

**Zoning Board of Adjustment  
Regular Meeting Minutes  
April 4, 2018**

The Regular meeting of The Borough of Florham Park Board of Adjustment was called to order on Wednesday evening April 4, 2018 at 7:00p.m., in the Municipal Building, 111 Ridgedale Avenue, Florham Park, New Jersey.

**Members Present:**

Mr. Michael Cannilla, Chairman  
Mr. Jeffrey Noss, Vice Chairman  
Mr. John Novalis  
Mr. Rick Zeien  
Mr. Brian O'Connor  
Mr. Ron DeRose  
Mr. Jason Jensen

**Members Absent:**

**Also Present:**

Mr. Kurt Senesky, Esq., Board Attorney  
Mr. Robert Michaels, Board Planner

**Call to Order:**

Mr. Cannilla, Chairman called the meeting to order at 7:00p.m.

**Statement of Adequate Notice:**

Mr. Cannilla issued the following statement:

"I hereby announce and state that adequate notice of this meeting was provided by the Secretary of this Board by preparing a notice, specifying the time, date and place of this meeting; posting such notice on the bulletin of the Municipal Building; filing said notice with the Clerk of the Borough, forwarding the notice to the Florham Park Eagle, and forwarding, by mail and fax, the said notice to all persons on the request list, and that said notice will be included in the minutes of this meeting. This action is in accordance with the N.J.S.A. 10:4-6, et sec., "Open Public Meetings Act."

**Approval of Minutes:**

1. *Approval of Minutes from the February 7, 2018 Meeting.*

Mr. O'Connor made a motion to approve the minutes, second by Mr. DeRose.

Roll Call: On a roll call vote all members present and eligible voted to approve the minutes.

*Approval of Minutes from the February 21, 2018 Meeting.*

Mr. Zeien made a motion to approve the minutes, second by Mr. Novalis.

Roll Call: On a roll call vote all members present and eligible voted to approve the minutes.

**Resolution of Approval:**

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| <b>2.</b> <b><u>David &amp; Kimberly Rubelowsky</u></b><br>25 Townsend Drive<br>Block 2601, Lot 30 | <b><u>Application # BOA 18-5</u></b><br>front and side yard setback |
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Applicant is seeking approval for front and side yard setbacks in connection with an addition.

Mr. Novalis made a motion to approve the resolution, second by Mr. Zeien  
Roll Call: On a roll call vote all members present and eligible voted to approve the resolution.

**Use Variance:**

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| <b>3.</b> <b><u>Artis Senior Living</u></b><br>301 Columbia Turnpike<br>Block 1602, lot 5 | <b><u>Application #BOA17-13</u></b><br>use, preliminary & final site plan<br>R-25 zone |
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Applicant is seeking approval for an assisted living facility.

Carried from the February 7, 2018 meeting without further notice or publication.  
Applicant has requested to be carried to the May 2, 2018 meeting with no further notice or publication.

Mr. DeRose made a motion to carry the application, second by Mr. Noss.  
Roll Call: On a roll call vote all members present and eligible voted to approve the resolution.

**Request for Certification of a Pre-Existing, Non-Conforming Use:**

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| <b>4.</b> <b><u>Frank Marinaccio</u></b><br>70 Burnet Road<br>Block 1502, Lot 1 | <b><u>Application # BOA18-6</u></b><br>R-15 Zone |
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Applicant is seeking a certification of nonconformance for a three (3) family dwelling located in the R-15 zone.

John Johnson, Esq. represented the applicant. Frank Marinaccio was sworn in. Mr. Johnson explained that they are requesting the Board of Adjustment to certify a 3 family home as a pre-existing, non-conforming use.

In response to Mr. Johnson's questions, Mr. Marinaccio testified that he is the owner of 70 Burnett Road. To the best of his knowledge, the home was built in 1852. Mr. Marinaccio's parents purchased the home in 1929, and in 1934, he was born in the home. He lived there throughout his youth. It has always been a three family dwelling. In 1986, his mother's estate conveyed the property to him.

Mr. Marinaccio had a number of exhibits that include the deed from 1929 when his parents purchased the home, and the deed in 1986 when he was conveyed the home from his mother's estate. The Florham Park Tax Assessor's office lists the home as containing three apartments in the R-15 zone on the property record card. Other information obtained from the tax assessor includes documents describing the home as a three family dwelling with three kitchens, three living rooms, and three bathrooms. They type of use is described as a three family 1.5 story structure built in 1852.

Additionally, the NJ Department of Community Affairs has the home registered as a three family home.

Mr. Marianaccio contended that this three family use pre-existed and pre-dated the 1954 Florham Park zoning ordinances that created residential zones. He is asking the Board to certify that fact and should be recognized as a three family home.

Bob Michaels stated that a copy of the 1954 Zoning Ordinance and also a 1954 zoning map has been found and he has reviewed it. He agrees that residential zones were established by way of this ordinance.

