

**BERGENFIELD ZONING BOARD OF ADJUSTMENT**  
**REGULAR MEETING MINUTES**  
**November 13, 2023**  
**8:00 p.m.**

Chairman Shimmy Stein called the meeting order at: 8:00 p.m.

**OPEN PUBLIC MEETING STATEMENT**

In compliances with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on two municipal public notice bulletin boards and published on the borough website.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on that matter.

**PLEDGE OF ALLEGIANCE**

Led by Chairman Stein.

There was a moment of silence for the innocent victims of the war and the 240 hostages from different nations.

**ROLL CALL**

**Present:** Shimmy Stein, Richard Morf, Sara Berger, John Smith, Amnon Wenger, Jason Bergman, Jose Morel and Marc Friedman

**Absent:** Nishant Desai (excused)

**Also Present:** Gloria Oh, Zoning Board Attorney, Peter Bondar, Zoning Board Engineer, Caroline Reiter, Planner from T&M Associates, Councilman Marc Pascual, Council Liaison and Hilda Tavitian, Zoning Board Clerk

Chairman Stein acknowledged and thanked Robert Rivas, long-time resident and Planning Board Chairman, who will help with one of the applications tonight.

**INTRODUCTORY STATEMENT**

Read by Board member Friedman. Welcome to the Zoning Board of Adjustment. Let me briefly explain what we do. We are appointed by the Bergenfield Council to decide when a property owner should get relief from the strict application of the zoning regulations that are set forth in Bergenfield's zoning ordinance. Typically, we hear two types of variances. The first is whether an applicant can vary from land use restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second type of variance is a use variance, where an applicant wants to use the property for a purpose not permitted under the zoning ordinance in that zone.

In these cases, the applicant has the burden of meeting certain criteria set forth in the Municipal Land Use Law, which is available online. We carefully listen to the testimony, including objectors, and review all relevant documents. If a majority of the Board concludes that the applicant has satisfied those criteria for a bulk variance, we must grant the requested variance. Approval of a use variance requires five affirmative votes.

**APPROVE MINUTES OF PREVIOUS MEETING**

**Motion from board members to approve minutes – October 16, 2023**

**Motion By:** Mr. Bergman

**Second By:** Mr. Smith

**All ayes. None opposed.**

## **CORRESPONDENCE**

None.

## **OLD BUSINESS**

1. **Resolution** - Batya & Nathan Paul, 56 Norfolk Street, Pool, Spa & Grilling Station

**Motion By:** Mr. Bergman

**Second By:** Mr. Wenger

**5 ayes. 1 nay.**

### **2. Applications:**

1. Aaron & Tamar Joseph  
75 Lee Place  
An addition  
Carried from October Meeting

Chairman Stein stated they now have the architectural drawings. The application has already been deemed complete.

Chris Blake, 150 Engle Street, Englewood, NJ, architect, stated they are proposing an addition to a single-family home that is 5,589 sq. ft. and is in the R-5 zone. It is an irregular shaped property located in a cul de sac. Mr. Blake stated they are taking a small cape cod home and making it a two-story colonial. They are requesting a 4.5 ft. side yard variance, where 5 ft. is required on the right-hand side. The 5 ft. required setback on the left-hand side. The current improved lot coverage is 42.9% and the proposal is for 46.4% improved lot coverage. They will also be expanding the rear yard setback where 18.6 ft. is existing and 25 ft. is required. Mr. Blake stated the garage will remain where it is. The kitchen will be expanded to the rear and they will be pushing the deck out. There will be five bedrooms and three bathrooms upstairs, modest in size. There will be a small, front porch and the existing one car garage. It is an upgrade from the current cape cod house. There are some trees in the backyard for separation. The small driveway will remain where it is along with the small sidewalk. Mr. Blake stated the house will look similar to the one next door and will blend in nicely with the neighborhood. He stated 1% is 50 sq. ft., which is not much.

