

# ZONING BOARD OF ADJUSTMENT

**AUGUST 26, 2021**

PRESENT: John Hutchinson, Phil Greig, Mark Fitzgerald, John Lisko, Bob Cupoli, Mike Melango, Tom Palmisano, Holly Deitz and Michael Druz (arrived at 7pm)

ABSENT: Chuck Ross and Annemarie Drazenovich

ALSO, PRESENT: Board Attorney Kevin Kennedy, Board Secretary April Claudio, Borough Engineer Jerry Freda and Borough 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 July 27, 2021 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 July 22, 2021 meeting, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Greig, Mr. Fitzgerald, Mr. Lisko, Mr. Cupoli, Mr. Melango and Ms. Deitz

NAYS:

Mr. Greig made a motion to waive the reading and approve the minutes of the July 27, 2021 meeting, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Greig, Mr. Fitzgerald, Mr. Lisko, Mr. Cupoli, Mr. Melango

NAYS:

ABSTAIN: Ms. Deitz

Mr. Lisko made a motion to carry the resolution affirming the denial of the application for Michael DeBlasio and Anthony Fontana, 902-904 E Street, to the next meeting, which was seconded by Mr. Fitzgerald and approved unanimously.

Mr. Melango made a motion to waive the reading and approve the resolution for Daniel DeFranco, 1905 Surf Avenue, which was seconded by Mr. Greig and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Greig, Mr. Lisko, Mr. Cupoli, Mr. Melango

NAYS:

ABSTAIN: Ms. Deitz and Mr. Fitzgerald

Mr. Fitzgerald made a motion to waive the reading and approve the resolution for Joseph & Kimberly Miele, 307 15<sup>th</sup> Avenue, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Ms. Deitz, Mr. Greig, Mr. Fitzgerald, Mr. Lisko, Mr. Cupoli, Mr. Melango

NAYS:

ABSTAIN: Mr. Hutchinson

Mr. Greig made a motion to waive the reading and approve the resolution for Andrew & Maureen Sindt, 409 15<sup>th</sup> Avenue, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Greig, Mr. Fitzgerald, Mr. Lisko, Mr. Cupoli, Mr. Melango and Ms. Deitz

NAYS:

Mr. Melango made a motion to waive the reading and approve the resolution for Christopher Biniek, 902 D Street, which was seconded by Mr. Greig and approved by the following vote:

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AYES: Ms. Deitz, Mr. Greig, Mr. Fitzgerald, Mr. Lisko, Mr. Cupoli, Mr. Melango

NAYS:

ABSTAIN: Mr. Hutchinson

EDELMAN INVESTMENT GROUP LLC – 112/114 12<sup>TH</sup> AVENUE AND 108/108 ½ 12<sup>TH</sup> AVENUE

This application was a continuation of the July 27, 2021 hearing. Appearing for the application was attorneys David Lonski and William Shippers, architect Mary Hearn, engineer Rich DiFolco. Also appearing was attorney Rick Brodsky representing objectors Cecilia and Brian Matthews.

Mr. Kennedy marked the certification of Holly Deitz who listened to the recording of the July 27, 2021 meeting as exhibit B2.

Mr. Brodsky submitted a letter earlier today regarding the deficiency of the notice. Mr. Lonski stated the question was asked at the last hearing and nobody objected to the notice. Mr. Brodsky agreed however he discovered new information today. He highlighted his concerns addressed in the letter. He suggested the applicant re-notice.

Mr. Lonski read the published notice and felt the description in the notice clearly states what is being proposed. The notice clearly stated what wasn't and what was included in calculations. He also pointed out the property is in the R75 zone but also in the MF75 zone which does not have a floor area ratio requirement. He felt the notice was clearly sufficient.

Mr. Kennedy stated at the July 27, 2021 there were no objections made as to the deficiency of the notice. The Board also accepted jurisdiction and had several hours of testimony. He read the advertised notice in its entirety. Mr. Lonski stated they wish to proceed with their application. Mr. Kennedy explained what is required in the notice by law. He was concerned that if the Board did not proceed and Mr. Lonski did not agree to an extension then there could be grounds for an automatic approval which the Board would not want. The Board agreed to move forward with the application.

