

**Zoning Board of Adjustment
Regular Meeting Minutes
May 1, 2019**

The Regular meeting of The Borough of Florham Park Board of Adjustment was called to order on Wednesday evening, May 1, 2019 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. Brian O'Connor
Mr. Jason Jensen
Ms. Elizabeth Roseman (1st Alt)
Mr. Ted Trautman (2nd Alt)

Members Absent:

Mr. Rick Zeien

Also Present:

Mr. Kurt Senesky, Esq., Board Attorney

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:

Approval of Minutes from the April 3, 2019 Meeting.

Mr. Jensen made a motion to approve the minutes, second by Mr. Noss.

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

Resolution of Approval:

1. **Jonathan Guerrieri**
20 Kenneth Court
Block 2002, Lot 30

Application # BOA 19-4
R-15 Zone

Applicant is seeking approval for a front yard setback in connection with a porch.

Mr. Noss made a motion to approve the resolution, second by Mr. Jensen

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

C-Variance:

8. **Joseph DeFillippes**
20 Brooklake Road
Block 4101, Lot 28

Application # BOA18-14
R-15 zone

Applicant is seeking approval for building height, building coverage, lot coverage in connection with a detached garage. Carried from the October 17, 2018 meeting. Applicant has re-noticed and republished.

The applicant is now represented by Harvey Gilbert, Esq. John Ferrante, Engineer, and Joe DeFillippes, applicant remained sworn in. Mr. Gilbert stated that he reviewed the file, and is aware of the circumstances. He intends to address the issues on both lot 28 (B) and lot 16 (A).

Upon questioning by Mr. Gilbert, Mr. DeFillippes confirmed that he is the owner of lots 16 and 28. They were the subject of a 2004 subdivision. There were conditions placed on lot 28. The construction of the home on lot 28 occurred two years later. There were regular inspections and an eventual C/O was issued for this construction. Mr. DeFillippes believed that the conditions of the subdivision were complied with and he was somewhat surprised the he received violations. He doesn't remember the differences of what was approved and what was built.

Mr. DeFillippes reiterated that he obtained all inspections and a C/O when building the house. He did not try to hide anything during the process. He stated that he realized the shed was a mistake when he did not get permits. But he said that he was replacing a shed that was roughly the same size. When questioned about the same size, it was revealed that the former shed was 12ft x 20ft, and the new shed is 24ft x 20 feet. The Board agreed that the new shed is not the same size and, in fact, is double the size of the original shed. Mr. DeFillippes responded that it is not much different than the sheds that are on adjacent properties.

Mr. Cannilla said that Mr. DeFillippes testified that he would meet the requirements of the original subdivision resolution and it is his obligation to follow those requirements. The lot coverage was to be 30% and now it is 40%. It also included limiting the building coverage to 12.89% including the garage (shed) on Lot 28(B) and it is now at 22%. He built a home that was bigger than what was allowed. Mr. DeFillippes said that his plans were approved by the town and if it was too big, they should have denied it. The first set of plans did not include a deck, but the second set did include the deck. However, he ultimately did not build the deck at that time. He said he came in at a later date with plans to build the deck, he said they were signed off on by the town and he built the deck. When questioned, Mr. DeFillippes admitted the patio was not on the original plans.

Mr. Senesky questioned the driveway traversing the two lots. Mr. DeFillippes replied that it has always been on both of the lots. Mr. Trautman asked him how he built a home that is different that the plan. Mr. DeFillippes responded that the house is the same as the plan, and it was inspected by the town.

The meeting was opened to the public.

Barbara Nevius, 89 West End. Asked if there is a foundation under the shed. Mr. DeFillippes said it is on a concrete slab.

John Ferrante, Engineer, stated that they now have the records of the subdivision plat.

A-1: letter submission of April 24, 2019

Mr. Cannilla reiterated that the building and lot coverage exceed the resolution condition. The resolution limited the coverages to 12.89% building coverage on lot B and 25.3% lot coverage. It far exceeds these numbers.

Mr. Ferrante stated that the resolution stated that Lot A was to have 14.79% building coverage and 35.27% lot coverage. Lot B was limited to 12.89% building coverage and 25.3% lot coverage. The existing gravel was to be removed.

Mr. Ferrante stated that the subdivision was approved on 9/13/04 and the footing and foundation permit was issued on 11/14/05. The lot grading plan is dated 11/22/05 and the architectural plan is dated 12/30/05. The architectural plan stated 15% building coverage and it was approved by the town.

Mr. Cannilla asked Mr. Ferrante if the architect knew that there was a building coverage limitation due to the subdivision. Mr. Ferrante did not know. He said the construction official usually checks the file to see if there were any limitations on the property. He does not know the procedure in Florham Park. Mr. Ferrante said the plans also noted that the improved lot coverage on the new lot was 21% where 30% is permitted. These plans were submitted and approved for construction by the town.

