

ZONING BOARD OF ADJUSTMENT

JUNE 28, 2018

PRESENT: Philip Grieg, Michelle Casserly, Mark Fitzgerald, John Hutchinson, Judy Young, Robert Cupoli, Manny Fowler, and Charles Ross

ABSENT: John Lisko

ALSO, PRESENT: Board Attorney Kevin Kennedy Esq., Board Secretary April Claudio, Zoning Official Ted Bianchi and Borough Engineer Derek Jordan

The secretary stated that adequate notice of this meeting of the Zoning Board of Adjustment was sent by email to our official newspapers, the Coast Star and the Asbury Park Press on December 18, 2017 and by posting a copy of said notice at the Municipal Complex on the same date.

Mr. Kennedy stated the application for 105,107,109 12th Avenue has been withdrawn. William Shippers, attorney for the application, stated his client is going to reconsider his proposal.

Mr. Kennedy prepared a resolution of dismissal for the application. Ms. Young made a motion to approve the dismissal of the application and the resolution, which was seconded by Mr. Greig and approved by the following vote:

AYES: Mr. Greig, Ms. Casserly, Mr. Fitzgerald, Mr. Hutchinson, Ms. Young, Mr. Cupoli, and Mr. Fowler

NAYS:

Edelman Investment Group LLC - 112-114 12th Avenue

Mr. Kennedy stated this is a continuation of the May 23, 2018 meeting. Since that meeting the applicant's attorney submitted a letter stating a floor would be removed from the plans and some other height modifications would be made. He stated plans have been submitted for the changes. However, Fred Nieman, an attorney for an objector, questioned if the revised plans required a renotification to those within 200 ft. Mr. Nieman felt the general rule when you make a substantial change to the plans is the plans must be submitted ten days prior to the meeting and require a re-notice. He represents resident Arthur Ammermuller. William Shippers, attorney for the application, stated he was prepared to go at the last meeting but there was a quorum issue so the application was carried. He added that often plans are changed during the meeting process and plans aren't always submitted until after the fact as a condition of the resolution. After the last meeting he listened to all the neighbors and made changes which he would like to show tonight and move forward. He felt Mr. Nieman and Mr. Ammermuller are going to appeal his application no matter what if he is successful with a vote. He would like to proceed with the application tonight. Mr. Hutchison stated he is concerned the Board didn't receive the plans ahead of time as well.

Mr. Kennedy gave a background on the noticing requirements and its importance. The new plans are significantly different than what was previously on file at Borough Hall. Typically, a change in the plans that would alter the variances in a negative way would require a re-notice. However, this application reduces the variances proposed which creates a question of if a re-notice would be required. Out of an abundance of caution he would recommend that they do re-notice since the plans are different. Whether they are legally required to or not is the question. The other issue is the plans must be on file ten days in advance which these were not meaning this could create a procedural issue. Also, the Zoning Officer and Borough Engineer have not had time to review the plans to see if the variances have changed. Given the nature of the application, the number of attorneys present, and the number of members of the public in attendance he would want to make sure there are no procedural issues that could come up if there is an appeal. He explained what would happen if an appeal was filed. There's a chance that if this were appealed and the judge agreed with a notice issue that the judge could send this back to the Board to hear it all over again. However, it is up to the Board to decide whether or not to proceed.

David Lonski, Mr. Shippers' co-counsel, stated the notice was sufficient by clearly looking around the room. Timing is an issue for the client. If the Board wants them to re-notice they would request a special meeting in the next few weeks. The Board discussed possible special meeting dates and determined July 25th was a date that worked for a quorum.

Mr. Fitzgerald made a motion to carry the application to July 25, 2018, which was seconded by Ms. Young and approved unanimously.

ZONING BOARD OF ADJUSTMENT

JUNE 28, 2018

At 7:55 p.m. the Board took a brief recess to allow the meeting room to clear out. The Board reconvened at 7:59 p.m. All were still present.

MATTHEW KELLY – 1005 14TH AVENUE

Appearing for this application was Mr. and Mrs. Kelly and design consultant Jeffrey Winters. Ms. Casserly stated she had a previous working relationship with one of the applicants but it would not compromise her participation. Mr. Kelly stated they have a single-family home that they reside in and would like to build a second floor on the home. The current home is only one and a half stories. His wife is pregnant and would like to have a home to keep them in Belmar. Seeking variances for a lot of existing nonconformities. No changes to the boundaries of the property or the footprint of the building. Variances: minimum lot size, rear yard setback of 20 feet where 35 feet is required, one side yard setback of existing 3.5 feet where 5 ft. is required, and building coverage required is 30%, 33.5% exists and proposing 34%. There will be no work to the existing garage but it's setbacks are nonconforming.