Mr. Brodsky cross examined architect Mary Hearn based on her testimony at the prior hearing. He sought clarification on the variances being requested. There are bulk variances, and three "D" variances for use, floor area ratio and height. He asked if the height calculation took into account the amenities on the roof deck and asked about the height of the elevator vestibule. Ms. Hearn stated the height to the elevator is 57.2 ft. He asked if it is common to have amenities on a roof deck already over the height requirement. Ms. Hearn stated she knows of four times it was done in town where she did the plans. He asked if the number of units was reduced would it require less variances or less intense variances, if a permitted use could be built on the site and if something could be built in compliance with the height. She replied yes. He asked if the applicants have given any consideration to reducing the size of the building. She did not know. He asked about the rear balconies and what people would be looking at when on them. Ms. Hearn stated she would hope they would be looking at the Ocean. He pointed out that they could also look into the backyards of the homes that would be adjacent. Ms. Hearn stated the setbacks are either 10 or 16 feet depending on which balcony it is. He stated the required setback is 40 feet and asked why it couldn't be complied with. She stated it was due to the side of the building. He felt if the number of units was reduced the size of the building could be reduced as well.

Mr. Brodsky stated attorney Karen Shelton who appeared at the last hearing notified him that she was unable to attend this meeting due to being in quarantine.

Mr. Fitzgerald asked if the visibility of the elevator tower and two stair towers from the street wasn't taken into consideration. Ms. Hearn stated she did and referenced exhibit A9 showing the front rendering of the building.

Mr. Hutchinson asked for clarification on the R75 vs MF75 zone. Ms. Hearn stated there will be additional testimony on that coming.

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Public: Mark Presto, 110 13<sup>th</sup> Avenue, asked about the balcony setbacks. Ms. Hearn stated the two corner ones are 10 feet and the interior balconies are 16 feet. She added the setback is 18 feet to the structure.

Mr. Lonski presented a new witness: Theodore Lamicella Jr., state certified general real estate appraiser. Mr. Lamicella stated he is also a certified Tax Assessor. Mr. Lamicella prepared an appraisal of the site and a feasibility analysis of the proposed development. He evaluated the site as is to ascertain the market value which \$3,486,000. Looking at the property, zoning, and highest and best use. He reviewed if two single family homes could be built there but the conclusion of his analysis is the homes would be worth \$700,000 each. Mr. Brodsky objected to the relevancy of the testimony. He felt the amount of money the developer is to make is not relevant to municipal land use law. Mr. Lonski stated the purpose of the testimony is to develop a feasibility analysis that there is no economic detriment to the neighborhood and an economic gain for the property. Mr. Brodsky still objected. Mr. Lisko was also concerned. Mr. Kennedy suggested they proceed but on a short leash. Mr. Lamicella referenced the overlay multifamily zone which would allow 13 townhomes which would be valued at \$1,105,000. He analyzed the site for 24 condominium units, and they would average \$720,000 per a unit. Given the land acquisition, development costs and other costs which would total \$16,008,000 and the market value being \$17,400,000, this would not generate a lot of profit. He felt 32 units would be what developers would typically want to see. The existing use of the property is considered high impact which is a negative impact on surrounding properties whereas the proposal would not be considered a high impact property. The proposal would enhance the value of the surrounding properties.

Mr. Brodsky cross examined Mr. Lamicella. He questioned why the developer is proposing 24 units if it's not economically feasible. Mr. Brodsky asked where in the municipal land use law it states the landowner's profitability is grounds for granting variances. Mr. Brodsky requested the appraisal report be submitted to him and the Board. Mr. Shippers stated he will supply Mr. Brodsky with a copy at the end of the hearing. Mr. Shippers stated if he wants to build a project that gets rid of the Belmar Inn and two animal houses and possibly take a financial loss than that is his right. Mr. Kennedy requested a copy of the report also be submitted to the Board Secretary. Mr. Brodsky would like the opportunity to review the report and cross examine Mr. Lamicella. Mr. Lonski stated he hopes to complete the entire application this evening. Mr. Brodsky continued his cross examination of Mr. Lamicella.

Mr. Greig stated all of this discussion was about profit and loss but that doesn't weigh into the Board's decision. Mr. Kennedy agreed.

Public: Brett Lomas, 609 9<sup>th</sup> Avenue, questioned Mr. Lamicella's testimony about the Breakers in Spring Lake negatively affecting the homes nearby. Mr. Lamicella stated any residential use next to a high impact use is negatively impacted.

Steve Bloom, 1104 A Street, asked if the value of the surrounding homes would increase if two single family homes were built. Mr. Lamicella replied yes. He added that the proposal would have a bigger positive impact on the value.

Arlene Neppel, 1100 A Street, questioned how 24 homes is more valuable. She added they don't care about profit and only care about high density and people looking into their backyards. She felt that four homes could be built and be sold for 2-3million. Mr. Shippers objected to her testimony and incorrect facts that were stated. He also felt she has not been qualified as a real estate expert. Ms. Neppel asked if there would be a profit if four single family homes were built. Mr. Lamicella felt nobody would tear down the property to build single family homes valued at \$700,000 each. She argued that the lots would be worth more. Mr. Lonski objected to her testimony.

