the storage unit /garage has never changed. Ms. Williams stated that she had come to the meeting to support the project at 144 Rutgers and the applicants have been considerate neighbors.

Lucille Davignon, 184 Princeton Avenue, was sworn. Ms. Davignon stated that the residents of 144 Rutgers received a violation in July 2018 and she is concerned. Her street was finally paved, kids play on the street, and she's worried about safety. She would like the street to stay safe and worries about trucks coming down the street all the time. Ms. Davignon didn't understand why the tree permit was granted since the reason for the permit was installation of a pool.

Discussion took place about the trees that were recently removed; Ms. Pangis stated that the trees which were recently removed were trees on her fence line on the right and left sides of her property.

Mr. Sullivan announced that the application was being carried to September 26, 2019, with no further notice required.

Mr. Pangis explained that their intent is to keep the Princeton Avenue side closed off once the project is completed. The detached garage will not be used for anything but residential for their own family; there is no intent to use it for a business or a separate residence.

Ms. Pangis asked if there is a possibility to amend the previous resolution; they would like to put a toilet in the storage shed with no heat or air conditioning.

Mr. Warner clarified that one of the variances being sought is relief from that particular condition in the previous resolution.

Mr. Warner reiterated that the application is being carried to September 26, 2019. If the 120-day time period would expire, the applicant would have to grant an extension.

**Open to the Public**

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

**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 approximately 10:35 p.m.

Connie Valenti, Secretary