

ZONING BOARD OF ADJUSTMENT

MAY 23, 2019

PRESENT: John Hutchinson, Mark Fitzgerald, Phil Greig, John Lisko, Judy Zoppi, Robert Cupoli, Thomas Palmisano and Chuck Ross

ABSENT: Manny Fowler

ALSO, PRESENT: Board Attorney Kevin Kennedy, Board Secretary April Claudio, Zoning Official Ted Bianchi, Floodplain Manager/Planner Christine Bell

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. Greig made a motion to waive the reading and approve the minutes of the April 25, 2019 meeting, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Fitzgerald, Mr. Cupoli and Mr. Palmisano

NAYS:

ABSTAIN: Mr. Greig, Mr. Lisko, and Ms. Zoppi

Mr. Kennedy stated the resolutions from the previous meeting are not complete and they will have to be voted on at the next meeting.

Mr. Lisko announced the application of Noel Chapman, 97 13th Avenue has been postponed to July 25, 2019 without the need for further notice.

Mr. Lisko announced the application of Thomas and Rose Mercadante, 2004 Ocean Avenue has been rescheduled for June 27, 2009 without the need for further noticing except for the newspaper advertisement.

VICTOR & TAMMY SOLURI – 1209 MAPLEWOOD ROAD

Mr. Fitzgerald and Ms. Zoppi stated Mr. Soluri did work on their homes and will recuse themselves from this application. Mr. Ross was ineligible for the application because he lives within 200 ft. Appearing for this application was Mr. and Mrs. Soluri, their Attorney Mark Steinberg and engineer John Mann.

Mr. Kennedy stated this application is to eliminate or modify a previously imposed condition in their resolution of approvals from 2014.

Mr. Steinberg stated the Soluris appeared before the Board in 2014 to put an addition on their house without counsel. The Board imposed conditions and granted their application. There are two conditions they are questioning to determine if they are necessary and applicable. Condition 1 is that the application shall be required to elevate the home if FEMA regulations and the Borough determine it is necessary. Condition 2 is that if determined they must comply with FEMA regulations that they have to fill in the crawl space. After reviewing the ordinance and consulting an engineer he feels both conditions should be revoked.

Mr. Soluri and Mr. Steinberg stated they reviewed the Borough's Flood Damage Prevention ordinance specifically the definition of "substantial damage". Mr. Steinberg referenced their deed from 2004 that had a purchase price of \$270,000. Mr. Soluri stated he had an appraisal done of \$380,000. They submitted a report of the tax assessor showing the property assessments from 2014 to present. Mr. Soluri stated the total cost of construction other than labor which he did on his own was \$49,779.40. These numbers show that they did not do more than 50% of the value in construction and therefore do not have to meet FEMA and the Borough's regulations.

Mr. Mann stated he reviewed the Borough's ordinance, the building code requirements and the elevation certificate. If they had to raise the floor of the crawl space, they would have to raise it 1.6 ft. If they had to fill the crawl space, there would be 16 inches to fill which is under the minimum for building code requirements for wood protection. There are ways to mitigate that but if they do this the crawl space becomes unusable with only 16 inches of clearance. They won't be able to maintain the ductwork, piping, wiring; it would all have to be moved. A second

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crawl space access would also have to be added. Have to look at the point to doing this, the cost of doing it and is there any benefit. The basic requirement has always been to fill a sub space grade to avoid flooding but this area is too shallow. He referenced a technical bulletin from FEMA that says it doesn't need to be filled. He stated Mr. Soluri put a drain in the crawl space. There has been no need to pump any water, it flows out of the crawl space. There is no benefit to filling the crawl space and no practical reason. The costs to fill it in and making it into two separate areas is not rational. Feels the Board should not be ordering they fill the crawl space. If the crawl space is permitted to remain unfilled there is no detriment to neighboring properties. The only detriment would be the cost to comply and the loss of the usable crawl space.

