

ZONING BOARD OF ADJUSTMENT

APRIL 25, 2019

PRESENT: Tom Palmisano, John Hutchinson, Mark Fitzgerald, Chuck Ross, Bob Cupoli and Manny Fowler

ABSENT: Judy Zoppi, Phil Greig, and John Lisko

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

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 21, 2018 and by posting a copy of said notice at the Municipal Complex on the same date.

Mr. Kennedy administered the Oath of Oath to new Board member Tom Palmisano.

Mr. Kennedy announced the application of Jeffrey Shapiro, 512 10th Avenue, will be carried to the May 23, 2019 meeting per attorney Tim Middleton's request.

Mr. Ross made a motion to continue the application of Down to Earth Construction, 102 2nd Avenue, at a special meeting to be held on May 28, 2019, which was seconded by Mr. Cupoli and approved unanimously.

Mr. Ross made a motion to waive the reading and approve the minutes of the March 28, 2019 meeting, which was seconded by Mr. Hutchinson and approved by the following vote:

AYES: Hutchinson, Fitzgerald, Ross, Cupoli and Fowler

ABSTAIN: Palmisano

Mr. Cupoli made a motion to waive the reading and approve the minutes of the April 10, 2019 special meeting, which was seconded by Mr. Hutchinson and approved by the following vote:

AYES: Hutchinson, Fitzgerald, Ross, Cupoli and Fowler

ABSTAIN: Palmisano

SURFBOARD LLC/ AMY & MYRON SUSECK – 114 NINTH AVENUE

Appearing for this application were Mr. and Mrs. Suseck, their attorney Timothy Middleton and planner/engineer Joseph Kociuba Also appearing was objecting attorney John Hauleenbeek, representing Paul Marino of 112 9th Avenue.

Mr. Middleton stated his clients purchased the property in May 2017. It was a nine-bedroom home with a one-bedroom rear cottage. They came before the Board in December 2017 to convert the rooming house into a single-family home which the Board welcomed. They also requested to convert the rear cottage which was a non-conforming use into a garage. There was a request to move the garage onto Ninth Avenue rather than keeping it on A Street. In the resolution of approval, the Board mentioned repeatedly that it was desirable to convert the rooming house and cottage. The house conversion is only a few weeks away from being complete. In regards, to the garage, the approvals also included an expansion of it by 4 feet. Approximately 80-83% of the cottage was to be replaced which is what happen during the construction process. They did approximately \$30,000 of improvements to the garage. Through the inspection process there were conversations between Mr. Bianchi and Mr. Suseck regarding the neighbor having concerns the garage was not built according to the plans. It was found to be built in compliance with the plans, but the issue became that not enough of the original structure remained and it is entirely new construction. The resolution did not speak of that issue at all. Don't believe there was any requirement of the applicant to keep any of the garage. Felt they would have the right to rebuild it if wanted to. Requesting Mr. Bianchi's decision not be adhered to.

Mr. Bianchi stated the approvals were for an addition and renovation, but they tore it down. There was an issue with a soffit being over the property line but that was rectified. There is nothing left of the old garage.

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Mr. Hutchinson asked if there is a point or something written that says how much has to remain. Mr. Bianchi replied no.

Mr. Suseck stated when he appeared before the Board in December 2017 nobody objected to his application. He had a transcript prepared by a licensed transcriber which Mr. Middleton submitted into the record. He started the conversion of the cottage into a garage in late August of 2018. The plans submitted, and which were approved by the town showed a new cement floor, new plumbing, new windows etc. The existing structure sits on the existing footing but when they dug the footing for the 4ft section they hit their neighbor's sewer pipe. He consulted with the town and the neighbor. Offered to pay 50% of the cost to replace it or move it or bridge it. Didn't get a response from the neighbor so went to the town and had the architect prepare plans to bridge the pipe.