Beth Mane, 308 12<sup>th</sup> Avenue, read the master plan and ordinances and asked questions relative to them. Mr. Lonski felt her questions should be addressed to the Planner.

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Kevin Brennan, 605 11<sup>th</sup> Avenue, asked if an amenity deck adds value or decreases value of an adjacent property. Mr. Lamicella stated the amenity deck adds value to the subject units and as those sell the values of the surrounding properties increases.

Elissa Cohen, 109 16<sup>th</sup> Avenue, sought clarification on Mr. Lamicella's testimony about the current Belmar Inn negatively affecting the surrounding homes. Mr. Lamicella stated any type of commercial property near single family homes is high impact and negatively impacts the surrounding homes.

Hoda Naggar, 102 12<sup>th</sup> Avenue, felt the analysis wasn't objective enough because he did not speak about the negative impacts. Mr. Lamicella reiterated that the proposal would have a more positive impact than what exists today.

At approximately 8:20 pm the Board took a fifteen-minute recess. The Board reconvened, roll call was taken and all were still present.

Mr. Lonski stated his next witness is the engineer, Richard DiFolco. Mr. Lonski submitted exhibit A29, parking lot configuration plan, A30 a zoning chart showing comparison of the R75 and MF75 zone, and A31 a poster board showing the MF zone 2008 ordinance and a map showing where it applies.

Mr. DiFolco explained the MF75 zone allows for a conditional use with alternative zoning requirements. There are only three blocks in Belmar where the zone applies to. There are only three parcels in that area that qualify with the lot condition of 14,000 square feet. Only two of them are available for potential for redevelopment which are the Belmar Inn and Mayfair Hotel. The other ones are already developed. If the zoning standards are followed for this zone, they could build 14 townhomes on the property with no floor area ratio requirements, can be 3 full stories at 35 feet and only 10 feet from the rear property line. The Borough knew these parcels didn't fit and put in these requirements as an incentive. Each of the townhomes could have 3-4 bedrooms which would equate to 42 to 56 bedrooms. They are proposing 48. The MF75 zone also allows 50% building coverage and garages are not included in that calculation. Size wise the MF75 zone is very comparable to what is being proposed. As well as the setbacks and building height. He felt the zoning criteria for the R75 zone is for single family homes and if the Board agrees to the proposed condo use than the other bulk variances are not as relevant because it's not a single-family home. If the use is approved, it gets rid of a blight on the neighborhood.

Mr. DiFolco referenced exhibit A8 which is a binder of documents. Mr. Brodsky reiterated his objections to the relevance of the exhibit because it contains documents and transcripts relating to a previous application that was withdrawn. Mr. Lonski felt he should be able to identify the exhibit and explain its purpose. Mr. DiFolco stated the binder contains police reports, first aid call reports, fire reports and code violations for the Belmar Inn which he referred to along with the master plan, state master plan and ordinances in preparation for his testimony as a licensed Planner.

Mr. Brodsky questioned the need to have the transcripts from a hearing for a prior application part of the testimony. Mr. DiFolco stated he is relying on the testimony of the fire, police and code officials that is in the transcripts.

Mr. DiFolco clarified what documents were in exhibit A8 which are listed as A-O on the index inside the binder.

Mr. Lonski stated the documents in the binder whether from 2018 of a prior application or not were used by Mr. DiFolco to formulate his opinion of the proposal. It is the background used for the testimony Mr. DiFolco will provide. Mr. Lonski added that a lot of the documents are public records. Mr. Brodsky stated he has no objection to the binder being used as part of this hearing as exhibits as long as they are being used as facts for this application. He objected to items B, C, F, G, J, and K in the binder.

Mr. Lonski had no problem with removing items B, C and G. He added he could ask Mr. Cinelli, Mr. Poff and Mr. Dullea to come back and reiterate their testimony that they gave in 2018 but

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doesn't feel it's necessary since Mr. DiFolco was simply using public records to do his fact finding in preparing his testimony. Mr. Kennedy felt the Board should be cautious about relying on transcripts for prior hearings of an application that was withdrawn without prejudice however the public records that were obtained from Borough are okay to be relied on. He also felt the Board cannot rely on the testimony presented at the prior hearings of the prior application.

