

**CITY OF BEVERLY
BURLINGTON COUNTY
STATE OF NEW JERSEY**

**LAND USE BOARD
REGULAR MEETING
APRIL 17, 2024 – 7:00PM**

MINUTES

The Regular Meeting of the Land Use Board of the City of Beverly, County of Burlington, and State of New Jersey was held on the aforementioned date with the following in attendance: Diane Benson, Maureen Cronin, John Haaf, Barbara Kelly, Robert E. Lowden, Jr., Paul Lucca, Mayor Randy H. Miller, Richard Wolbert, Board Solicitor Chuck Petrone Esq., Board Planner Edward E. Fox III., Zoning Officer Theodore Evans, and Board Secretary Caitlin D’Alfonso. Cynthia Robertson was absent from tonight’s meeting.

Chairman Haaf called the meeting to order at 7:00PM and read the following opening statement into the record:

“The Provisions of the Open Public Meetings Act have been met. Notice of this meeting, Resolution 2024-1, was published in the Burlington County Times on January 25, 2024, transmitted to the Courier Post, filed with the Municipal Clerk, and was mailed to all persons who requested and paid for such notice.”

The above was followed by the Flag Salute and Roll Call.

MINUTES

Regular Meeting: March 20, 2024

A motion was offered by Ms. Kelly and seconded by Mr. Wolbert to approve the minutes of March 20, 2024. Motion carried on a Roll Call Vote, as follows:

Aye: Benson, Kelly, Lucca, Miller, Wolbert, Haaf

Nay:

Abstain: Cronin, Lowden

Absent: Robertson

APPLICATIONS

Appeal of Administrative Officer: 623 Broad Street (Block 846, Lot 8): The applicant seeks to appeal a violation notice issued by the Zoning Official regarding the height of applicant’s garage.

Ms. Kelly recused herself for the hearing on the aforesaid application.

Luis Crespo, applicant, was sworn-in by Board Solicitor Petrone prior to testimony being provided.

Mr. Crespo stated to the Board that he is appealing the Zoning Officer's violation notice as it relates to the height of his constructed garage. Mr. Crespo attempted to make assertions and allegations not relevant to the appeal, and further questioned the hiring of the City Administrator, who currently sits on the Board as a Class II member. Board Solicitor Petrone explained that the testimony offered by Mr. Crespo is not relevant, and that the purpose of tonight's hearing is strictly limited to whether or not the Zoning Official erred in issuing the violation notice regarding the height of applicant's garage. Mr. Crespo continued to provide further information irrelevant to tonight's appeal hearing in order to "preserve the record" of the alleged ongoing discrimination, and expressed that he shall be permitted to provide any information that he deems applicable as a portion of the submitted escrow for the appeal application will be charged by the Board's professionals. Chairman Haaf stated that Mr. Crespo has not provided any testimony thus far that is pertinent to the appeal of the zoning violation, and reiterated Mr. Petrone's statement that the purpose of tonight's hearing is to hear and gather relevant information in relation to the applicant's garage height in order for the Board to determine if the Zoning Officer erred in his enforcement of the zoning code. Mr. Crespo continued to list alleged incidents he claims to have endured by the City over a decade prior, with Mr. Petrone noting that the Board has no jurisdiction on any of the matters brought forth by the applicant thus far and again reiterated that the information was not relevant to the appeal. Mr. Petrone read into the record the applicable sections of the Municipal Land Use Law with respect to appeals made before the Board.

Mr. Crespo stated that he had submitted construction plans and building permits to the City's Construction Office, and was directed by the Construction Code Official that an approved zoning permit would first be necessary to ensure that the proposed improvements comply with the zoning code regulations. Mr. Crespo subsequently submitted a zoning application and property survey for review by the Zoning Officer, but stated his belief that it was the Zoning Officer's responsibility to review the documentation that was submitted to the Construction Official. Chairman Haaf asked Mr. Crespo the garage height that was submitted on his zoning application and approved by the Zoning Officer. Mr. Crespo responded that the zoning permit was approved for a height of 14ft, but the plans submitted to the Construction Official depict a height of 19ft. Mr. Crespo stated that his garage was built in accordance with the plans submitted to the Construction Office, asserting that the definition for "building height" permits the garage to be built as currently constructed, and inquired if the Board members were familiar with the content in the City's zoning code. Chairman Haaf explained that the "building height" definition pertains to principal structures, not accessory structures, and that a garage is clearly defined in the zoning code as an "accessory structure."