Mr. Soluri stated he stayed home during Hurricane Sandy and saw the water come within one inch of the lowest grade of his home. It did not enter the house but did come through the crawl space because he has vents. The water receded within 45 minutes. Everything would have to come out of his crawl space in order to comply. The only work done to the first floor was removing a bathroom in the back and adding a staircase to the second-floor addition. The first floor would have to be completely gutted after removing everything from the crawl space. He felt Mr. Torrance who was the floodplain manager at the time did not tell him he needed to fill in the crawl space until five minutes before the meeting which is why he agreed to the condition.

Mr. Mann referenced Mr. Torrance's December 17, 2014 letter which he felt was not logical. He stated the code referenced in the letter does not mention raising or filling in a crawl space. Does not find any provisions in the zoning ordinance that requires raising a crawl space. The lowest floor is only 1 inch below the required base flood elevation. Does not make practical sense to raise it. The elevation listed in the zoning resolution is not accurate.

Mr. Soluri stated he does not want to elevate his home. The lift would be difficult, disturb his neighbors and cost a lot of money. He never intended to elevate his home. Since not elevating he would have to fill in crawl space but that means having to relocate all of the utilities.

Mr. Lisko asked Mr. Bianchi if the town considers this a substantial improvement. Mr. Bianchi replied yes. Mr. Lisko asked if the house is in the floodplain. Ms. Bell replied yes. She stated the house is partially in the floodplain. Mr. Lisko stated it is his understanding that the town has a rating for flood certification which includes the town requiring all properties to comply with the flood regulations. Ms. Bell replied yes and will explain that further. Mr. Lisko stated he understands they say it is not practical but if they allow them to not comply it would affect the town's rating.

Ms. Bell explained the Community Rating System. Belmar has a score of six which allows properties in the special flood hazard area to get a 20% discount. If Belmar does not enforce the categories they obtained credit for, their score could go down or the Borough could be kicked out of the CRS program. One of the requirements is to ensure that properties comply with FEMA regulations. If its determined that houses are not in compliance the town could get put on probation or kicked out of the program which means nobody in town would get the discount on flood insurance.

Mr. Lisko asked if an applicant wanted to appeal whether this is a substantial improvement, or not would that come before the Board. Ms. Bell stated they would appeal it to the Zoning Board. Mr. Lisko asked Mr. Bianchi if he would change his mind because of the numbers heard. Mr. Bianchi replied no, he stated the cost of construction listed on the building permits totaled \$87,000.

Mr. Hutchinson asked what is under the crawl space. Mr. Soluri stated there is baseboard heat.

Mr. Greig asked for clarification on the 50% evaluation. Ms. Bell stated it is 50% of the market value of the structure.

Mr. Hutchinson asked if the house is still under construction. Mr. Soluri replied yes, about 90% complete. Mr. Hutchinson asked if we can look at the value of the house now vs 2014 since it's changed. Ms. Bell stated the ordinance states its 50% of the market value prior to the start of construction.

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Mr. Greig asked what the value of the structure was in 2014. Mr. Steinberg stated the tax assessment was \$97,000 but the town only assessed at 66% so when you add that back in it would be \$145,000. Ms. Bell stated the cost he listed of construction is not at market value. Mr. Greig asked if labor has a value. He questioned why the permits said \$87,000. Mr. Soluri estimated high. Mr. Greig asked if there is any consideration if the owner is doing their own labor. Mr. Bianchi stated it has to be fair market value of construction which includes labor even if they are doing their own. Mr. Greig felt the cost was half of what was estimated, which is extreme considering he is a builder that does a lot of work.

Mr. Steinberg referenced the FEMA bulletin regarding crawl spaces. Mr. Mann stated for shallow crawl spaces it is not mandated to fill them in with conditions that would have to be met. Their crawl space satisfies those conditions.

Ms. Bell disagreed and stated the technical bulletin is reinforcing FEMA's guidelines. She read the definition of the lowest floor as listed in the Borough's ordinance. Anything under the base flood elevation you cannot have living space. The bulletin is guidelines for putting in vents instead of filling them in to make crawl spaces compliant. If there are flood vents on the structure, they can submit a flood elevation certificate for review to determine if in compliance. The crawl space is the lowest floor based on the Borough's ordinance.

