

**Bradley Beach Zoning Board of Adjustment
Regular Meeting Minutes
Thursday, October 17, 2019 at 6:30 PM**

Meeting is called to order by Chair Rosenberg at 6:30 PM. The Board and the public recite the Pledge of Allegiance.

Open public meeting announcement is made by the Board Secretary.

Roll Call:

Present: Robert Quinlan, Dominic Carrea, Raymond Wade, Dennis Mayer, Deidre Phillips, Teresa Rosenberg, Deborah Bruynell, and Harvey Rosenberg

Absent: Michael Affuso and David Critelli

Also Present: Mark G. Kitrick, Esq. - Attorney to the Board and Gerald Freda, PE, PP, CME – Board Engineer

New and reappointed Board Members are sworn in by Mark Kitrick, Esq.

Chairman makes announcement as to how the meeting will proceed.

Approved Meeting Minutes:

September 19, 2019 Regular Meeting Minutes - Motion to accept offered by Harvey Rosenberg, seconded by Robert Quinlan, all present in favor.

Resolutions Memorialized:

Resolution No. 2019-15 – Approval of Bulk Variances for 2nd Floor Addition) – Patrick & Kathy Freeman – Block 79, Lot 28 – 26 Atlantic Avenue

Applications Under Consideration:

ZB19/09 – (Bulk Variances for Addition and New AC Unit) – Caroline Riordan – Block 16, Lot 3 – 317 Newark Avenue – Applicant proposes an addition to the existing structure by adding new 10' x 17' 2nd floor bedroom over a new 10' x 17' covered porch and a new AC unit in the side yard area which does not meet the required setbacks. Applicant is represented by Thomas J. Hirsch, Esq.

John Sepchuck (sp?) – sworn in – owner of property.

Gerald Freda, PE – sworn in.

This is a simple application with no variances other than the AC Condenser which will be 8.5 feet from the property line versus the 10 foot requirement. All other improvements do not need variances. The AC was installed by the contractor without the proper permits. The Applicant believes this is the best and most correct placement for the condenser.

Mr. Sepchuck indicates he and his wife have owned the property for the past 10 years and they would like to extend the existing porch and add a new bedroom above. This is the first time they were alerted of the AC unit being too close to the property line when they applied for zoning permits for the addition. The contractor who had installed it was recommended to them and the owner suggested the best location and the contractor agreed and installed.

Exhibit A-1 – Survey showing neighbors AC units and homeowner's

Exhibit A-2 – Photo of neighbors AC units

Exhibit A-3 – Survey showing sump pump discharge area

Exhibit A-4 – Photo of sump pump discharge area

Exhibit A-5 – Photo of sump pump discharge area

There are multi-dwelling units on both sides of this property.

It is indicated the homeowner would have asked to have the condenser installed in its current location initially and would have asked for the variance if they had known it would be necessary.

Mr. Mayer indicates the applicant is here asking for forgiveness.

Deidre Phillips indicates she feels the AC unit would be better suited in the area indicated as the sump pump discharge area. Jerry Freda indicates he does not feel the sump pump area would be an appropriate placement.

Mr. Hirsch asks the Board to keep in mind the purpose of AC setbacks.

The applicant is questioned about the curb cut in front of their home and he indicates it has been there since they purchased the home, but there has never been a driveway there.

Chair Rosenberg asks if it is possible to move the AC unit. The owner indicates that access to the air handler in the attic was an issue.

Dominic Carrea – indicates the Board Engineer agrees with the placement of this unit and asks if the unit is raised? It is indicated yes it is raised about 4 feet in case of flooding, snow drifts, etc. Mr. Carrea asks if he would be willing to lower the unit?

Caroline Riordan (homeowner) – sworn in – indicates that the estimate for the 2nd contractor included lowering the unit to ground level.

Deborah Bruynell indicates she believes lowering the unit the ground level is a nice compromise.

OPEN TO THE PUBLIC:

Geraldine Hansen – 315 Newark Avenue – sworn in – indicates the neighbors' AC unit does not impede on them and they are happy with their improvements.

Based upon the application submitted and the testimony provided, Harvey Rosenberg makes a motion to approve the application with the condition that the owner lower the

AC unit to the ground level and obtain the appropriate permits, moved and seconded by Dominic Carrea.

Those in favor: Deborah Bruynell, Raymond Wade, Dominic Carrea w/comment, Robert Quinlan, Dennis Mayer, and Harvey Rosenberg.

Those opposed: Deidre Phillips w/comment

Those abstained: None.