Tamar Joseph, applicant, inquired if it is possible to make a small amendment to the plan. She stated there is a 10x7 corner in the original plan that was not squared out. They would like to square out that part and extend the front porch to fit a couple of chairs.

Mr. Blake stated it gives more flexibility to the floor plan and increase the 46.4% to 46.9%. The addition of the small porch would bring it up to 47.7%.

Board engineer Bondar stated right now, there are no drywells on the property. They are proposing one that needs to be calculated for the new roof area. The overall drainage should be improved due the new drywells. Mr. Bondar stated they need to demonstrate the percolation into the ground with the drywell calculations.

Board member Wenger inquired if the seepage pit will release the water forward.

Mr. Bondar stated the drywell is located in the rear of the property. He suggested the applicant discuss how the property is graded. He inquired if there are any existing drainage issues on the property.

Mr. Blake stated it is a flat property with a very low slope. Mr. Blake's response was no.

Board member Smith inquired what the total increase, with all the changes, in lot coverage is.

Mr. Bondar stated it's 47.7%. They will have to size it for what the ultimate thing will be. They need to do the recalculation.

Chairman Stein stated, should the application be approved, they need to recalculate and have it properly sized for improvement.

Board member Morf inquired if the driveway can be changed to brick pavers.

Ms. Joseph stated they are planning to use pavers.

Mr. Blake stated they will revise the plan to reflect pavers.

Board member Berger inquired what they intend to do with two rooms in the basement and if there are egress windows.

Mr. Blake stated it is not determined. It is not intended for a bedroom. It will either be a gym or office. There will be egress windows.

Chairman Stein stated, should the application be approved, it will be stated that they can not have a bedroom in the basement.

Board member Morel wanted to ensure the applicant is aware they need to use pervious pavers.

**Questions from residents within 200 Feet:**

David Dashevsky, 114 Maiden Lane, stated there is water that goes underneath their deck and the water is flowing down Maiden Lane.

Chairman Stein stated, should the application be approved, the applicant will be putting in a drainage system that isn't there now. It's guaranteed that it will be better than what it is now. The grading will be better.

Board member Smith inquired if the roof leaders will be draining into the tank. The plan doesn't show the roof leaders will go into the tank.

Mr. Blake stated the old and new portion of the house will go into the tank. Anything that falls into the front yard will go into the street, draining into the ground.

**Motion to Approve Application Subject to:**

- Pavers in the Driveway
- Down Spouts Going Into the Tank
- Squaring Off the Front and Back
- No Bedroom in the Basement

**Motion By:** Mr. Smith

**Second By: Mr. Bergman**  
**All ayes. None opposed.**

2. Michael Yunger & Elana Katz  
72 Norfolk Street  
Inground Pool

Chairman Stein stated the application was previously approved. The issue is that the pool was built too close to the property line in the back.

Benjamin Wine, attorney from Prime & Tuvel, 1 University Plaza Drive, Hackensack, NJ, stated the application was granted in 2022. They were granted approval for two variances, 62.3% improved lot coverage and sought 8 ft. to the pool. Mr. Wine explained after construction, the Yungers' submitted their As-Built survey to the building department and it was determined the improved lot coverage was slightly less than what was approved. 62.2% was constructed. The initial drawing showed 8 ft. to the pool coping and the contractor constructed 8 ft. to the pool, to the water level. The pool was constructed 1.9 ft. closer to the rear yard than initially sought and approved. The Yungers' had no idea and was not their intention. It is a 1.9 ft. mistake made by the contractor. Mr. Wine submitted photos, Exhibit A-2, of the pool constructed along with the foliage and fencing. Mr. Wine stated what was approved was 8 ft. to the coping and 10 ft. to the pool. It was built 8.1 ft. to the pool and 6.1 ft. to the coping, a 1.9 ft. difference than what was approved. All of the pool drainage is located where the 1.9 ft. is currently located.