Mr. Soluri stated he offered to put flood vents in last time and would agree to do this. Ms. Bell stated utilities also have to be raised. Mr. Soluri stated if he fills in his crawl space it would violate the building code which means he would have to elevate the home.

Mr. Greig stated he feels based on the information it was a substantial improvement. Mr. Steinberg stated if the Board wanted he could present a real estate expert to state what the fair market value is.

Mr. Cupoli asked if electric and plumbing permits were taken out because those costs are not listed on the cost sheet they submitted. Mr. Soluri stated he purchased the materials and had contractors do the work for free because they owed him favors. He added \$13,000 to the total which is \$62,000.

Mr. Lisko stated he would rely on the town's determination that it is a substantial improvement without knowing the exact details of how that is determined. Felt if they are going to argue that it is not a substantial improvement that they should have a report from an expert or multiple expert that can back up that it is not a substantial improvement. Sees zero leeway with not complying with the Borough's floodplain requirements.

Mr. Steinberg stated it seems they may be able to keep the crawl space by doing certain other mitigations rather than filling it in.

Mr. Kennedy read facts from the resolution of approvals regarding testimony from the 2014 hearing. The resolution read that the applicant agreed to meet with the Borough's construction and flood experts to determine what would need to be done to comply with FEMA regulations. There were also conditions detailed conditions further explaining what needed to be done. Mr. Kennedy asked if they met with any of the Borough's officials to try to resolve this. Mr. Soluri stated he met with Mr. Torrance and FEMA representatives at a meeting in Manasquan. Mr. Kennedy asked what the results from that meeting were. Mr. Soluri stated they didn't get the information they were looking for. Met with Mr. Torrance and DEP at his home. It was never resolved.

Mr. Kennedy asked if there is an audit or enforcement mechanism by FEMA. Ms. Bell stated as a participant in the CRS we get audited every 3-5 years. The Borough is getting inspected this summer. In addition to that, FEMA and NFIP, can come out whenever they want to check in.

Mr. Hutchinson asked for clarification on the technical bulletin. Ms. Bell explained utilities and HVAC would have to be elevated. Mr. Hutchinson suggested they take some time to see what would be compliant and come back to the Board.

Mr. Palmisano asked if they could make a utility room and put in vents.

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Mr. Steinberg would like to carry the application to allow them to gather more information and do some research. He feels there may be other options available to them.

Mr. Lisko and Ms. Bell clarified that they must comply with the Borough's ordinance not just FEMA regulations because the Borough's ordinance is stricter than FEMA.

Ms. Bell stated there may be ways to comply without filling in the crawl space, but they will have to speak to their professionals.

Mr. Kennedy marked a letter from Mr. Torrance dated September 22, 2014 which stated the addition would be a substantial improvement and what the requirements would be to comply.

Public: Linda Sharkus, 400 4th Avenue, stated she has several properties in town with flood insurance and would hope the Board does whatever they can to prevent her rates from going up.

Mr. Hutchinson stated he heard next year that flood insurance rates will sky rocket.

Mr. Greig made a motion to carry the application to the July 25th meeting, which was seconded by Mr. Cupoli and approved unanimously.

At approximately 9:03 p.m. the Board took a brief recess. Mr. Fitzgerald left the meeting during the recess.

At approximately 9:15 p.m. the Board reconvened.

JEFFREY SHAPIRO – 512 TENTH AVENUE

Appearing for this application was attorney Timothy Middleton, Mr. Shapiro, engineer Joseph Kociuba and architect Donald Passman.

Mr. Middleton stated the application requires a "d" variance because the property is a nonconforming use.

Mr. Shapiro stated he loved coming to Belmar in high school and college. Met his first wife in Belmar. Met his new fiancé in Belmar. A lot of good times. He has boys and she has girls, like the Brady Bunch. The house currently has two bedrooms and a master bedroom on the second floor and only one full bathroom. Would like to add space to the second and third floors so can all live together. Staying within the footprint. Goal is to be here for the next 25 years. Would not start construction during the summer, would wait until after Labor Day. The rear cottage has been rented by the same woman for five years on a yearly basis and just signed another two-year lease. This helps subsidize his mortgage payments.