Mr. Fowler asked how many bathrooms and bedrooms exist. Mr. Kelly stated they have three bedrooms and one bath. The final plans would be four bedrooms and three bathrooms. Mrs. Kelly stated they only have one functioning bedroom now the other one is very small. Mr. Fowler asked about water runoff. Mr. Kelly stated the water will go into gutters and leaders.

Mr. Cupoli asked if a parking variance is required. Mr. Bianchi stated there is enough parking.

Mr. Fitzgerald asked if they are only adding 18 square feet to the footprint. Mr. Kelly replied yes.

Ms. Casserly asked about the a/c location. Mr. Kelly stated there is a brown box on the landscape plan where the current a/c is.

Mr. Hutchinson asked to confirm that the impervious coverage calculation is correct. Mr. Kelly stated they are just under the percentage it can be.

Mr. Ross asked about elevating the home. Mr. Kelly stated they are not in a flood zone.

Public: Kyle Rizzitello, 1003 14th Avenue, stated they are the best neighbors and doesn't see any reason why they shouldn't be approved for their addition. Will be an improvement to the neighborhood and their property. They want to stay in Belmar and raise their family.

Board Comments: Mr. Fowler stated there is a hardship and the hardship is they want to put a second floor on top of their house. Finds it refreshing and would vote in favor of the application.

Mr. Cupoli stated he is also in favor of the application. Ms. Young and Mr. Fitzgerald were also in favor.

Ms. Casserly stated she is thrilled to see a friendly face in town and would be in favor of a family staying in town.

Mr. Greig stated he sees no reason to not be in favor of the application. Mr. Hutchinson stated he too is in favor of the application.

Ms. Casserly made a motion to approve the application, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Greig, Ms. Casserly, Mr. Fitzgerald, Mr. Hutchinson, Ms. Young, Mr. Cupoli, and Mr. Fowler

NAYS:

111 10TH AVENUE ASSOCIATES LLC – 111 10TH AVENUE

ZONING BOARD OF ADJUSTMENT

JUNE 28, 2018

Appearing for this application was attorney Michael Rubino, engineer Rich DiFolco, architect Brian Berzsinkis, and owner Nick Antipin. Mr. Kennedy stated this is a continuation from the original presentation held on January 25, 2018. Mr. Kennedy stated Mr. Rubino re-noticed given the amount of time that had lapsed.

Mr. Rubino stated they made their presentation on January 25th but there were some issues that needed to be resolved. They attempted to come back in March but he was ill and then in April there was an issue with the transcripts. They ordered new transcripts. Mr. Kennedy stated Mr. Fitzgerald and Ms. Casserly certified they read the transcripts. Mr. Rubino stated there are some minor changes they will discuss and some issues regarding the rental of the property which they will discuss. His client stated that any rentals at the property would not be less than 30 days, he submitted proposed bylaws for the Board to review. Mr. Rubino explained the multi-family cluster ordinance that their application falls under and reminded everyone why they are before the Board. Mr. Rubino read the bylaws. Someone from the public interjected and asked for clarification on the application. Mr. Rubino and Mr. Kennedy clarified this is an application for three buildings with two units in each building for a total of six units under the multi-family cluster ordinance.

Mr. Berzsinkis stated one of the comments was a concern about a closet in a den becoming a bedroom. They removed the closet. They also added a second bathroom to each unit to make them more marketable.

Mr. Hutchinson stated there was one other issue at the January meeting which was the garbage.

Mr. DiFolco stated there was a comment from one of the board members about running a perforated pipe for water runoff underground which they will propose to do. They also added a location for the trash outside. There would be two 6x10 enclosed trash enclosures. There was also a question about the location of the air conditioning units. They would be located on pads near the garbage areas. He submitted a revised plan.

Public:

Vicky Renner, D Street, at the last meeting there was discussion on if the existing units had heat in them. Mr. Antipin stated there is electric heat but they've been typically rented as summer rentals. She asked if approving this application would open it up for anyone else to pursue. Mr. Rubino explained the multi-family cluster ordinance again. She asked about parking. They meet all the parking requirements. Mr. Rubino explained the rental clauses in the proposed bylaws to her.

Mark Presto, 110 13th Avenue, felt the property doesn't qualify as a multi-family cluster development. They are simply just asking for variances. Felt the dens could still be used as a bedroom. Felt four units would be more reasonable. Felt the property has been animal house and is now being rewarded with this plan.

Randi Brazel, 101 11th Avenue, felt the Board of Trustees could amend the bylaws after the fact. Mr. Rubino stated that would be in violation of the Board resolution. She stated she moved here years ago and came before the Board when she renovated her house but did not move here to be surrounded by condos.

