

**Zoning Board of Adjustment
Regular Meeting Minutes
March 16, 2022**

The Regular meeting of The Borough of Florham Park Board of Adjustment was called to order on Wednesday evening, March 16, 2022 at 6:30p.m. The meeting was conducted by virtual means utilizing the Zoom service in accordance with the guidelines set for by the State of New Jersey which explicitly permits a public body to conduct a meeting electronically during a state of emergency.

Members Present:

Mr. Michael Cannilla, Chairman
Mr. Jeffrey Noss, Vice Chairman
Mr. John Novalis
Mr. Rick Zeien
Mr. Jason Jensen
Mr. Michael Shivietz

Members Absent:

Mr. Brian O'Connor
Mr. Matthew Engel (1st Alt.)

Also Present:

Mr. James E. Polles, Esq., Board Attorney
Ms. Katherine Sarmad, PP
Mr. Michael Sgaramella, PE

Call to Order:

Mr. Cannilla, Chairman called the meeting to order at 6:31 p.m.

Statement of Adequate Notice:

Mr. Cannilla asked the Board Secretary if the statutory requirements of the Open Public Meetings Act had been met. Board Secretary Marlene Rawson responded that we are in compliance with the requirements.

Approval of Minutes:

1. Approval of Minutes from the March 2, 2022 Meeting.

Mr. Zeien 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.

Resolutions of Approval:

2. **CAJ Capital Investors, LLC** **Application #BOA 17-13**
301 Columbia Turnpike
Block 1602, Lot 5

Applicant is requesting a one-year extension of the Protection Period for the site plan and use variance approval to March 20, 2023.

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

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

3. Salvatore & Cynthia Hoo

Application #BOA22-02

6 Midwood Drive
Block 905, Lot 24 (R-15 zone)

Applicant is seeking approval for excess building and improved lot coverage.

Mr. Zeien made a motion to approve the resolution, second by Mr. Shivietz

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

D- Use Variance and Related Bulk Variances:

7. The Johnson Residence

Application #BOA22-01

76 Burnet Road
Block 1501, Lot 3 (R-15 zone)

Applicant is seeking approval to improve and develop the Property for use as a two-family structure with multiple accessory structures.

Carried from the February 2, 2022 meeting with no further notice or publication.

Simone Calli, Esq. represented the applicant. She stated that the plans were revised because of the concerns raised by the Board at the first meeting. Garage "B" was removed completely. Garage "A" will now function only as garage space. The home office space was removed.

A-2: revised power point presentation (23 sheets)

Michael Tobia, Planner for the Applicant, remained sworn in. He re-stated that the two family usage dates back to 1906 and predated the 1953 Zoning Ordinance. It is an oversized lot and is just under 30,000 square feet, which is nearly twice the minimum lot size. It is in the R-15 zone.

The revised site plan includes the complete removal of Garage "B" and 390 square feet of blacktop in the front of the garage (B). The parking area was reduced from four stalls to three stalls. This will meet the minimum RSIS compliance for a two family use that is five stalls (2 in garage).

The building coverage is reduced by 1000 square feet and is now 8.2% which is well under what is permitted. The lot coverage is now 22.1% and is well under what is permitted.

Garage "A" will be renovated to include parking for two vehicles and a storage area. Home office space was eliminated and all utilities were removed. There is only an attic and basement storage. A water line will be provided for a garden spigot and basic electric.

Three variances are no longer needed because of these changes. They are residential use variance for accessory structure, height variance and size of accessory structure. Garage "A" will now function as a garage only.

The setback will increase by 63 feet from neighboring property owner by the elimination of Garage "B".

Pictures of the subject home and other homes in the neighborhood were included in the power point presentation. Mr. Tobia showed the neighborhood conditions. Mr. Tobia stated that 80 Burnet is the only single family home. The other four dwellings are two and three family homes.