Back in September Mr. Suseck stated he spoke to Ted about the plate on the foundation in need of repair. He understood that it was okay to replace or repair whatever was needed. At no point during the inspections did anyone from the town say anything about the construction. There was no direct conversation between him and the neighbor regarding his concerns about the construction. Only thing left to do with the garage is put a door on, finish the bathroom, and address some issues from the framing inspection. Mr. Middleton submitted a copy of the approved plans for construction.

Mr. Haulenbeek submitted three photographs and a copy of the plans originally submitted to the Zoning Board dated October 19, 2017. He asked how much of the original cottage remains. Mr. Middleton stated Mr. Kociuba will answer that. Mr. Haulenbeek asked Mr. Suseck if the photos depicted what was on the property when he purchased it. Mr. Suseck stated essentially yes but those pictures are from 2002 and he has more current pictures. Mr. Haulenbeek wanted to discuss the placement of the HVAC units. Mr. Bianchi stated they had proposed to place it on a roof of a bump out. Mr. Haulenbeek stated he was advised by Ms. Claudio that the resolution stated they would be in a compliant location but did not specify where and that it is required to have a 5 ft setback. Mr. Bianchi stated the current placement is in a compliant location. Mr. Suseck offered to put up a fence to shield the view of the HVAC units. Mr. Bianchi stated if they came in to place the HVAC units in that location at a later date it would be approved because it is a compliant location.

Mr. Fowler asked if anyone will be residing in the garage when it is completed other than a vehicle. Mr. Suseck replied no. There is no heat or insulation in the garage. The outside of the garage matches the house.

Mr. Cupoli stated it seems like the contractor just did what he wanted. It appears it is a new structure. Mr. Suseck argued that his approvals included a new roof, floor and new wall. He added that he would not hire this contractor again. He dealt with his contractor and architect multiple times to work out any issues throughout the process. He also visited Borough Hall several times to resolve the issues. Mr. Cupoli asked if the fence around the HVAC units will be enough.

Mr. Ross stated we see a lot of plans and what we approve isn't always 100% what is actually built. There's a lot of changes that are made that the Board doesn't see because they are resolved in the Zoning Office. He doesn't think if HVAC units were on the plan originally, they would have asked them to move them from a compliant location to a noncompliant location. He asked if the garage is the same foot print. Mr. Suseck stated it is and the height is lower than the previous structure. Mr. Ross asked if one of the inspectors should have picked up on the garage being substantially improved. Mr. Bianchi stated he often catches them but not always. At the time he did his inspections the work was not done.

Mr. Hutchinson asked what the condition of the cottage was when the property was purchased. Mr. Suseck stated it was vacant and not livable. During the construction phase they found the cinder blocks and floor joists were disintegrated. The framing was all off. The footings remained, just replaced some of the cement blocks on top. Only new footings were installed for the addition.

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Mr. Fitzgerald stated he felt if at the original meeting it was said that the cottage would be torn down and a garage would be built the Board would not have objected but because it was discussed as a conversion or renovation which is causing this to happen. He asked if the new use of the garage is preferred over the old cottage.

Paul Marino stated he would have preferred it remain a cottage. Mr. Fitzgerald stated that is not the preference of the Board or the town. A reduction in density and residences is typically considered a positive change. He asked Mr. Marino if a fence is put around the HVAC unit is an acceptable change. Mr. Marino replied yes.

Mr. Kociuba submitted a colored copy of the exhibit presented at the December 14, 2017 meeting which depicts the basement and first floor plan. The existing rear cottage had setbacks of 1.4 and 1.1. He agrees with Mr. Bianchi that typically when a non-conforming structure is removed you lose it however he disagrees in this instance because the non-conforming use was eliminated by the conversion to a garage and new variances were granted for the expansion. He submitted a colorized model of the garage to show what was replaced. The south wall of the garage is new because that is where it was expanded. On the plans the west side called for new windows and removal of an existing window which means that no existing walls would have remained. The structure was very old and not built to code. It needed to be reframed in order to support the new roof. The original plan called for a 9/12 pitched roof, but the applicant lowered it. The old roof was a small hip roof with a low pitch. Only the north wall from the sill plate down could have remained. That wall had a 2 ft gap in it. Photos of this were submitted. The east side there were three windows on the existing structure that were framed in. By the time they were filled in there was limited space. Calculated only 17% of the structure could have been retained. Review of the transcripts clearly stated the conversion to a garage was not a hardship but a benefit to the neighborhood. A variance was granted for the structure and feels they have the right to build the garage as they have done.