James Ortenzio, 109 10th Avenue, spoke at the last meeting. Stated it is very easy to say call law enforcement. The issue is having rental properties, why not have it in the bylaws that they must be rented consecutively for 365 days. Would like to know what plan B is if this doesn't get approved. Also, would like to know more details on the garbage area. Ms. Young recalled at the last meeting that he was in favor of the application and asked if he still his. Mr. Ortenzio stated he doesn't know what plan B is. He is not for 30-day rentals.

Ronnie Lippsett, 217 11th Avenue, spoke about when she came before the Board years ago and wanted a rear rental home and was told no. Doesn't understand why this has changed and wants the Board to think about what the goal is for Belmar. Also agrees the rentals can't be transient and must be for a 365-day lease.

ZONING BOARD OF ADJUSTMENT

JUNE 28, 2018

Ted Protonentis, 106 15th Avenue, asked Mr. Rubino to read a section of the multi-family ordinance. However, he was referring to a different section of an ordinance regarding multi-family homes where it states the den would be considered a bedroom. Mr. Rubino stated that ordinance is not the ordinance they are seeking approvals for.

Aileen Fahy, 400 River Avenue, stated the neighbors speak volume of what we want Belmar to be. She is a real estate agent and said the market calls for people to take homes and renovate them to bring them back to their glory. Hopes the Board holds the application up to the standards of the ordinance.

Johnathon Falk, 506 11th Avenue, spoke about animal house rules and how it affects the bylaws and eviction of tenants.

Greg Glezman, 409 10th Avenue, asked how many units are on the property. Mr. Antipin stated there are currently ten units on the property.

Arlene Neppel, 100 15th Avenue, stated she would like to know how many bedrooms there are now and how many are proposed. Mr. Rubino stated there are 19 existing bedrooms and proposing 12. She felt they are proposing 18 because of what Mr. Protonentis said. Agrees should stop rewarding bad behavior. Would prefer he build a single-family home with a rear garage apartment. Thirty-day rentals isn't good would prefer a six-month lease.

Mark Pheiffer, 319 5th Avenue, was concerned there are too many variances being given in town.

Juan Gonzalez 208 ½ 14th Avenue, spoke about how a big animal house on his street was removed and it has changed the street.

Merry Brennan, 404 11th Avenue, doesn't see any hardship here. Was concerned about setting a precedent.

Peter Terranova, 800 B Street, asked if this was undeveloped land what would the maximum number of units be allowed on the property. Mr. Rubino replied one. Mr. Terranova stated the ordinance was to be a tool to develop some areas but they are not bound to use it. Felt it would be hard for Code Enforcement to enforce the bylaws.

Rose Dagnya, Ninth Avenue, stated the property as it is now was a mistake and doing it over again is a mistake. It's over development.

Mr. Rubino reiterated the ordinance allows for people with more than seven units to redevelop. He spoke about case law for other conditional use applications. The testimony at the last meeting was all the setbacks were met, parking, impervious coverage etc. were all met. This ordinance was put in place to get rid of what Mr. Antipin has. The Board should only be considering their deviation from the ordinance which is due to the lot size.

Mr. Antipin stated rentals aren't the problem it's the kids that rent. Asked if someone is going to spend \$450,000-500,000 to rent to kids. Thinks they would be a great addition to the town. He will live in one of the units. It will not be another animal house; there's too much money involved. If the rental is limited it would be hard for him to sell the units. Could go back to renting the units as is but they aren't nice so it's hard to get families to rent.

Mr. Fitzgerald asked if they would consider going to four units. Mr. Antipin replied no.

Mr. Greig stated the 30-day rental clause doesn't work for him. He suggested 180 days. He asked how close the trash area would be to the neighbors. Mr. DiFolco stated it's a 6x10 enclosed area with a fence and a gate. Mr. Greig asked about the location of the a/c units. Mr. DiFolco stated they would be at least 10 feet from the property line. Mr. Greig asked about the den being a bedroom. Mr. Bianchi stated the architect can list the room as a den and it is what it is. Mr. Greig and Mr. Bianchi clarified that this complies with the multi-family cluster ordinance except for the lot size and the layout of the homes. Mr. Greig asked what would happen if the buildings didn't sell. Mr. Rubino stated Mr. Antipin would be the sole owner. It was discussed that the bylaws and Board of Trustees would have to be created after the 4th unit was sold. Mr. Greig

ZONING BOARD OF ADJUSTMENT

JUNE 28, 2018

asked if they would change the rental clause. Mr. Antipin was worried about limiting the sale of the units by limiting the rental policy. The Board would be in charge of who the units get rented to with credit and background checks. Mr. Antipin decided he would agree to a 180-day rental clause. Mr. Greig felt this is too dense of a project and would not be in favor of the application.