Burnet Road is a dead end with five Florham Park properties on it. It is dominated by two and three family properties. Numbers 92 Burnet and 94 Burnet are two family homes. Number 96 Burnet is a two family home with a cottage in the rear of the property. Number 70 Burnet is a three family home that was recently certified by this Board as a three-family home. There is also a home at 5 Carrigan Lane that is

a two family home. All this was confirmed through physical visits, observations of mailboxes and utility meters.

The subject property is the largest and the least dense of all of these properties. There are no neighbors that are on the other side of Burnet Road. It is all recreational uses and open space with wooded areas. All of the two and three family homes predate the zoning ordinance. Only the one-family home post-dates the ordinance. For these reasons, Mr. Tobia concluded that the property is particularly suited for this use and there are no negative impacts.

Mr. Tobia showed a rendering of the proposed site. Carrigan Lane has one two family home. The other five homes on Carrigan are single-family homes. He reiterated that two and three family homes on Burnet and Carrigan pre-date the 1953-1954 ordinance and all the single-family homes post-date the ordinance.

This site is particularly suitable for a two family use and would not be in conflict of what is in the neighborhood.

Mr. Tobia stated that the Board could consider the option of an approval of an expansion of a non-conforming use rather than a D-1 use variance. This Board denied certification of a pre-existing, nonconforming use. However, historical records show that this was a two-family use for a century. Case law indicates that they could request an expansion of a non-conforming use because there are substantial esthetic improvements proposed. Case law supports that if there is a substantial esthetic improvement, it can be expanded as long as it is not overwhelming.

There are no exterior changes proposed other than a new 10 x 16 unenclosed deck off the back of the home. There will be new siding, new windows, and roof and landscaping upgrades. The interior will be gutted and renovated. There is a minor expansion, but will produce greatly improved conditions. It will be made to look like a single family home.

Mr. Tobia said there is no substantial detriment to this. They will reduce the coverage on the lot. Building coverage is also reduced. The lot is nearly twice as large as what is required. They will remove the garage that is encroaching into the setback. This will create ample setbacks from adjacent properties. The parking will comply with RSIS design standards. It will fit in with the development pattern of the neighborhood. This is an isolated and unique lot on a dead end street. There is no impairment to zoning.

Mr. Tobia continued that the R-15 zone covers many hundreds of lots. This is a unique street in a remote area of town. Variance powers by a Board of Adjustment exist for these kinds of situations. The proofs show that there is no substantial impairment to the public good or to the zoning ordinance.

Mike Sgaramella confirmed that all plumbing will be removed and the septic tank will be properly abandoned as per health department requirements. They agreed to this.

Mike Sgaramella asked how it was determined that other two family uses exist in the neighborhood. Mr. Tobia replied that through a visual inspection and the observation of several mailboxes and two electric meters on those homes. He also has been inside two of the homes. They also looked at property record cards.

Mike Cannilla asked about the sanitary sewer project in that area. Mike Sgaramella replied that they are in the final design stages and the project will be out to bid shortly. He expects that installation will begin in summer to fall of 2022.

Mike Cannilla asked if they would agree to a condition that no C/O would be issued until the sanitary sewer is hooked up. They agreed to that.

Katherine Sarmad responded to Michael Tobia's option of an expansion of a non-conforming use. She stated that the 1954 Zoning Ordinance set this property in a single-family zone. She explained that a D-1

use variance is for a use that not contemplated in the zone. A D-2 use variance is for an expansion of a non-conforming use. She referred to case law on a pre-existing, non-conforming use in which the new owners did not protect themselves by acknowledging the non-conforming use. In that instance, it was considered abandoned. However, she also said that there is not much case law on a denial of non-conformity and what the denial does to the use.

Katherine Sarmad stated that several years ago this property was before this Board for a Certification of a Pre-existing, Non-conforming use. After hearing testimony, the Board denied this request. That denial was not appealed. For that reason, it could possibly be considered abandoned. Nevertheless, the sale proceeded forward.