Mr. Haulenbeek asked if there was discussion in the transcripts on how much of the existing structure would remain. Mr. Kociuba replied no. He added there was no discussion about the actual construction of it.

Mr. Marino stated he never had a problem with any of the owners or tenants of the old house. He has had a lot of bickering with the new owners going back to the sewer pipe issue. He argued that the height of the structure is not lower. Mr. Fitzgerald clarified that the testimony is the height is lower than what the Board approved not necessarily lower than the old structure. Mr. Fitzgerald pointed out the structure was approved and is not being litigated. The issue tonight is whether or not it is considered new construction. Mr. Marino felt he didn't think the Board would have approved the application which is why he didn't attend. Mr. Fitzgerald stated his concerns would have been more timely back in December 2017.

Public:

Ken Legath, 109 Ninth, stated his concern is that there is a bathroom and sliding glass doors on the garage. His concern is it being used as a sitting room as listed in the notice that came in the mail.

Mr. Fitzgerald stated we are welcome to all comments from the public but reiterated that a lot of the items being discussed were discussed at the original meeting and were approved. They are not part of tonight's application.

Mr. Kociuba stated it was an outdoor seating area not indoor.

Mr. Kennedy gave a brief summation of zoning rules when it comes to nonconforming structures and how it does or does not relate to this application. Mr. Kennedy and Mr. Kociuba confirmed that the structure as built is the same size in square feet as what the Board approved. The orientation of the structure is the same, the height has been reduced, it's still a single car garage, the utilities proposed are the same, and the setbacks are the same. There's no change in any of the variances or parking demand. It looks exactly the same as what was approved and intended to be built.

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Mr. Kennedy stated the Board would decide if they are going to affirm or reverse Ted's decision that the scope of work changed. If the Board reverses Ted's decision, it's the end of the case. If they affirm Ted's decision, then they must decide whether to grant the variances for the side and rear yard setback.

Mr. Kennedy asked if the structure could be moved to comply with the setbacks. Mr. Kociuba stated it is not easy to do and there would be a substantial hardship. It would require new footings, reconstruction of the slab, lifting it and relocating it. It would exacerbate another non-conformity, the distance between the house and the garage. To a point is where there may not be room to walk between the house and the garage.

Mr. Fowler stated we have chatted about a garage since 7:00 that has not heat and was formally a unit that someone lived in and looked like something that should have been torn down. They do deserve a slap on the wrist for what was done but supports Ted's decision and also supports the application. Felt the neighbor is very fortunate to have lived there as long as he has with no problems. The garage is exactly what they approved except for maybe some cosmetic improvements.

Mr. Cupoli asked if we are setting a precedent where contractors come in and do what they want and then come in and ask for a variance. Mr. Kennedy replied no, every application relies on its own merits. Mr. Cupoli stated he understands what they did is what had to be done. Does agree with Ted. Would lean to being acceptive to the variances and the building being as built.

Mr. Ross stated does he wish that every application would be built as proposed, yes. Doesn't recall any negative comment at the December 2017 hearing. Recalls everyone being pleased that a nine-room rooming house and a rear cottage being removed. Maybe we did miss the discussion on the a/c unit. Would like it to be a condition that a fence barrier be put up around the a/c units. If this was presented to him that night that they were rebuilding the garage, he still would have approved it. Ted did do the right thing, but it doesn't change his opinion.