Ms. Casserly stated there was a lot of discussion on the bylaws and asked Mr. Kennedy for some feedback. Mr. Kennedy stated any conditions the Board would impose would be in the resolution and recorded as part of the bylaws. Ms. Casserly stated she has some concerns about the density of the project and doesn't feel it conforms with the vision of the town. She would not be in favor of the application.

Mr. Fitzgerald explained the Board's role on granting variances and what their limitations are and what rules they must follow. His concern is if they vote this down the residents will have to live with the existing conditions for future years. Feels the town needs to do more on enforcement. This applicant is feeling the pain of being a horrible landlord. He felt they should knock it down to four units and the owner should compromise to make peace with the neighbors.

Ms. Young stated everyone wants to make money and understands that but is it healthy for the neighborhood. Senses a real lack of trust amongst the neighbors. Concerned past performance dictates future performance. Doesn't think condos are a bad idea if done in a right way. Likes the idea of 180 days but struggles with saying yes to this. Could build something nice but the neighbors are saying he hasn't been a good neighbor. Struggling with what is best for him the town and the neighborhood.

Mr. Cupoli stated he is not in favor of 30-day rentals so he was glad that has changed. He would like to see only year-round rentals. Feels the property is being over developed. He would not be in favor of the application.

Mr. Fowler stated he doesn't see a hardship given the number of units are similar. Doesn't like the words condominium and townhouses. Takes away from where we are at and where we need to be. At this time, he could not be in favor of the application. The idea of one single family home seems appealing. To the public: they will have an animal house still there if this doesn't go through and who knows what will happen. There's friction between the neighbors. Thinks the neighbors are telling him they can still make money might just be a different amount of money.

Mr. Ross stated he had a lot of the same concerns back in January. What struck him is that this is the first time the multi-family cluster ordinance was ever brought before the board. Doesn't feel the ordinance makes sense. Doesn't see how the benefits outweigh the detriments.

Mr. Hutchinson stated Belmar is changing and will always change. We are becoming a town where only a certain segment can afford. Young people can't afford to come to town and older people are having problems staying in town. Must have ways that young people can come into town and raise a family and ways for older families to stay. If don't allow apartments or condominiums it will kill the feel of Belmar. After hearing what people said he would agree with seeing less density such as four units and limiting the rentals to six months. As it stands now with what ifs he would not be in favor of the application.

Mr. Rubino stated they are not willing to reduce the number of units proposed.

Mr. Kennedy summarized the application. Explained the Board can't approve or deny an application based on the number of members of the public present. Explained the application could go before the planning board for a permitted conditional use if they met all the requirements of the ordinance. Stated the board must determine if the permitted conditional use is still a permitted use for the property with the variations being requested. Explained the other legal standards the Board should consider when voting on the application. The applicant is not requesting a hardship variance and therefore the Board doesn't need to look for a hardship. There were comments about precedent but NJ law is clear that there are no precedents. The Board should consider the change in number of units, the aesthetics of new construction, the number of bedrooms now vs proposed, parking density, is the site appropriate for the use, etc.

ZONING BOARD OF ADJUSTMENT

JUNE 28, 2018

Mr. Greig made a motion to deny the application, which was seconded by Mr. Fowler. The application was denied based on the following vote: (A yes vote was in favor of the denial)

AYES: Mr. Greig, Ms. Casserly, Mr. Fitzgerald, Mr. Hutchinson, Ms. Young, Mr. Cupoli, and Mr. Fowler

NAYS:

Mr. Greig made a motion to approve the minutes of the May 23, 2018 special meeting, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Greig, Mr. Ross, and Ms. Young

NAYS

ABSTAIN: Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Mr. Fowler and Mr. Cupoli

Mr. Greig made a motion to approve the minutes of the May 24, 2018 meeting, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Greig, Mr. Ross, and Ms. Young

NAYS

ABSTAIN: Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Mr. Fowler and Mr. Cupoli

Ms. Young made a motion to approve the resolution granting approvals to Joseph Mazur, 207 15th Avenue, which was seconded Ms. Casserly and approved by the following vote:

AYES: Mr. Greig, Ms. Casserly, Mr. Ross, and Ms. Young

NAYS

ABSTAIN: Mr. Hutchinson, Mr. Fitzgerald, Mr. Cupoli and Mr. Fowler

Mr. Fowler made a motion to approve the resolution of dismissal for the application of Dariusz Targonski, 611 10th Avenue, which was seconded by Mr. Greig and approved by the following vote:

AYES: Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Mr. Fowler, Mr. Cupoli Mr. Greig, and Ms. Young

NAYS

ABSTAIN:

INELIGIBLE: Mr. Ross

Ms. Young made a motion to adjourn the meeting, which was seconded by Mr. Greig and approved unanimously.