

**Zoning Board of Adjustment  
Regular Meeting Minutes  
May 4, 2022**

The Regular meeting of The Borough of Florham Park Board of Adjustment was called to order on Wednesday evening, May 4, 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. Brian O'Connor  
Mr. Jason Jensen  
Mr. Michael Shivietz

**Members Absent:**

**Also Present:**

Mr. James E. Polles, Esq., Board Attorney  
Mr. Michael Sgaramella, PE – Board Engineer  
Mr. Michael Mistretta, PP - Planner

**Call to Order:**

Mr. Cannilla, Chairman called the meeting to order at 6:32 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 April 20, 2022 Meeting.

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

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

**Resolution of Approval:**

2. **Kimberly Mancarella** **Application #BOA22-04**  
70 Townsend Drive  
Block 2605, Lot 18 (R-15 Zone)

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

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.

**C Variance:**

7. **AJ Developers LLC**  
111 Braidburn Road  
Block 3502, Lot 24 (R-15)

**Application #BOA22-06**

Applicant is seeking approval for 10.15% building coverage where 9.5% is permitted in connection with a covered porch.

Steven Azzolini, Esq. represented the applicant. He gave an overview of the application. His client is a real estate developer who has constructed at least 30 homes in Florham Park. The subject home is in the R-15 zone. It is being custom built for a contract purchaser. An error on the part of the builder created a slight overage on the allowable building coverage.

The home is located in the R-15 zone. The lot size is three times larger than what is required for the zone. The excess building coverage amounts to .65% and was created by a roof overhang that was added to an open air porch/patio in the rear. The home conforms in all other aspects. It does not affect the massing of the home and is not a streetscape concern. The location of the home is across the street from open space of a golf course.

Art Pizzi, real estate developer was sworn in. He stated that the lot was purchased in 2020. They signed a contract with the buyer in June 2021 and the plans permits were approved in October 2021. They submitted plans and after the required inspections, the home was framed, and the porch was under construction. It was then that he realized the porch discrepancy. He immediately stopped construction and contacted the Borough Construction Official.

Mr. Pizzi said that there was separate conversations about adding a porch covering/overhang between the owner and the architect that Mr. Pizzi was not part of. The permit was issued on the originally submitted plans that did not include the porch overhang. The framer added the overhang without the revised plan page approved by the construction department. Once Mr. Pizzi discovered the roof overhang was not yet submitted or on the approved plan set, he contacted the construction official.

The revised plan page showing the roof over the porch was submitted to the Construction Department where it was denied due to the increase in building coverage and he was instructed to apply for a variance.

Andy Ginsburg, contract purchaser of home, was sworn in. He agreed that he had a discussion with the architect about adding a roof over the patio/porch. He has developed skin cancer and needs to stay out of the sun.

Chris Szymczak, Architect, was sworn in. He said that the home was designed with the raised patio/porch. It is on the first floor level which is above grade. The size is 30 feet x 12 feet. It is very far back from the setback line and is open on three sides. He prepared the roof plan. The overhang will also offer protection from the weather and make the patio more useable.

Mr. Szymczak stated the building coverage limit is 4231 square feet. The plan inclusive of the new overhang is 4523 square feet. It is 292 square feet over the building coverage limit. He said he measured all overhangs in the field. The house overhangs alone add 390 square feet to the home. Eliminating them would detract from curb appeal of the home. They also serve an important purpose by keeping water away from the home.

The Board was confused as to how many drawing sets there were and the timing of submission. Chris Szymczak stated that there were multiple revisions to the plans. The patio was always there, but at one point, there was no roof over it. The first signed and sealed plans did not have a roof. That was the set that permits were issued for. The second submission included the roof over the patio. This was re-

submitted after permits were issued and construction began. He did not check the coverage numbers because the property was so large.