Mr. Crespo asked if the Board members received copies of all documentation relevant to his appeal. Chairman Haaf confirmed same.

Discussion ensued on the interpretation of the definition of "building height" as it relates to the definition of a "garage" and "accessory structure." After several disruptions of decorum by the applicant, Board Solicitor Petrone counselled Mr. Crespo and explained that this is an official meeting of a quasi-judicial body and that appropriate meeting conduct shall be followed. Mr. Lowden recused himself from the meeting after a verbal exchange with Mr. Crespo that had prompted Mr. Petrone's counsel.

Mr. Crespo inquired how he was to measure the height of the accessory structure. Mr. Petrone stated that the City measures accessory structures from grade to peak. Mr. Crespo asked where the standards for measurement of the height of accessory structures is defined in the zoning code. Mr. Petrone stated that the City's zoning code makes clear that unless specified otherwise, the normal usage of the language prevails. Mr. Petrone read aloud the applicable section, and noted that the City's regulations regarding accessory structures clearly states that the maximum height of accessory structures is 15 feet. Mr. Crespo continued to debate the definition of "garage," "structure," and "building."

Mr. Petrone asked Mr. Crespo if he received a copy of Ordinance 2019-10 (governing accessory structures) and the Schedule of Area and Bulk Requirements prior to the submission of the zoning permit application. Mr. Crespo stated that he was not provided such documents prior to the submission of his application, and was instead referred to the website. Board Secretary Ms. D'Alfonso stated that she personally handed Mr. Crespo a copy of Ordinance 2019-10 and the Schedule of Area and Bulk requirements when he came to pick up a zoning permit application. Mr. Crespo stated that the information provided by Ms. D'Alfonso was not accurate. Mr. Wolbert stated that he personally witnessed Ms. D'Alfonso provide the aforesaid documentation to Mr. Crespo, and that all residents who inquire about zoning permit applications are provided with the same information.

Mr. Crespo asked how there can be two Board of Education members on the Land Use Board. Mr. Wolbert explained that same is permitted since one member is a Class II and the other is a Class VI. Chairman Haaf stated that Mr. Crespo's question does not relate to the specific matter being heard before the Board.

Mr. Crespo reiterated that there is no clear method for measuring accessory structures, continued to assert that the "building height" definition applies to his garage, and that it was the Zoning Officer's responsibility to review the plans submitted to the Construction Official. Mr. Petrone stated that the Municipal Land Use Law does not require the Zoning Officer to review construction plans prior to their approval, and that the Zoning Office and the Construction Office are separate entities with separate requirements. Mr. Petrone further explained that it is the procedure in every municipality that zoning approval is received prior to the approval of construction permits, and that the Construction Official is solely charged with ensuring that the submitted plans comply with UCC. Mr. Crespo inquired where this process is written. Mr. Petrone noted that the enabling statute is the Municipal Land Use Law, and Chairman Haaf stated that the same guidance is provided by the City employees.

Ms. Cronin inquired about certain dates noted on Mr. Crespo's zoning application and zoning permits. Secretary D'Alfonso clarified same. Ms. Cronin also inquired about Ms. D'Alfonso's handwritten note on the application that states that the Zoning Officer "needed clarification on 'attic' space. Applicant stated on October 24th verbally that it will be a small 'loft space' for storage, not a second story." Ms. Cronin asked why the Zoning Officer approved an application that describes a "loft space" if second stories are not permitted for accessory structures. Mr. Lucca noted that his garage complies with the maximum height of 15 feet and does indeed have a loft space for storage, and that his loft space is most certainly not a full second story that can be inhabited. Furthermore, Mr. Lucca stated that he was previously informed by the City for his own property that if he wanted to exceed the maximum height for accessory structures, he would need to make an application before the Land Use Board for a variance.

Mr. Crespo stated that the handwritten information regarding the “loft space” was not accurate, and stated that he recorded a verbal conversation between himself and Ms. D’Alfonso when said clarification was provided and wished to submit same as evidence. Mr. Petrone stated that the recording cannot be submitted as evidence as the recording was not authenticated.

Chairman Haaf asked Mr. Petrone the next step the Board will need to take in this appeal process. Mr. Petrone stated that the purpose of tonight’s hearing is solely for the Board to determine if the Zoning Officer erred in his enforcement of the zoning code. Mr. Petrone clarified that if the applicant’s appeal is not successful, the applicant is not precluded from filing a subsequent application before the Board for a variance.