Mr. Palmisano stated he understands Ted did what he had to and based on looking at the photos of what was there previously he would be in favor of it.

Mr. Hutchinson stated he agrees Ted did what he was supposed to. Believes there was a failure to communicate between the neighbors, the applicant and construction office however he is in favor of the application.

Mr. Fitzgerald thanked Ted for moving this their way. Understands he was looking out for the residents. The frustration on the neighbors is heard loud and clear. Many of the objections would have been timely to come up at the December 2017 meeting.

Mr. Palmisano stated there should be some indication that the type of fence be specified so it's not something like barbed wire. Mr. Kennedy stated he could add language that there be good faith efforts to agree on an acceptable fence.

Mr. Hutchinson made a motion to affirm Mr. Bianchi's decision as the Zoning Officer to stop the construction, which was seconded by Mr. Ross and approved unanimously.

Mr. Ross made a motion to then grant approval for the construction and variances associated with it, which was seconded by Mr. Palmisano and approved unanimously.

At approximately 9:33 pm the Board took a brief recess. At approximately 9:45 pm the Board reconvened. Roll call was taken. All were still present.

GORDON & SHEILA TINER – 207 10TH AVENUE

Appearing for this application was Mr. Tiner. Mr. Tiner has owned the property since 1998. There is a single-family home and a detached garage on the site. He currently lives there. The proposal is for a second-floor addition on the garage. The existing garage is 20x24 and used as his workshop. Would like to reclaim the garage for his vehicles and snow blower when they retire to the property permanently. The addition would be an unfinished workshop area with heat. Doesn't think adding the second floor will be detrimental to the neighborhood.

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Mr. Fitzgerald stated the variances are for the second story on the garage and the height of 20 ft vs 18 ft. Mr. Tiner stated it is also a use variance because the garage is only used for storage.

Mr. Hutchinson confirmed this is for noncommercial use. Mr. Tiner agreed. The ordinance says motor vehicles only but we all people store things in their garages and have hobbies in them. Mr. Tiner stated he has tools because he renovated his house himself and has renovated other people's houses.

Mr. Ross asked if the garage will be reconstructed. Mr. Tiner stated no, he will just be adding the second floor. Mr. Ross asked about gutters and leaders. Mr. Tiner stated they will drain on the property. He added he would use a portable electric heater. There would be no a/c unit. The upper level of the garage will be sided to match the house.

Mr. Cupoli asked if there is water in the structure. Mr. Tiner replied no. Mr. Cupoli asked if the service cable will have to be relocated. Mr. Tiner doesn't think it will need to be removed.

Mr. Fowler asked if there would be a bathroom in it or outdoor shower. Mr. Tiner replied no.

Mr. Palmisano asked if it will be one open room. Mr. Tiner replied yes.

Mr. Fitzgerald asked for the square footage of the area of the second floor, 460 square feet. Asked why it can't stay at 18 ft. Mr. Tiner stated it is needed for headroom. Mr. Fitzgerald asked about lowering the height of the first floor. Mr. Tiner stated the existing garage is constructed of block walls, so he wouldn't be able to do that.

Public: none

Mr. Fowler stated provided it stays a workshop and is not rented would be inclined to vote in favor.

Mr. Cupoli inclined to vote in favor.

Mr. Ross in favor of the application.

Mr. Palmisano and Mr. Hutchinson stated he is in favor of it.

Mr. Fitzgerald stated he is not in favor of increasing the height of garages and altering the uses of it. Concerned this could be a new trend. Doesn't think height variances for secondary structures should be under consideration.

Mr. Kennedy asked if the resolution should be recorded so it is clear the garage cannot be used as living space. Mr. Cupoli and Mr. Fowler agreed it should be.

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

AYES: Hutchinson, Palmisano Ross, Cupoli and Fowler
NAYS: Fitzgerald

Mr. Ross made a motion to adjourn the meeting, which was seconded by Mr. Hutchinson and approved unanimously.