The existing house has 3 bedrooms, 2 bathrooms, and is a two ½ story. The rear house is two stories with two bedrooms and one bathroom which will not change.

Mr. Passman explained the architectural plans. The second floor would have two bedrooms in the front, the existing master bedroom would become a sitting room and a new master bedroom would be built in the back. The third floor or habitable attic would have three bedrooms. A total of 6 bedrooms in the house. Also adding a second-floor porch above the first-floor porch. Would also like to fill in the space below the second-floor addition so the laundry room can be expanded. Doesn't change the building coverage. Proposal is aesthetically pleasing and fits in with the character of the neighborhood.

Mr. Kociuba stated there are existing nonconformities of the site: rear cottage number of stories and setback. No changes to the cottage. Seeking variances for front yard setback, porch setback, side yard setback on the left side which is existing, half story definition – 7 square feet over so it is technically a third floor, dormer length of 13 ft where 10 ft is required, building coverage, 25% max currently at 30.89% and proposing 31.5%, impervious coverage 50% max, 57.3% exists, proposing 57.8% because of the area where the a/c condenser will be located. Three parking spaces required, three are proposed, but technically have room for four, four and a half are required for the two structures. Under the RSIS requirements only four is required, it is his opinion they are compliant. Also seeking a variance for expansion of a nonconforming use

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because of the two dwellings. There are three properties surrounding them that have multiple dwellings on them. Concerns of density and parking would not be relevant as it is existing and there is enough parking. They are not creating a new nonconforming use. Variances are minor increases. Will be a nice visual product for the neighborhood. Comply with FAR, actually pretty far under. There will be no substantial impact on the neighbors or detriment to the public good.

Mr. Cupoli asked if new siding will be done. Mr. Shapiro stated it will all look the same.

Mr. Greig asked if this is a substantial improvement and will require compliance with flood regulations. Mr. Middleton stated they will be below the 50% requirement but if not will comply.

Mr. Ross asked about the fair market value. Mr. Passman stated they had an appraisal done and quotes from two contractors that came in under the 50%. Mr. Shapiro confirmed the two estimates were below 50% of the appraisal he got for the mortgage company.

Mr. Bianchi stated it would be reviewed at the time construction permits are applied for. He also pointed out that he reads the ordinance states five parking spaces would be required. Mr. Kociuba would argue that the RSIS standards would make them compliant.

Mr. Ross asked if the foundation will support a second story. Mr. Passman stated it would. Mr. Ross asked for clarification on the parking. The plans show three, but they can fit four. Mr. Kociuba was calculating the spaces at 18 feet. Mr. Bianchi stated a space is 9x20. Mr. Shapiro stated he can fit seven cars in the driveway. There would actually be three compliant parking spaces and a fourth non-compliant in the front yard.

Mr. Lisko asked about stormwater runoff. Mr. Kociuba stated they don't anticipate any changes in stormwater runoff. Mr. Lisko asked about a drywell. Mr. Shapiro agreed to install one. Mr. Lisko asked if there is an outdoor shower. Mr. Passman stated there is one there already.

Public: Linda Sharkus, 400 4th Avenue, asked questions about the deck.

Board:

Mr. Palmisano stated he likes the application.

Mr. Cupoli stated it is a beautiful house already and it will be much better.

Ms. Zoppi is in favor of the application.

Mr. Greig stated it looks like a good application and would be in favor of it.

Mr. Ross is also in favor of the application.

Mr. Hutchinson stated what they have asked for is minimal, done a nice job designing it.

Mr. Lisko is also in favor and stated it looks great.

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

AYES: Mr. Hutchinson, Mr. Ross, Mr. Palmisano, Mr. Greig, Mr. Lisko, Mr. Cupoli and Ms. Zoppi

NAYS:

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