Mr. Petrone swore-in Zoning Officer Theodore Evans for testimony. Mr. Petrone asked Mr. Evans if Mr. Crespo provided the plans submitted to the Construction Office that depict a height of 19 feet with the zoning permit application. Mr. Evans stated that he did not. Mr. Petrone asked Mr. Evans to confirm that the height of the garage that was approved in the zoning permit was 14 feet. Mr. Evans confirmed same.

A short recess was called by Chairman Haaf as Mr. Wolbert temporarily left the meeting. The meeting resumed after a few minutes upon Mr. Wolbert’s return.

Mr. Crespo asked Mr. Evans if all construction work requires prior zoning approval. Mr. Evans explained that only certain improvements require zoning approval prior to the issuance of construction permits. Mr. Petrone reiterated that Mr. Evans, as the Zoning Officer, is not charged with the responsibility of the review or issuance of construction permits under the UCC.

Ms. Cronin inquired about the dimensions of the garage noted on the zoning permit application, as the handwritten height of 14 feet does not appear to match Mr. Crespo’s handwriting. Secretary D’Alfonso stated that Mr. Crespo submitted the zoning application and property survey without the required dimensions, and that the dimensions were verbally dictated to her by Mr. Crespo in-person and written by her hand on the application in his presence. Ms. Cronin asked Mr. Crespo if he received a copy of the zoning permit after approval that states that the approved height of the garage was 14 feet. Mr. Crespo stated that he did receive a copy of the permit. Mr. Crespo stated that he believed the 14 feet approval allowed for a taller peak height under his personal interpretation of the “building height” definition. Mr. Petrone stated that without the necessary dimensions, the Zoning Officer would not have been able to determine if the proposed garage complied with the zoning code and would therefore have had to deny the zoning permit application.

There being no further testimony, Chairman Haaf called for a motion.

A motion was made by Ms. Cronin and seconded by Mr. Wolbert to uphold the Zoning Officer’s enforcement of the City’s zoning code as it relates to the height of the garage constructed by the applicant at the property located at 623 Broad Street. Motion carried on a Roll Call Vote, as follows:

Aye: Benson, Cronin, Lucca, Wolbert, Haaf
Nay:
Abstain: Miller
Absent: Kelly, Lowden, Robertson

Chairman Haaf called for a brief recess prior to the hearing on the application for 465 Laurel Street. After several minutes, Chairman Haaf called the meeting back to order.

Ms. Kelly and Mr. Lowden returned to the dais. Ms. Benson recused herself from the remainder of tonight's meeting, as she resides within 200 feet of 465 Laurel Street.

Bulk Variance Application: 465 Laurel Street (Block 1164, Lot 3): This application seeks bulk variance approval to construct a 3-bedroom, single-family detached dwelling on 465 Laurel Street, which is currently a 3,371sqft vacant parcel of land. The proposed plans require a bulk variance for the side-yard setback requirement.

Mr. Edward Vidal, Esq. introduced himself to the Board as the legal representative for the applicant for the 465 Laurel Street bulk variance application.

Mr. Petrone swore-in Mr. J. Oliveira, part owner of Oliveira Brothers Contractors, Inc., to provide testimony.

Mr. Vidal explained to the Board that a bulk variance application has been submitted for the property located at 465 Laurel Street, as the applicant wishes to construct a 3-bedroom, single-family home, but the proposed plans do not meet the required side-yard setbacks. Mr. Vidal stated that the property is currently vacant after the demolition of the previous residential structure a few years prior. It was also noted that the lot is undersized, which is a pre-existing condition. Mr. Vidal distributed "Exhibit 1" to the Board members, being an updated property survey of the lot depicting an off-street parking area to accommodate one (1) parking spot. Mr. Vidal then distributed "Exhibit 2" and "Exhibit 3", pictures of the lot as it currently exists. Finally, Mr. Vidal distributed "Exhibit 4," depicting aerial views of the site.

Mr. Vidal stated that it was the initial recommendation of the Board Planner via written correspondence dated December 11, 2023, that the proposed front-yard setback be adjusted to 20 feet to align with neighboring residential structures, but the applicant is proposing a 25 feet front-yard setback to allow for the installation of the aforesaid parking area.

Regarding the chain link fence currently erected around the lot, Mr. Oliveira testified that the fence will be replaced with some adjustment in placement for the off-site parking area.

