

ZONING BOARD OF ADJUSTMENT

FEBRUARY 28, 2019

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

ABSENT: Judy Zoppi

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

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. Fitzgerald made a motion to approve the minutes of the January 24, 2019 meeting, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Fitzgerald, Mr. Lisko, Mr. Greig, Mr. Cupoli and Mr. Fowler

ABSTAIN: Ms. Casserly

Mr. Fitzgerald made a motion to waive the reading and approve the resolution for Jerome Bucci, 217 12th Avenue, which was seconded by Mr. Hutchinson and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Fitzgerald, Mr. Lisko, Mr. Greig, and Mr. Fowler

ABSTAIN: Ms. Casserly

NAYS: Mr. Cupoli

Mr. Greig made a motion to waive the reading and approve the resolution for Vincent Minutillo, 212 13th Avenue, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Fitzgerald, Mr. Lisko, Mr. Greig, Mr. Cupoli and Mr. Fowler

ABSTAIN: Ms. Casserly

MICHAEL FRADKIN – 80 INLET TERRACE

Appearing for this application was Debra Fradkin. This applicant appeared before the Board for a new single-family home and then again for placement of the a/c unit and generator. During construction it was determined that the plans originally submitted to the Board reflected an outdoor shower that was not in compliance with the side yard setback requirement. After review of the meeting minutes and resolution it was determined that a variance was not granted nor discussed for the placement of the outdoor shower. Mr. Bianchi issued a temporary certificate of occupancy until this is addressed. A setback of 10 feet is required and it is proposed at 2.5 feet. The outdoor shower is along the side of the house near the generator and is blocked by trees and a fence.

Mr. Fowler asked if the neighbors can see into the shower. Ms. Fradkin stated it is fully enclosed.

Mr. Cupoli asked if the shower could be moved closer to the pool. Ms. Fradkin stated it is already built.

Mr. Greig asked if there is enough space between the fence and the shower to walk through. Ms. Fradkin replied yes.

Mr. Fitzgerald asked if the neighbor has any concerns. Ms. Fradkin stated the house is vacant.

Ms. Casserly asked how far away the neighbor's house from the fence is. Ms. Fradkin did not know the exact amount but estimated close to 15 feet. The shower is even with the back of the neighbor's house.

Public: George Komitas, 111 Third Avenue, would like the Board to give her the approval since no neighbors are complaining.

Mr. Fowler stated he would vote in favor of the application given the fact it is already built, and they have been cooperative. The rest of the Board agreed.

ZONING BOARD OF ADJUSTMENT

FEBRUARY 28, 2019

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

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

At 7:25 pm Ms. Casserly left the meeting and Mr. Ross took her place.

DOWN TO EARTH LANDSCAPING – 102 SECOND AVENUE

Appearing for this application was attorney William Shippers, engineer/planner Rich DiFolco, architect Mary Hearn and applicant William Merkler. Mr. DiFolco submitted two additional exhibits. Mr. Kennedy recalled we left off with testimony from the planner. Mr. Shippers stated the planner has additional testimony before cross examination is allowed.

Mr. DiFolco stated the project will improve the quality of the community and the Borough. The project will promote stable neighborhoods, encourages economic development, improves quality of life for residents, enhance the aesthetics, provide ample parking, be consistent with existing land use patterns. The goal of the master plan is to remove nonconforming uses. This proposal reduces the intensity of the nonconforming use and provides a more suitable use. The proposed building is elevated to address any flooding concerns. The project will be handicap accessible. The improvements will not impair the zone plan. A majority of the properties in the immediate area are a multi-family use. The proposal is a less intense use compared to the existing hotel use.

Rick Brodsky, opposing attorney, cross examined Mr. DiFolco. Mr. Brodsky stated despite the fact that the map shows multi family uses in the area this property is still in a single-family zone and requires many variances. He asked Mr. DiFolco if 5 units would be a more appropriate use for the property rather than the six proposed. Mr. DiFolco stated his testimony was that the six units is appropriate for the property given the size and aesthetics. Mr. Brodsky recalled the need for six units was for a financial reason. He wanted Mr. DiFolco to explain why six units are better than less units. Mr. DiFolco stated they could have proposed 8 units but there would have been less parking. Six units provides adequate light, air and space; obviously one can fit just as easy as six. Mr. Brodsky reiterated all of the variances being requested as he felt there was a lot of them and they are significant. He asked if there could be a more compliant plan if there were less units. Mr. DiFolco stated the variances go with the use of the property and felt if the Board likes the use of the property then the variances go with it. Comparing this proposal to that of a single-family home would not be fair. The setbacks have been taken into consideration which is why they are what they are. Mr. Brodsky felt less units would mean less variances. Mr. Brodsky questioned how the proposal is consistent with the master plan. Mr. Brodsky questioned the parking and whether or not there would be lower parking requirements if the project was smaller. Mr. DiFolco disagreed because the number of parking spaces required is determined by the number of bedrooms.