Michael Yunger, applicant, stated their intention at the meeting last year was to apply for a 8 ft. setback in the rear. There was some confusion amongst the engineer and some members regarding the layout of the pool. The application went through and he understood it as the plans being good and correct. Mr. Yunger stated they proceeded with the plans and filed their As-Built drawings. They heard back from the building department that the setback coverage was 8 ft. He wasn't aware of it and would have had the contractor adjust it. He apologized and hopes the variance is granted.

Board member Smith inquired why there is a different colorization in the pavers in the photo.

Mr. Yunger stated the pavers weren't touched. It's the pool coping that was just installed.

Mr. Wine stated Exhibit A-3 is a preconstruction photo before the pool was constructed, showing the pavers.

Board member Morf inquired where the pool drains. It can't go into the neighbor's yard.

Mr. Yunger stated he's not sure. He was at work when the pool was drained.

Chairman Stein stated, should the application be granted, applicant needs to conform to proper drainage.

Board member Friedman stated he wants to understand what happened. He inquired if Mr. Yunger received a copy of the resolution from the meeting last year. He inquired if the applicant gave a copy of it to his contractor. Mr. Friedman stated Mr. Yunger provided the contractor the plan that had the 8.1 ft.

Mr. Yunger acknowledged receiving a copy of the resolution. Mr. Yunger stated he gave the contractor the building plans. He didn't recall giving the contractor a copy of the resolution.

**Questions from Residents Within 200'**  
No one came forward.

**Motion to Approve Application with the Condition of Draining Properly:**

**Motion By:** Mr. Bergman

**Second By:** Mr. Morel

**All ayes. None opposed.**

A five minute recess taken at 8:53 pm. The meeting resumed at 9:01 pm.

**NEW BUSINESS**

1. Applications:           Valentina DiLoreto & Johan Esteban  
                                  193 Hickory Avenue  
                                  An addition

Jacob Solomon, 14-25 Plaza Road, Fairlawn, NJ, architect, stated they are proposing to add a second floor to the existing one-story garage at the side of the house and convert the deck in the back into living space. The addition does not exacerbate any existing non-conformities and will align with existing side yards. The proposed lot coverage will increase to 52.3% and improved lot coverage to 31.4%. They are proposing to add a family room and living room area. The exterior siding will match the existing. Mr. Solomon stated they are proposing a small balcony facing Third Street.

Mr. Bondar inquired if there are any known drainage issues.

Valentino DiLoreto, applicant, stated there are no drainage issues.

Board member Morf stated that the only issue is the continuation with the side yard variance because of the R-6 rules.

**Motion to Approve Application**

**Motion By:** Chairman Stein

**Second By:** Mr. Smith

**All ayes. None opposed.**

Oath of Office administered to Ms. Caroline Reiter by Board attorney Oh.

DP Bergenfield, LLC  
21 West Church Street  
3 Story Residential Building  
Carried From October Meeting

Board members Wenger and Bergman recused themselves. Planning Board Chairman Rivas joined the hearing for this application. Caroline Reiter, planner from T&M Associates, also joined the meeting.

Brian Chewcaskie, Cleary, Giacobbe, Alfieri, Jacobs LLC, 169 Ramapo Rd, Oakland, NJ, attorney for applicant, stated they are proposing a three-story residential building with six 2 bedroom units and two 1 bedroom units. It is going to be a rental project with one affordable housing set aside. Mr. Chewcaskie stated they are proposing 15 parking spots, including EV spaces. The application was submitted on August 11, 2023 along with site plan, drainage calculation report, planning report, and a traffic report. They are in receipt of the reports from T&M Associates. A revised site plan and correspondence was

submitted in response to the engineering reports. At the last meeting in October, the application was not heard and carried to tonight's meeting.

Chairman Stein stated they are seeking 7 variances and five affirmative votes are needed for approval of the use variances.