After some discussion, both Mr. Cannilla and Mr. Ferrante concurred that the resolution conditions indicate that the lot coverage was to be limited so that the aggregate of the two lots would be 30%.

Mr. Trautman confirmed that the house is larger because no one from the town double checked. Mr. Ferrante continued that on 12/30/05 the architect revised the plan to push the house back from 40ft to 48ft. At that time, he said the building coverage remained the same but the lot coverage was increased to be 25.2%. The deck was now on the plan, however, it was not built at that time. On 9/6/06, a C/O was issued. The deck was constructed at some point after that.

On 5/8/08, a notice of violation for the deck was issued because he did not have a permit. Mr. DeFillippes stated that he went to the building department and the construction official, Steve Jones, said that he can build the deck.

Mr. Ferrante went on to say that in 2016, the shed was constructed, without a permit. This led to a notice of violation that was issued in 11/9/2016 for this shed.

Mr. Ferrante also said a condition of the resolution stated that prior to the issuance of a construction permit for lot 28, the gravel area was to be removed from both lots, and sufficient asphalt to be removed from lot 16 in order reduce the lot coverage from 35.2% to not more than 30%. This was not done.

Mr. Cannilla confirmed that the deck was included in the 25.2% that was reported by the architect. He asked if asphalt was included. They were not sure because the asphalt was not shown.

Mr. Novalis said that if the deck was built after the C/O was issued, how did they get out the back door? What was on the plans? He was not sure how the C/O was issued. Mr. DeFillippes said he did not have anything there for a while, and only answered that he did get a C/O.

Mr. Gilbert asked Mr. Ferrante if it is typical for a property owner to present a resolution to the building office. Mr. Gilbert said that Mr. Cannilla is implying that he had a responsibility to do so. Mr. Ferrante replied that the building office normally checks internally for a history of the property or conditions.

Mr. Cannilla asked if the resolution was given to the architect at the time, and Mr. DeFillippes said he did not do that, and he did not even think about it. Mr. Cannilla reminded him that he testified to certain conditions. Mr. DeFillippes said he did not think about it at the time, and admitted he made a mistake. He also said that the Construction Official should have pointed the issues out to him at the time so that it all could be been corrected immediately.

Mr. Cannilla asked if it occurred to him that when he built the garage/shed, he would be over on coverage. Mr. DeFillippes said he did not think about coverage numbers. Mr. Senesky asked if he knew that he needed a permit. Mr. DeFillippes said that he did not know he needed a permit. He did not think about it.

A 12/10/18 survey of both lots was presented by Mr. Ferrante. The lot includes a shed, gravel area, paved area, paver patio, deck and driveway. The building coverage on Lot 16 is now at 16.5% which is compliant with ordinance but not with the resolution (15%). The improved lot coverage exceeds 30%, and the existing shed does not meet the 10ft setback. Lot 28 does not meet building coverage requirements permitted by the resolution with or without the storage shed.

Mr. Cannilla felt that the building footprint should have matched the approved subdivision map and it does not.

Mr. Ferrante said that the shed needs a height variance, and the side yard setback is 9.9% where 10 feet is required. He noted that in 2005, the overhangs were not included in the architect's calculations. He said that he calculated everything in his coverage numbers.

A-2: Lot 16 and Lot 28.

Lot 16 will be brought into compliance with the resolution as much as possible. They will remove all the gravel and 347 feet of asphalt. They will move the shed into a compliant condition. This will meet the resolution requirement.

They will remove the gravel in the back of lot 28 and removed 600sf of paved asphalt. They will still need variances.

Mr. Cannilla asked how the building coverage increased. Mr. Ferrante replied that the front steps were covered, the rear steps were covered, and the deck was roofed. Mr. Ferrante said the overhangs were also not included when built and that accounts for 225sf. Also, the house is 2 feet longer or wider than the plan. The garage was constructed.

The figures were recalculated and the building square footage that exists today is now 3229sf or 23.49%, where they were limited to 12.89% as per the resolution.

A-3: Geotechnical map

Mr. Ferrante said the proposal is not that different than what exists now on the adjacent properties and in the area as depicted on the map. The hardship is that the lot is small making it easy to get out of compliance. Mr. Cannilla pointed out that there is no hardship that is associated with this application. Mr. DeFillippes is the one who subdivided the lot.

Harvey Gilbert stated that they are trying to explain how this got out of control. Mr. DeFillippes made a mistake, but now wants to bring it as close to compliance as he can. It was not intentional. Mistakes were made. He said that they will remove the gravel and the asphalt and that will bring the lot coverage down to 39%.

The building coverage does exceed the requirement at 23.5%. Mr. Ferrante noted that the house alone exceeds the requirements and they will need a variance.

Mr. Novalis asked if they would consider removing the garage since it was built without a permit. It is 600sf and will not pass inspection because there are no footings. It is also over the height limit at 16feet tall. It will help reduce the building coverage.