Mr. Fitzgerald and Mr. Fowler were concerned about Mr. Brodsky repeating his statements several times. They felt the Board understood his concerns and would like to move forward with the application given there are additional witnesses to give testimony. Mr. Kennedy explained it is important to let anyone giving testimony to be able to speak within reason.

Mr. Brodsky spoke about the special reasons Mr. DiFolco had testified to previously and asked for more explanation. He mentioned that Mr. DiFolco stated there would be no negative impact of these buildings to the neighbors. Mr. Shippers stated Mr. DiFolco stated there would be no substantial detriment to the Borough. Mr. Brodsky was concerned about the impact the proposal has on his client's properties.

Tim Middleton, attorney, stated he understood Mr. DiFolco's testimony was based on the existing 34-unit rooming house vs the proposed six-unit townhomes. That the proposal is better than what is existing today. Anything smaller than what is proposed would not be economically feasible for the applicant.

At 8:40 p.m. the Board took a recess. At 8:50 p.m. the Board reconvened.

ZONING BOARD OF ADJUSTMENT

FEBRUARY 28, 2019

Theodore Lamicello Jr. testified as a real estate appraiser. He was hired to determine a feasibility analysis regarding the highest and best use of the property. Mr. Brodsky objected to the validity of this. Mr. Shippers stated the feasibility study also relates to intensity, number of units, density, property values, impact on assessment and taxes. Mr. Lamicello stated the viability of a project is based on the revenue generated from it which would cover the cost of land acquisition and construction. He compared sales of rooming houses to determine market value of the existing hotel which is \$2,380,000.00. the property is currently assessed at \$2,130,000.00. The property is under contract for 2.5 million. He estimated each unit would be valued at 1,290,000.00. The estimated development would cost 6.6 million. Leaving a profit margin of 8.1%. Typical profit margins would be 8-15%. If the proposal was only five units, the profit margin would be 1.3%.

Mr. Brodsky requested documents be submitted to back Mr. Lamicellos' testimony. Mr. Shippers agreed to do so. Mr. Brodsky asked if his analysis would change if the contract price was lowered. Mr. Lamicello stated it would. Mr. Brodsky asked what the value would be if it complied with the zoning. Mr. Lamicello reiterated his testimony regarding the value of the property if it was subdivided.

Mr. Shippers called upon Michael Long of 201 Ocean Avenue to testify. Mr. Long owns half of the oceanfront block between 2nd and 3rd Avenues. Mr. Shippers asked his opinion on this project. Mr. Long stated he is in favor of the project. Believes the project will increase the value of his property. Also has a concern about the unknown alternative. In time it would prove to be a good thing for the neighborhood and the town.

Mr. Brodsky asked what relationship there is between Mr. Long and Mr. Shippers because he felt this is now the public portion. Mr. Shippers stated Mr. Long is a directly affected neighbor. Mr. Kennedy also had concerns. Mr. Shippers stated he had one more person that wanted to speak but will wait and allow him to speak on his own later.

Mr. Brodsky stated he has a planner to testify and that Mr. Middleton also has a planner. He questioned the need for Mr. Middleton's planner to testify as a proponent. Mr. Shippers had no objection to Mr. Middleton's planner testifying.

Given the late hour the Board decided to hold off on the additional testimony. Mr. Kennedy suggested that Mr. Shippers prepare a legal brief and submit it to the Board 10 days prior to the next hearing date and Mr. Middleton and Mr. Brodsky could submit a response brief 4 days prior to the meeting date. Mr. Kennedy also asked that any documents to back of up the appraiser's testimony also be submitted 10 days prior.

Mr. Shippers had requested a special meeting date in March at the last hearing. In anticipation of this the date of March 14th was chosen. Mr. Brodsky and Mr. Middleton were concerned about their availability for that date. Another option is the regular meeting of April 25th. Mr. Shippers stated his client is adamant that we move forward with the March 14th date.

The Board decided to carry the application to April 10th as a special meeting date.

Mr. Lisko made a motion to carry the application without further notice, which was seconded by Mr. Cupoli and approved unanimously.

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