Katherine Sarmad concluded that this should be a D-1 use variance in her professional opinion. Two family uses confirmed only by mailboxes and physical visits may not be enough.

Michael Tobia replied that abandonment is a delicate issue when it pertains to non-conforming uses. The applicant at that time hired an attorney, engineers, and consultants to continue the use. Mr. Tobia agreed that the denial clouds the record. However, he said the proofs described would also apply to the the D-1 proofs.

Katherine Sarmad agreed that the positive criteria presented could apply to a D-1 use variance. She concurred that people's property rights are in the balance as well.

Jeff Noss asked if there is unequivocal proof that two and three family homes exist as stated. It was noted that none have been certified by this Board except for 70 Burnet Road who successfully received a certification from this Board a few years ago.

Rick Zeien observed that this is an oversized lot. A minor addition is proposed out the rear. What would prevent them from building much bigger in the future?

Michael Tobia replied that any addition would trigger another D-variance. There are strong controls in place when a D-variance is present. A condition that no further expansion without Zoning Board approval can be placed in the record.

Jeff Noss asked if a precedent would be set if a two-family use was approved. What would prevent others in a single-family zone from making the same request?

Michael Tobia stated that this is a unique neighborhood and the request is bolstered by the substantial nature of the proposed site improvements. Every case is fact sensitive and any application would need to appear before the Zoning Board.

Mr. Cannilla said this is a pre-existing condition, it predates zoning, and the property has been functioning as a two-family use. There are very few of those properties in Florham Park. There are historical records that support this.

Jeff Noss felt the use was abandoned when they sold the home. Michael Tobia continued that he believes there is site suitability for a D-1 use variance and it has always existed this way for so long. Every case stands on its own. A D-2 use variance would apply to a pre-existing nonconforming use that predates the code. It is vested with property rights and the land. These cases do not create precedence. They are weighed heavily on site facts and the Master Plan.

There was a question on the legal notice. Simone Calli said they would proceed with a D-1 use variance. Their legal notice is adequate and covers both. Katherine Sarmad also reviewed the legal notice and agreed that it is correct.

John Novalis asked of the other two and three- family homes in the neighborhood are legal. He also felt that other properties could come in and ask for this as well. Michael Tobia did not know if they have a D

variance or not but noted that the dates of construction of the other homes pre-date the 1954 Zoning Ordinance so they were initially constructed legally.

Mike Cannilla added that it is not relevant how other homes are functioning. There is no documentation provided on the other homes. Jeff Noss still felt that it is important to know whether the other homes in this neighborhood are approved for this use.

Mike Cannilla asked if we should consider them permitted without documentation.

Michael Tobia said that he documented the land use pattern in this neighborhood. Whether or not there are certifications or D-variances, they exist today and the area character has been established. They all predated the 1954 ordinance and that is persuasive. Michael Tobia responded that there are many non-conforming uses in towns. Mr. Cannilla said it is up to the landowner to get the certification when a change happens.

Simone Calli asked if he means that if they are not legal, you will not consider those in terms of site suitability and character of the neighborhood.

Mr. Tobia continued there is a multitude of nonconforming structures in every town. Very few of them get certifications. He can do more research if the Board wants to see if there is a record of any certifications. However, he is not confident that there will be records of certifications on these homes.

James Polles also responded that particular suitability is appropriate to put on for facts and reasoning. They testified to whatever was seen. We heard his opinion on the negative criteria. He did not hear him say the word "precedent".

Jeff Noss clarified that it would be useful to have a sense of history of the other properties and whether they were approved for a two family use. It is currently an unknown fact that is relevant to him.

Rick Zeien commented that this is a unique neighborhood and he knows there is no other neighborhood like this in town. This Board recently gave approval to the three-family house. Families have lived in this neighborhood for years and many of these properties changed hands. No one in the Borough ever said anything about these multi-family houses when these properties changed hands. We are just looking at this case only.