Mike Hubschman, engineer, presented Exhibit A-2, a colorized rendering of the site plan revised 11/1/23. He stated the existing lot is 82.8 ft. in the front and 82.9 ft. in the rear. The property is an odd shape. There is an existing two-family dwelling in the center of the site. The proposal is to remove the entire structure onsite. There will be 3 ft. from the property line. Sheet 1 shows an aerial view of the site. They are proposing to construct a three-story building with a lobby, hallway, elevator, and a refuse room with a chute on the first floor. Mr. Hubschman stated the bedrooms will be on the second and third floor. They are proposing a new sidewalk and curb along the frontage. There will be 15 parking spaces and 3 E spaces, which they will receive credit for. The stalls are 9x18 ft. and the aisle is 24 ft. wide. Mr. Hubschman stated there will be adequate utilities onsite. The lighting and landscaping plan on sheet 4 shows a simple lighting plan. There will be wall park lights in the rear and ceiling mounted lights. There will be shade trees in the front with some arbor vitae. He stated they are required to have a 6 ft. buffer. A fence is proposed along the left side and partially along the rear. The ordinance requires them to hide the parking from the side and rear. They are reducing the impervious coverage on site by 2,610 ft. They are proposing piping that will go into the existing sewer system. The property manager will be responsible for having the refuse removed by walking the refuse outside to the curb. The snow will be removed by the property manager.

Chairman Stein stated they have to figure out garbage pick-up and snow removal.

Board member Smith inquired how much space there is between the fence and the back building. He inquired if it will be accessible by the owner of the factory in the back.

Mr. Chewcaskie stated they can provide a gate for access if that's what the board wants. The snow can be removed off site.

Mr. Hubschman stated the plan was revised to address the concerns in the board engineer's letter.

Board member Morf inquired about stormwater drainage.

Mr. Hubschman stated the site presently has stormwater drains to go to the street.

Board member Friedman inquired if there is a fire in the rear of the building, how does fire apparatus get in and out of the site to attend to the fire.

Mr. Hubschman stated there is a hydrant one block up on the side. It is a fully sprinklered building with required fire code standards.

Board planner Reiter requested clarification of the buffer strip. Ms. Reiter inquired about drop offs, pick-ups, and deliveries.

Mr. Hubschman stated they will have arbor vitae that would be 6 ft. high. He stated on the west side, it's 7 ft. and meet the requirement. He stated there is street parking and there is room in the lobby for package drop off.

#### **Questions from Residents:**

Mary Sullivan, resident, inquired about the total number of apartments.

Mr. Chewcaskie stated it will have a total of 8 apartments with one affordable housing apartment. They are required to have 15% set aside (1.2) for rentals.

Barry Doll, 97 Highgate Terrace, inquired about the square footage of the property. He inquired about the requirement and if there was a traffic study done. He asked if there is a county road associated with the application.

Mr. Hubschman stated it's 9,902 sq. ft. There is no requirement. He stated no, there is no county road.

Mr. Chewcaskie stated a traffic study was provided.

Thomas Brennan, architect, President of Thomas Brennan Architects, 133 W. McDermott Drive, Allen, Texas, stated as shown on the floor in Exhibit A-1, there are 15 parking spaces in the garage. He explained there is a lobby area to the right and a package room with the mailboxes. A key fob is needed to go up to the apartments on the upper floors. There are four units per floor. The one-bedroom apartment is 766 sq. ft. with a kitchen, dining area, and a large master bedroom and bath. The second one bedroom will be designated as the affordable unit. It will be same size as the market unit. The two-bedroom units will have a larger living room, dining room area with two bedrooms and two baths. All of the units will be sprinklered with NFPA 13 system. Mr. Brennan stated the units are nice, airy, and bright. The HVAC system will be a P pack system that will be in the living room and bedroom areas the tenants will have immediate control of. There are no units on the roof. Mr. Brennan stated they meet the 40 ft. height restriction. There is a flat roof with no mechanical surfaces. It has a nice residential feeling in a contemporary version.