Mr. Shippers stated he would like to allow Mr. DiFolco to finish his engineering testimony and then he will seek to have Mr. Poff, Mr. Cinelli and Mr. Dullea come to a future meeting date and Mr. Brodsky can cross examine them all he wants and then Mr. DiFolco can proceed with his planning testimony.

Mr. DiFolco stated there is a 6 ft. solid fence along the property line which will shield headlights from any neighboring property. He addressed the size of the parking stalls which was brought up at the last meeting. They are requesting three design waivers. There are some that are 9 feet, but others are 8.5 feet. To eliminate excess impervious area, they are proposing 18 ft. stall lengths with only 16 feet paved. The driving aisle is 22 feet which would be okay with one way flow. There are two handicap parking spaces which meets code. RSIS states two parking spaces per a unit which would be 48 and includes 1.5 spaces for guest use on site or in the area; they are short one space. That one space can be made up on the street. The lighting in the parking lot is in the ceiling shining down. There is no spillage outside the site. There will be garage doors on the entrance and exit for security reasons. The walkways throughout the site will be made of pavers. The drainage system will collect all the roof water and storm water through gutters to an inlet at the easterly corner of the property. The water impact would be reduced compared to what exists today.

Mr. Lonski presented exhibit A32 which were two videos showing the aftermath of Hurricane Sandy. Mr. Brodsky questioned the relevance of the videos because the property is not in a flood zone. Mr. DiFolco stated it is used to show that if you aren't in a flood zone it doesn't mean you won't be, and the building has been designed to withstand the 100-year storm. Mr. Brodsky stated the video shows other properties that flooded and not the subject property. Mr. DiFolco stated the video was to show the potential of what they should be prepared for in the future.

Mr. DiFolco explained the landscaping plan. He addressed all of the comments in the Board Engineer's review letter. Mr. Freda stated the one-way traffic flow is much more conducive to the way the parking is set up. Two-way traffic would be too crowded. He asked Mr. DiFolco to explain which parking spaces are 18 feet long. Mr. DiFolco stated all the interior parking spaces are 18 feet. The ones around the perimeter are 16 feet and the bumper would be outside the building. There are also some that are 16.5 feet in the interior near a 6ft sidewalk. Mr. Freda stated the parking spaces are 8.5 feet wide rather than 9 which is common in a parking garage and a waiver for such is typically granted.

Mr. DiFolco stated the ac units on the roof will be screened with a soundproof wall. The amenities on the roof do not make up more than 10% of the roof.

Mr. Brodsky cross examined Mr. DiFolco. Mr. Brodsky questioned an ordinance that states the appurtenances cannot exceed 5 feet. Mr. DiFolco stated that would be more of planning testimony because he feels the R75 zoning criteria are irrelevant because they are not proposing a single-family home. Mr. Brodsky asked how far the amenity deck is from the property line. Mr. DiFolco stated it is about 40 feet. Mr. Brodsky questioned how many people can congregate on the roof deck. Mr. DiFolco showed 40 seats on the plan, but the occupancy is set by code. Mr. Brodsky calculated 72 people seated. Mr. Brodsky questioned if there will be noise coming off the roof. Mr. DiFolco felt noise is objectionable. Mr. Brodsky asked if each unit would have a specific designated space. Mr. DiFolco replied yes. Mr. Brodsky asked what the utilization plan is for the remaining spaces. He asked how many spots exist on site now. Mr. DiFolco stated there are no spaces marked but six could fit. Mr. Brodsky asked about fumes of 47 cars affecting adjacent properties. Mr. DiFolco was not concerned about fumes.

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Mr. Lisko requested to wrap up questions given the late hour (10:15 pm). The Board discussed when to carry the application to. Ms. Claudio stated there are two meetings in September and she has three applications scheduled for each. Mr. Lisko stated he would like to see this application carried to the October 28<sup>th</sup> meeting. Mr. Lonski asked if a special meeting could be held earlier in October. Mr. Shipers stated he would agree to renote for a special meeting date once it is set. He also stated he would like to have both October hearing dates so this application can be wrapped up. Mr. Brodsky requested he be included in the scheduling decision of the special meeting.

Mr. Cupoli made a motion to carry the application to the October 28, 2021 meeting, which was seconded by Mr. Fitzgerald and approved unanimously.

Ms. Claudio stated she received a letter from Jennifer Wagner, 1211 Briarwood Road who received variance approvals in 2015. Ms. Wagner requested an extension of the approvals. The Board discussed granting a two-year extension from today's date, but any future extension requests will have to be made in person at a meeting before the Board. Mr. Lisko made a motion to approve the extension, which was seconded by Mr. Melango and approved unanimously.

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