Mr. Novalis asked why Mr. Marinaccio is asking for this certification at this time, when he has owned the home for many years.

Mr. Marinaccio responded that he is 83 years old and he wants the record to be set straight and resolved now so that his children will have no problems.

Mr. Novalis continued that his fear is that the family will someday sell the home and the use will remain intact even though someone else will own the home.

Mr. Senesky stated that it is Mr. Marinaccio's right to do that. It is not up to the town and whether they agree with it or not. He would be entitled to sell it as such. If it is found to pre-exist the ordinance and this Board certifies that, then it is entitled to continue. But there are restrictions. If it is abandoned, it can no longer continue. If it changes into something else, then it will also lose that status. Also, if it is totally destroyed, then the right to the use is gone as well. The law does not favor pre-existing non-conforming uses, but it allows them to continue as a property right.

Mr. Zeien asked if all the apartments are occupied. Mr. Marinaccio responded that they are.

Mr. Johnson asked Mr. Marinaccio if the home has always been used as a three family home from the time he was born to the present time, to the best of his knowledge. Mr. Marinaccio confirmed that to be true. He lived there all of his life until after he was married for 5 years and was able to buy his own home in Florham Park. Even after that, it was always occupied as a three family home.

Mr. Noss confirmed that Burnett Road is in Florham Park, but on the Madison border, near Madison High School. Mr. Marinaccio verified that, and in fact, a small portion of his property lies in the Borough of Madison, so he does pay some property taxes to Madison.

The Board confirmed that there are separate entrances for each apartment and there are no interconnecting doors between apartments. One apartment has a kitchen, living room, two bedrooms, and one bath. Second apartment has a kitchen, living room, bath, and two bedrooms, third apartment has kitchen, living, and one bedroom. There are all separate utilities. There is no garage. Parking is all outside on two paved area areas.

Mr. Zeien questioned whether the outside parking has to be addressed. Mr. Senesky stated that if a pre-existing, non-conforming status is affirmed, it will also carry all the other aspects of that use. If it was built today it would need to meet the requirements of the RSIS.

Mr. Noss asked if it would be possible for the owner to sell the units, rather than rent them. Mr. Senesky stated that it would not affect the pre-existing non-conforming status.

Mr. Cannilla confirmed with Mr. Senesky that reasonable conditions can be written into the resolution.

Bob Michaels agreed that Florham Park cannot control or distinguish the type of ownership of the dwelling. He also agreed that the building cannot expand and the apartments cannot be reconfigured.

Bob Michaels also informed the Board that when a zoning ordinance is enacted, the Zoning Officer is able to make this declaration if a property owner requests it within one year of the ordinance passage. After that, the Board of Adjustment must make that declaration.

He continued that since the ordinance establishing single family zones was enacted in 1954, it is this Board who must make the declaration for Mr. Marinaccio.

Mr. Senesky added that these applications tend rely on the testimony of credible witnesses who can verify facts and a timeline. There is no particular form of proof to these cases.

Bob Michaels said that he has been involved in a couple of these applications throughout his career and oftentimes there are gaps in the information. He feels that this particular application shows a detailed timeline back to 1934 and finds the application to be very complete.

Mr. Johnson thanked the administrative staff at Borough Hall for their assistance with his client.

There were no other questions or comments. There were no comments from the public.

Mr. Cannilla called for a motion.

Mr. Zeien made a motion to approve the declaration of a pre-existing non-conforming use, second by Mr. Jensen.

Roll Call: On a roll call vote all members present and eligible voted to approve the application.

The 2017 annual report of Board of Adjustment applications was distributed to the members of the Board of Adjustment. Mr. Cannilla recommended that the members review this report and vote to approve the report at the next meeting on April 18, 2018. Mr. Senesky added that the purpose of this report is to advise the Planning Board and Governing Body on the nature of the applications come before the Board. The Board can also make suggestions on some amendments to the zoning ordinance that might be appropriate.

The issue of porticos was raised. There is a question on whether or not a portico or "roofed overhang" over a front porch is permitted to be in the setback. The ordinance states that "unenclosed" front porches no larger than 5 feet x 6 feet may protrude up to 5 feet inside the setback.

The Building Department is under the impression that only the porch is permitted to be in the setback and any overhang will need a variance.

The Board disagreed and noted that they do not consider an overhang to be an enclosure. They felt that the intent of the ordinance was to allow an overhang no larger than 5ft. x 6ft., as long as it does not include sides, making it "enclosed". The Board has routinely permitted these types of requests without the need for a variance, provided that it meets those size limitations.

Kurt Senesky stated that he will write a letter to the Zoning Official to inform her of the Board's interpretation of the ordinance.

There were no other questions. Seeing no other business, Mr. Cannilla called for a motion to adjourn.

On a motion duly made and seconded the meeting was adjourned at 8:00p.m.