Ms. Reiter inquired which unit will be the affordable one. They will not be meeting the requirement and the borough will not receive credit. It has to be a two bedroom or possibly a three-bedroom unit.

Mr. Brennan stated the one-bedroom unit will be the affordable unit.

Mr. Chewcaskie stated they will do whatever is necessary for the borough to receive credit.

Chairman Stein stated, should the application be approved, a two-bedroom unit is required to fulfill the affordable housing requirement.

Ms. Reiter stated it should be a three bedroom, but there isn't a three-bedroom proposed. She recommended the affordable unit be a low income household.

Board member Smith stated he was appointed by Mayor and Council as liaison for affordable housing. He believes the planner is correct, but if it's 8 units, one has to be affordable housing. It doesn't specify if it has to be a two or three bedroom unit. It depends on the municipality.

Chairman Stein stated, should the application be approved, they just need to state that it has to comply with the town's fair share agreement.

Mr. Chewcaskie stated they will comply with the requirements of the settlement agreement. It's complicated when it's only 8 units.

Mr. Smith stated he had consulted with the borough attorney. He had stated if it's less than 10 apartments, at least one apartment has to be affordable. He did not specify how many bedrooms it needs to be.

Board member Morel requested the architect and engineer conform to the number of allocated parking spaces. Architectural renderings show 16 and engineer's plan shows 15 parking spaces.

David Spatz, planner, Community Housing & Planning Associates, Inc., 60 Friend Terrace, Harrington Park, presented Exhibit A-3, the planning report that was submitted with the application and described the photos and demographics of the area. A D1 use variance is needed as the building will be fully residential and a D variance for density. Mr. Spatz stated C variances are being sought for rear yard setback, side yard setback, building and improved coverage, and parking spaces. The site is well situated for the property as there are multi-family developments directly across the street in the B-1 zone. The site is large enough to support the proposal and provide substantial parking. They are only lacking in one parking space. The proposal meets purposes A, G, and I in the municipal land use law. The reexamination report of the master plan recommended that residential development be encouraged. Mr. Spatz stated the Brewster Arms development across the street is a much larger site that are conforming. He explained, however, the apartments on 24 W. Church Street, has 24 units and provides a density of 57 units. They are significantly below what other developments in the area are in terms of density. The traffic report submitted indicates there is no negative impact from the traffic provided by the site. The landscaping will enhance the property and will provide the proper buffer. Mr. Spatz stated the apartments provide smaller spaces typical of SMART growth policies. The property on the side street is not appropriate for commercial use. There is less visibility on the side street. The site can accommodate the proposed density and is not out of character with the area. It is a better design than the older buildings there. Mr. Spatz stated entertainment venues would generate more traffic and require more parking. He stated even though it is in a commercial zone, they are surrounded by multi-family developments, there would be a negative impact with more traffic, noise, and parking. The front yard is conforming, consistent, and will have a conforming street scape along Church Street. The rear yard requirement is 25 ft. and they are at 23.78 ft, which there will be little to no impact.

Chairman Stein stated, should the application be approved, an easement will be required.

Mr. Spatz stated a gate can be provided. There will be a landscape buffer, also. The proposed building will have 55.44% coverage and improved coverage 73.64%. There will be improved drainage that will mitigate the slightly bigger building. The increased number of units will not have a substantial negative impact to the site. Residential uses are permitted in the zone and what is being proposed is consistent with the neighborhood.

Ms. Reiter inquired if any freestanding or wall signs are being proposed. She stated everyone knows retail has been struggling since the pandemic and the growth of e-commerce. She confirmed that Mr. Spatz had stated the new residence can provide customers and employees for some of the surrounding businesses.

Mr. Spatz stated there won't be any freestanding signs, only the number of the building. Yes, it can bring clientele to the businesses and employees who can walk to work.