Jeff Noss felt that if approved we may create a "micro" two-family zone and the Board cannot alter the Master Plan.

Katherine Sarmad responded that the Board is able to utilize other properties for information even though they are not part of this application. They can get a flavor of the neighborhood from them. A certificate of non-conformity could have been issued to any of these properties within a year of the establishment of the zones. It would have been issued by the Zoning Officer and no Board appearance would have been required. The Board would have no say in that.

She added that the Certification of a Pre-existing Nonconforming Use offers a layer of legal protection from liability from the property owner. That was sought and denied which is why they are here.

Also, Borough records show that there was a subdivision of this property in 1980. The Borough was aware that the structures were on the subdivision map and no questions were asked about the use of the property. The Board is tasked with weighing the proofs for a D variance. You must stay confined to what is being asked of you.

Mike Cannilla clarified that we must focus on how this particular property is appropriately suited for this use. The density has been reduced. They could put a much larger home with much more coverage. The D variance will lock in the density for the property.

Jeff Noss wondered what the difference is between a rental property and a two family home. He said that there are lot of rental properties in Florham Park.

Michael Tobia responded that this property would be owner-occupied but rent the upper level to a tenant. He noted that it is discouraged by law to discriminate between owners and renters.

Mike Cannilla thought that it is illegal to have two unrelated families in a single family home.

John Novalis commented that if they receive a D-1 variance, they could still sell the property. Nothing will stop them from selling it or renting it. We cannot say that they must stay in there indefinitely. How could we enforce that? He did not think that it would be binding. What if they want to move away?

Mike Cannilla wanted to clarify that the testimony is that this will be owner-occupied and make it a condition. Otherwise, he wants the Board to disregard that testimony. He assumed that the owner must be of the two residences.

James Polles stated that he would need to research whether that requirement is legal. He is wary of that sort of requirement. However, he will prepare a legal opinion.

Rick Zeien felt that the requirement would be unenforceable. Mr. Cannilla asked if the applicant would be testifying.

Simone Calli replied that the applicant will not testify. She said that this owner intends to occupy the unit but also stated that they would not agree to a condition that the home be owner-r occupied. She believes that it is an illegal condition.

John Novalis wanted a summary of variances that remain.

The use variance is still a request. Garage "A" is existing and non-conforming.

Michael Tobia summarized that the request is for a D-1 use variance. The garage that will remain exists now and is not changing the use. A variance for size (965sf) and height (17.5ft) exist today. He did not think that a variance should apply for that.

He added that the Board's Planner Katherine Sarmad ruled that if the building changed in some way, then the non-conforming conditions would need to be examined as variances. If they are treated as variances, the hardship would be that it would difficult to change the height and square footage to achieve technical compliance.

Mr. Cannilla stated the Applicant might want to consider requesting it so you are covered one way or another. Mr. Tobia stated that they would do that just to play it safe.

Katherine Sarmad noted that Garage "A" has a strange extension added to it. She asked if it could possibly be removed to improve the esthetics for the neighboring property owner. The rear yard is the neighbor's side yard. Michael Tobia said that he would look in to that.

Jeff Noss confirmed that the entrance for Unit "A" is off the rear deck and the entrance for Unit "B" is the existing front entrance. Katherine Sarmad asked about the separate exterior access to the basement. It was confirmed that the separate access will remain but the outside door would be locked and it is assigned to Unit A only.

Ms. Calli stated that they have been fully transparent and take the Board's comments very seriously. They would like to take more time to address the concerns of the Board and make them comfortable with the application. She also would like a full Board present for the vote. She requested that the application be carried to the April 20, 2022 meeting without further notice. She also granted an extension of time to that date.

Mr. Zeien made a motion to carry the application to April 20, 2022 second by Mr. Jensen
Roll Call: On a roll call vote all members present and eligible voted to carry the application.

On a motion duly made and seconded the meeting was adjourned at 8:45p.m.

Marlene Rawson
Board Secretary

March 16, 2022