Mr. DeFillippes said that he is able to install footings, according to the construction official.

Mr. Ferrante stated there are ways to reduce the lot coverage. In addition to removing the asphalt and gravel, it can be further reduced by removing the patio which will bring it to 32.9%. Removing the deck will bring it to 31.3%, and some additional front pavement removal will bring it to 30%.

Option 2 is to remove the gravel, asphalt, patio and the shed to bring it to 29%. He reminded the Board that he is just stating facts and this has not been discussed with the client. He also said that these elements are not uncommon for this area. He added that the shed cannot be seen from the road and it borders land that is owned by PSEG. It is in keeping with the character of the neighborhood.

Mr. Senesky said that the negative criteria can be satisfied by that argument, but what about the positive criteria that would allow him to have this amount of coverage? Where is the hardship?

Mr. Novalis asked who lives in the house on Lot 16. Mr. DeFillippes said that he has tenants in there.

Mr. Cannilla said that there is 25.23% lot coverage on Lot 28 as per the resolution. He asked them to clarify the request.

They stated four variances. Building coverage to be 23.5% where 12.89% is required. Improved lot coverage is 39.7% where 25.23% is required. Shed/garage height of 16.2ft where 15ft is required. Side yard setback on the house of 9.78ft and 9.89ft where 10ft is required.

Mr. Cannilla asked if overhangs were wider than 18 inches. If they are more, then the setback deficiency could be more. Mr. Ferrante said that he would check.

Mr. Noss asked what is stored in the shed. He asked why it must be so large. Mr. DeFillippes said that he stores garage door supplies related to his business. Also, he has a plow and other outdoor equipment.

Ms. Roseman asked about the first notice of violation issued in 2016. She asked when he submitted a permit application but Mr. DeFillippes did not remember. Mr. Cannilla said it was 2018. Ms. Roseman was not convinced that Mr. DeFillippes did not know the procedure since he was told he needed a permit with the original shed. She did not understand why he waited almost two years to apply for the permit when facing possible fines.

Mr. DeFillippes replied he was working on getting an attorney and was in contact with the construction official about the situation.

The meeting was opened to the public.

Barbara Nevius, West End Avenue. Asked if the shed was removed, would the coverage then comply. Mr. Ferrante replied no. She then asked if the deck and the overhangs were removed as well, would it comply. Mr. Ferrante said that it still would not comply.

Mr. Cannilla noted that they had an obligation to comply with the subdivision conditions.

Mr. Gilbert replied that they will make Lot 16 comply with the resolution

Mr. Cannilla said that lot is not the subject of this application. Mr. Gilbert said that lot 28 will be made as compliant as reasonably possible.

Jason Jensen asked why they are making the concessions on Lot 16, and not Lot 28 which is the subject of this application.

Mr. Gilbert replied that they understand that they are way beyond where they should be, but you cannot unpick a tomato. They are looking for ways to get within the bounds of comfort.

Mr. Cannilla clarified that the request is that they want what is there now, with no concessions.

Mr. Gilbert stated yes. His client got the permits for his house construction, and did not know that it was not built in compliance. He did not build it and he did not check the numbers. He noted that it was not

checked by the town building department either. He is not happy about being in this situation. He found himself in this situation where the people he hired did not follow the rules.

Mr. Cannilla said that there are many elements that were added without permits.

Mr. Cannilla clarified they are only willing to remove what the subdivision required which is the macadam and the gravel. That is his obligation as part of the subdivision approval.

Mr. Noss said that the applicant's engineer suggested ways to reduce the coverage. He asked if they were amenable to making some concessions. Mr. Gilbert said that he would discuss them with his client.

Mr. Noss added that the garage was built illegally and what would happen if we approve it. Mr. Senesky replied that it would need to comply with the building code.

Mr. Gilbert asked for a break to confer with his client.

Break.

After conferring with his client, Mr. Gilbert notified the Board that he wanted to carry the application to a future meeting so that a further study of the options can be discussed.

Mr. Cannilla called for a motion to carry the application to June 5, 2019 without further notice.

Mr. Jensen made a motion to carry the application to June 5, 2019, second by Mr. O'Connor
Roll Call: On a roll call vote all members present and eligible voted to carry the application.

2018 Annual Report:

Mike Cannilla stated that the Annual Report will be forwarded to the Planning Board and the Mayor and Council. This report lists the applications and actions that were taken by the Board of Adjustment in a given year. He said the report can be used to identify any trends and frequent requests that may suggest that a change in bulk zoning requirement(s) should be explored.

Mike Cannilla said that the Board can make suggestions that would be forwarded to the Planning Board for further review. If the Planning Board agrees that an adjustment is warranted, then the recommendation is made to the Borough Council for review and approval.

Mike Cannilla asked that everyone review the report so that it can be discussed at a future meeting.

On a motion duly made and seconded the meeting was adjourned at 9:45p.m.

Marlene Rawson
Board Secretary

May 1, 2019