Chairman Stein inquired about guest parking. He asked if there will be assigned spots. He inquired if the elevator can accommodate a stretcher.

Mr. Spatz stated the required parking includes guest parking. There aren't any visitor spaces designated on the site. Mr. Spatz responded yes.

Mr. Chewcaskie stated they will assign one space per unit and the rest will remain open.



Mr. Rivas inquired if the governing body deliberately x'ed out the no commercial feature. He inquired how he articulates enhanced proof. He inquired if there are any other special reasons that would lend itself to the approval of the application aside from pointing to across the street. Mr. Rivas stated they are required by the Medici test to articulate the special reasons.

Mr. Spatz stated they require mixed use, but this part of Bergenfield has residential and multi-family uses, the mixed uses might work on Washington Avenue or a main street. It's not appropriate to have commercial use on a side street. The enhanced proof is that the property can support and is well suited for the use being proposed, the site itself and the surrounding area. Mr. Spatz stated he provided testimony on site suitability, consistency with the neighborhood development, and the property can support it both in use and density. He stated he compares how projects stack up to the zoning laws, stated 3 purposed that fall under the municipal land use law, sufficient uses, and how it is a beneficial enhancement to the surrounding area.

Mr. Morf stated he didn't see any provisions for exterior down lighting and along the back. There shouldn't be any dark areas.

Mr. Hubschman stated there will be three types of lighting. There will be lighting in the rear and on the right side. There is some spillage of lighting on the left side.

Chairman Stein stated, should the application be approved, they will require lighting along the entire perimeter.

Mr. Smith inquired what the requirements are for a building going up to 40 ft. high. There have been changes in the last few months with the zoning ordinances, especially what can be done in zones B-1 and B-2. He stated in the ordinance, a building higher than 30 ft. should have commercial use on the bottom floor. Mr. Smith stated Mr. Spatz' testimony is based on the traffic report. Mr. Smith stated there is a conflict as the traffic report was done in August 2023 and his report is dated June 2023.

Mr. Spatz stated he does have them, but does not recall them. They are before the board seeking a use variance because they don't want to put commercial on the ground floor. The traffic report indicated there was no significant or negative impact being made by the proposal. Mr. Spatz stated he read the traffic report.

Mr. Chewcaskie stated prior to the issuance of Mr. Spatz' report, there was a preliminary traffic analysis done.

Mr. Smith inquired if the traffic expert was on the ground or if the study was done by the computer. He should come to Church Street and look at the traffic. There are buses that go up and down that street and there are issues with the line of sight. The street is not wide enough for the buses, the garbage trucks, and delivery vehicles. There is going to be more than a 1 car increase impact made by the apartment complex. Mr. Smith asked another traffic study be done. A left-hand turn is going to back up traffic. There is no mention of the train in the report. He would like the traffic expert to explain there are no traffic problems, especially with the sun glare.

Mr. Chewcaskie stated the traffic expert was at the site. They will bring the traffic engineer if the board wants to hear from him.

The majority of the board requested the traffic engineer to testify.

Mr. Chewcaskie requested the application be carried to the next meeting.

Chairman Stein stated no further notice is necessary. The application will be heard first.

## **2. RFQ's for 2024 Professionals**

Chairman Stein stated there are RFQ's for board attorney, engineer, and a planner and are already out there. They are due on December 8, 2024. The board will vote for the 2024 board professionals at the reorganization meeting in January.

## **MOTION TO ADJOURN MEETING**

**Motion By:** Mr. Smith

**Second By:** Chairman Stein

**All ayes. None opposed.**

The meeting was adjourned at 10:39 p.m.

Respectfully Submitted,

A handwritten signature in black ink that reads "Hilda Tavitian". The signature is written in a cursive, flowing style.

Hilda Tavitian, Clerk  
Zoning Board of Adjustment