John Novalis asked why they chose a raised patio and asked if it could be entirely enclosed. Chris Szymczak replied that the foundation is to the first finished floor and it must be a full foundation to hold back the earth. He agreed that the foundation is strong enough to fully enclose. John Novalis thought that the area could be fully enclosed and made a four-season room and some future date. Steve Azzolini said that they would agree to a condition that it could not be enclosed, other than screens.

Rick Zeien confirmed that the roof leaders and gutters lead towards and underground drainage system.

Peter Korzen, PE, engineer for the project, was sworn in. He described the site as 1.02 acres and has more 19 and 27 feet on each side yard setback. The rear portion of the property is vast and partially wooded. All runoff will be directed to an underground pipe that will lead to the storm sewer system. This was approved by the Borough Engineer. He continued that the covering over the porch covering is actually be a benefit to drainage by directing the water into the system. He added that the covered porch not be seen by any neighbors due to the size of the property and setbacks.

The building coverage numbers on the zoning table were based on architectural plans dated October 1, 2021 showing a raised patio only.

Mike Cannilla questioned the timing of the first set of drawings and the second set and the confusion on when the change was made and why it was not discovered sooner.

Peter Korzen said he discovered the plan discrepancy and the porch covering when he did went to do the as-built survey. Art Pizzi said that when he realized he did not have the porch roof page at the time of framing, he picked up the revised pages from the architect. Art Pizzi initially thought the change was submitted to the Borough, but admitted he did not look at his sealed set to be sure that it was on the original set.

Steve Azzolini stated that they are not saying that it was a mistake by the Borough. This was an error on the part of the builder. It was not done with intent. From a legal perspective, he believes that it can qualify as a C-2 variance because it is not egregious and there is no detriment to the public good or zone plan. It is .65% of a building coverage variance and there are no other violations. It does not violate any setbacks. There is some benefit in that it will help with drainage and there is no detriment to any neighbors.

Mike Cannilla asked if they would consider conditions attached. Mr. Azzolini said that no walled enclosure or second story would be permitted, if approved.

John Novalis agreed but added that screens would be acceptable so that the patio could be enjoyed without insect infestations. Mr. Ginsburg would like to be able to have lightweight screens.

Steve Azzolini replied that his client would be happy to agree to that.

Jeff Noss stated that he lives near there and visited the lot. It is a very large lot. He found the patio/porch to be tastefully constructed and acceptable to him and does not create massing.. He hoped that there would be better procedures and communication with the architect in the future.

John Novalis stated that he also saw the home and lot. He would like to prevent future mistakes like this. He agreed that the developer needs to be more careful. There were lots of people involved in this project that should have been aware of this.

Jason Jensen said that he thinks it was an honest mistake. He appreciated that they came forward.

Mike Cannilla also agreed that they need to pay more attention going forward.

There were no other comments or questions from the Board members or the public. Mr. Cannilla called for a motion.

Mr. Noss made a motion to approve the application with the noted conditions, second by Mr. O'Connor  
Roll Call: On a roll call vote all members present and eligible voted to approve the application.

*Break: 7:45pm-7:51pm*

**D- Use Variance and Related Bulk Variances:**

**8. 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 one accessory structure.

Carried from the March 16, 2022 meeting without further notice or publication.

Simone Calli, Esq. represented the applicant. She stated that this is their third appearance and she intends to conclude the presentation at tonight's hearing. She restated that this is an historically two-family home that has existed here since 1926. It pre-dates zoning in Florham Park. All homes on Burnet Road are multi-family except for one home.

She continued that they listened to the comments and concerns of the Board members. She said there is no negative impact associated with this request. The use has existed for almost 100 years and no one has objected to it. The property will be the gold standard in this area. They carefully worked through the concerns of the Board members and endured the costs associated with it. The Applicants want to live here.

The Applicant also heard about the exterior door leading to the basement and have decided to remove the door. The final design is consistent with the area and will enhance the overall visual impact of the area. They respectfully request that the application approved tonight and to be welcomed to Florham Park.

Mike Cannilla confirmed with Marlene Rawson that all Board Members are eligible to vote.