Those absent: David Critelli and Michael Affuso

****THE BOARD TAKES A BRIEF RECESS AT 7:05 PM AND RETURNS AT 7:13 PM – ALL MEMBERS STILL PRESENT****

ZB19/11 – (Appeal of Zoning Officer’s Determination on 610 Evergreen Avenue) – Kim & George Januzzi – Block 71, Lot 21 – 608 Evergreen Avenue – Applicant is seeking an appeal of the Zoning Officer’s Determination regarding approval of a rear second story deck and stairs located at 610 Evergreen Avenue (Block 71, Lot 22)

Kim Januzzi and George Januzzi of 608 Evergreen as well as David Nichols of 612 Evergreen are all sworn in with the Board Engineer, Gerald Freda.

Kim Januzzi indicates on June 20th we were here on behalf of the neighbors application for a deck which had ultimately been denied by the Board. Ms. Januzzi explains why they are here tonight to discuss 2 ordinances. 1) height of the deck and 2) structure cannot have projections from the 2nd story greater than 24 inches – of which 610 Evergreen does not conform.

Ms. Januzzi believes the permit should not have been approved and the Zoning Officer exceeded his authority; therefore the permit is not valid.

Exhibit A-1 – First Photo - picture of the deck the night of the June 20th hearing taken by George Januzzi in June 2019

Exhibit A-2 – Second Photo – picture of current condition taken by George Januzzi in late July 2019.

Exhibit A-3 – Copy of Ordinance 450-13 (d) and (e) are the issue here.

A projection from the 2nd floor of a house is not a deck it is a balcony in Jerry Freda’s opinion/interpretation.

Per Ms. Januzzi the Zoning Officer cannot interpret and there is no ambiguity. Mr. Freda’s opinion is a discussion for a variance hearing.

Deidre Phillips – questions the indication of a date being altered which she is disturbed by. It is indicated it will be addressed later.

Exhibit A-4 – Copy of Denial which was sent to the Board for the purposes of the variance hearing which was seeking a much larger structure.

Ms. Januzzi proceeds to elaborate on each Exhibit in their packet up to Exhibit A-21.

The Januzzi's supply their timeline of events regarding complaints filed and responses.

David Nichols – indicates he spoke to Mr. Waterman after filing his complaint and asked about the whole situation and about the deck and told Mr. Waterman the 4 x 6 deck was illegal. There were questions regarding CO and e-mail correspondence with Mr. Waterman after his conversation with Mr. Januzzi. Mr. Waterman then indicated that the stairs were going to remain.

Mr. Ben Zilbergeld – attorney for Bradley Beach – questions Mr. Nichols with regard to where he lives in comparison to the property in question. Mr. Nichols indicates 1 property over there is a house in between. Was any written correspondence received from Mr. Waterman with regard to the conversation you say you had with him? Mr. Nichols indicates he did not write to him whatsoever. Mr. Zilbergeld indicates in looking at the exhibits he does not see an e-mail authored by Mr. Waterman. Mr. Nichols indicates no.

Ms. Januzzi indicates they had followed up with Mr. Waterman that Thursday and he had indicated that what was there had been approved and he did not understand what the issue was. They were told that they had 20 days to file an appeal and they should seek the advice of professionals to see how they wanted to proceed.

The Januzzi's indicated they filed Code Complaints which were not responded to.

Exhibit A-14 is discussed as this is the document believed to have been altered with handwritten notes.

After being put in touch with Mr. Kitrick the Januzzi's were again notified of the 20 day appeal period and after numerous discussions back and forth regarding the law it was determined the appeal period was still valid.

There was a meeting which took place with the Construction Official, Zoning Officer, Mr. Kitrick (Board Attorney), and the Januzzi's and the question of "stop work order" being issued and Mr. Waterman indicating there was a typo.

Shortly after the meeting the erection of the stairs began resulting in email correspondence.

Numerous references to a "deck" are discussed.

Mr. Januzzi indicates the Denardo's reliance on a permit that should not have been issued in the first place is not a valid argument. Ms. Januzzi explains to the Board that the decision made tonight will have precedential value; this is not a variance hearing.

Mr. Zilbergeld questions when the appeal was filed and indicates it was roughly 180 days give or take after permit granted.

Michal Wenning, Esq. – attorney for owners of 610 Evergreen (Denardo) questions the Januzzi's if they are Professional Engineers – they indicate no and asks if they have any expertise in interpreting ordinances – they indicate no.