Jeff Noss asked Michael Tobia, the Applicant's planner, for some clarification on planning proofs. He is trying to balance reality. He understands the concept of being ideally suited, and that there are two-family homes that exist in the area. What he is having trouble with is the idea of variance approval for a use that is not anywhere in Florham Park. The proofs on the negative criteria need to be strong.

Michael Tobia replied that the neighborhood is dominated by two-family uses. You would probably not find this home collection anywhere else in Florham Park. That underscores the need for zoning flexibility and the Board of Adjustment exists for zoning flexibility. It is unique and isolated area. It should be looked at through the lens of a use variance.

Jeff Noss agreed that this may not cause a domino effect because strong positive proofs are required. Michael Tobia felt this this application makes a unique and strong argument for what the applicant is requesting.

John Novalis said that we do not know for sure if other neighborhood homes are two-family. It was never proven. The owners of this property can sell or not move in at all, and it would simply be a rental

property. He wants clarification on what the applicants can do if they are approved. He asked if the other homes are legal two-family homes by way of a D variance or a Certification.

Simone Calli responded that they submitted tax cards for the other homes on Burnet that indicate two and three family usage. Michael Tobia added that they are not speculating about that. He observed standard indicators of two family usage such as separate utility meters, door bells. He personally has been in one of the homes. This is an older neighborhood and the homes are allowed to exist if they pre-date zoning. He added that it is not this Applicant's responsibility to certify other two-family homes. This property will fit in the pattern of the neighborhood.

James Polles clarified that the applicant is describing the balance of the neighborhood. Board Planner Katherine Sarmad noted that 70 Burnet received a certificate of non-conformity. The Applicant is reinforcing the claim of site suitability for 76 Burnet. He added that there can't be a condition that restricts ownership or compels the applicant to live in the home. Those restrictions and conditions cannot be employed and that has been made clear by the Appellate Division of the Courts.

James Polles said that the Board must think in terms of the D-1 use variance and applying the facts to case law when considering an approval. They have the power to grant a non-permitted use if the positive criteria exists. Special reasons must be proven and and it must promote the general welfare. The Board must decide if it has been proven that the property is particularly suited for that use and if it will promote the general welfare. They must also determine if the negative criteria has been addressed and it will not be detrimental to the public good or the impair the zoning ordinance or zone plan.

Mike Shivietz agreed that there should be an enhanced quality of proof but it is important to note that it should not be inconsistent with the Master Plan and Zoning Ordinance.

Michael Tobia said that the neighborhood is a single-family zone, but in reality there are mostly two and three-family homes. It is impossible to conclude that this would be a detriment. It is an isolated neighborhood that leans towards two-family usage.

Board Planner Michael Mistretta stated that Michael Tobia put the proofs on the record by his testimony. He also testified on the enhanced quality of proof and particular suitability in support of the D-1 use variance. The Board must deliberate on whether they meet the standard that Katherine Sarmad summarized in her planning memo. He added that the Applicant brought the application more into conformity and addressed the Board concerns by removing one accessory building.

Jeff Noss confirmed that most of the "C" variances have been removed by the elimination of the one accessory building. Michael Tobia stated that the requested variances are a use variance and one "C" variance for a detached two-bay garage that is pre-existing, non-conforming due to the size.

Jeff Noss concluded that there are many homes for rent in Florham Park. They will rent out half of this house. He did not think that it was that unusual or different from a full house rental.

He asked a question on what the tax records say. Simone Calli replied that it states that there is one owner but there is two units. Michael Tobia stated that this was one of the homes with two electric meters.

There were no other questions or comments from the Board or the Public.

Mr. Cannilla called for a motion.

Mr. Noss made a motion to approve the application, second by Mr. Zeien  
Roll Call: Noss, yes; Zeien, yes; O'Connor, yes; Jensen, yes; Cannilla, yes; Novalis, no; Shivietz, yes  
*Application approved 6-1*

On a motion duly made and seconded the meeting was adjourned at 8:30p.m.  
Marlene Rawson  
Board Secretary

May 4, 2022