Mr. Wenning questions the coverage of the lot – it is indicated they do not know. Mr. Wenning proceeds to ask multiple questions regarding the stairs which the Januzzi's do not feel is relevant to this case.

Mr. Wenning asks for the Fed Ex receipt transmitting notice to Denardo.

Mr. Wenning asks how long it took for the stairs to be constructed – it is indicated they do not know.

Benjamin Zilbergeld, Esq. representing George Waterman, Zoning Officer. Mr. Waterman is sworn in. Mr. Waterman indicates he has been the Zoning Officer for the Borough of Bradley Beach for the past 2 years and is also the Zoning Officer in Neptune Township for the past 15 years. Mr. Waterman proceeds to provide his educational background.

Mr. Waterman indicates the first Zoning Permit application was received on November 30, 2018 (Exhibit 6 in the appellant's packet). Mr. Waterman discusses the approval.

On March 12, 2019 – Zoning Permit Application is discussed (Exhibit 8 in the appellant's packet) which was denied and the discrepancy in the description of work in Zoning Notes discussed.

Exhibit ZO #1 – Denial of Application and the applicant's handwritten application is marked.

Kim Januzzi questions George Waterman with regard to Exhibit 7 and whether the denial included all approvals. How/Where is there a typo? The typo is in the dimensions per Mr. Waterman.

George Januzzi questions George Waterman with regard to Exhibit 6 The question of an uncovered and unroofed deck is discussed and Exhibit 3 and asks if he is aware of Ordinance Section 450-13(d). Mr. Waterman indicates yes. Questions arise with regard to consultation with Board Professionals regarding ordinances.

Mr. Wenning questions Mr. Waterman with regard to his interpretation. Mr. Waterman responds.

Chair Rosenberg questions the interpretation and it is indicated the Ordinance does not define a deck or a landing.

It is emphasized that this is an appeal of the original approval.

Mr. Wenning introduces his professional witness.

Carolyn A. Feigin, PE, PP – Civil Engineer of DW Smith Associates – accepted as an expert. Ms. Feigin designed the plan and describes her interpretation of "projections" and also confirms there is no definition in the Borough's Ordinance regarding "landing"

George Januzzi also questions Ms. Feigin.

Mr. Quinlan asks questions of Ms. Feigin.

Thomas J Coan – 612 Third Avenue questions whether or not a landing is part of a principal structure. Ms. Feigin indicates landing.

Dominic Carrea – questions whether the 2nd floor sliding glass door is necessary.

Exhibit D-1 (Denardo's Exhibit) – Copy of Survey prepared July 11, 2017, last revised September 6, 2019.

Plan initialed JMB 10/1/2019 showing coverage calculations discussed.

OPEN TO PUBLIC FOR GENERAL COMMENTS:

Thomas J Coan – 612 Third Avenue – sworn in – Mr. Coan provides his interpretation.

Mr. Wenning provides summation and indicates there may be a timing issue with the appeal as the approval was in December and the appeal was filed in June and the Appellant has provided no expert testimony only their opinion.

Ben Zilbergeld, Esq. agrees with the timing issue and indicates that Mr. Waterman's testimony is believable and he has followed the Code as it is written.

Kim Januzzi – provides case law to Mr. Wenning and thanks the Board for hanging in and she indicates the Construction Code does not trump Zoning and that this structure does not comply with the Borough's Ordinance and it therefore requires variances.

Mark Kitrick, Esq. refers to case law in Burlington and addresses the 20-day appeal issue.

Based upon the application submitted and the testimony provided, Harvey Rosenberg makes a motion to affirm the appeal in support of the Applicant, moved and seconded by Dominic Carrea.

Those in favor: Deidre Phillips w/comment, Raymond Wade w/comment, Dominic Carrea, Dennis Mayer w/comment, and Harvey Rosenberg w/comment.

Those opposed: Deborah Bruynell and Robert Quinlan

Those abstained: None.

Those absent: David Critelli and Michael Affuso

ADJOURNMENT:

WITH NO FURTHER BUSINESS BEFORE THE BOARD A MOTION TO ADJOURN WAS OFFERED BY CHAIR ROSENBERG AND SECONDED BY DENNIS MAYER, ALL IN FAVOR. MEETING CLOSED AT 9:47 PM.

NEXT SCHEDULED MEETING WILL BE OUR REGULAR MEETING ON THURSDAY, NOVEMBER 21, 2019 AT 6:30 PM HERE IN THE MUNICIPAL COMPLEX MEETING ROOM.

Minutes submitted by Kristie Dickert, Board Secretary