Mr. Vidal stated that the applicant's proposed driveway is being placed in an area that conforms to the City's current zoning code, with the exception that it does not meet the RSIS standard, which would require two (2) parking spots for the proposed structure. Mr. Oliveira confirmed same.

Board Planner Fox stated that the application meets the requirement for a de-minimis exception as it relates to the parking standards under the RSIS. Mr. Petrone noted that the pre-existing lot size would make meeting the RSIS parking standards almost impossible without significantly

altering the size of the proposed structure. Mr. Vidal and Mr. Oliveira confirmed same, with Mr. Oliveira noting that a de-minimis exception for parking will allow for the construction of a structure that cohesively fits within the aesthetic of the neighborhood.

Mr. Fox stated that it should be a recommendation of approval that the applicant submits grading plans prepared by a licensed engineer to the Board Engineer for review prior to the issuance of construction permits. Mr. Fox further noted that the grading plans should include driveway apron and curbing details, any sidewalk replacement plans, and utility connections. The applicant agreed to same. Chairman Haaf reiterated the need to control stormwater runoff on neighboring properties.

There being no further testimony from the applicant and no questions from the Board, Chairman Haaf opened the public hearing on the bulk variance application for 465 Laurel Street.

Darryl Coleman, 459 Laurel Street, was sworn-in by Mr. Petrone to provide testimony. Mr. Coleman stated that he believes the lot is too small to construct the structure as proposed by the applicant, and noted his concern about stormwater runoff from the proposed driveway that may affect neighboring properties. Chairman Haaf responded that the proposed driveway does not extend past the proposed setbacks and will therefore not directly abut Mr. Coleman's property line. Regarding the size of the proposed structure and Mr. Coleman's concerns about developing an undersized lot, Chairman Haaf noted that a structure long existed on the property before its recent demolition due to its deteriorating and unsafe condition. Mr. Fox asked Mr. Coleman if he would purchase the property if it was for sale, and noted that Mr. Coleman's lot appears to be similar in size. Mr. Fox further explained that if the Board denies the application, there would then be no applicable use for the property.

Anna Marie Dennen, owner of 467 Laurel Street, was sworn-in by Mr. Petrone to provide testimony. Ms. Dennen expressed her concern over the construction of a new structure on the lot due to its small size, and that if the structure or lot does not conform to the current zoning regulations, it should not be built. Ms. Dennen also expressed concern over a possible underground oil tank on the property, and that the construction of a new structure will detract from the privacy of the neighbors. Mr. Fox stated that Ms. Dennen's property is also of similar size to the applicant's. Furthermore, Mr. Fox expressed that though the proposed plans do not meet the current zoning regulations, the applicant has properly submitted a variance application to be considered before the Board to request an exception to the required building envelope. Finally, Ms. Dennen expressed concern that approval of this application will set a precedent for all other undeveloped and undersized lots in the City. Mr. Petrone stated that applications submitted to the Board are reviewed on a case-by-case basis, and that details or requirements from one application may not be applicable to another.

Mr. Lucca asked Ms. Dennen and Mr. Coleman if their homes have basements. Both Ms. Dennen and Mr. Coleman confirmed, and specified the type of foundation.

Gary Centinaro, 503 Cooper Street, was sworn-in by Mr. Petrone to provide testimony. Mr. Centinaro stated that he is in favor of the application, as it will add a ratable to the City in a community that has limited space for new construction. Furthermore, Mr. Centinaro expressed that the application does not meet the side-yard setbacks by an insignificant amount compared to the structure that existed on the lot prior.

Ariel Piña, 214 Magnolia Street, was sworn-in by Mr. Petrone to provide testimony. Mr. Piña stated that he is in favor of the application, and believes that the City should consider lessening the restrictions on setbacks and building envelopes to encourage more development that would be a benefit to the City.

There being no further comments, a motion was offered by Mr. Wolbert and seconded by Ms. Kelly to close the public hearing on the bulk variance application for 465 Laurel Street. Motion carried.

Mayor Miller inquired about the oil tank on the property. Mr. Wolbert stated that a previous inspection of the property indicated that an oil tank may exist, and that the Construction Office may have information to determine if same was abated properly. Mr. Petrone stated that it can be a condition of the Board approval to ensure proper abatement of any potential underground oil tank.

Mr. Wolbert noted that the portion of Laurel Street in which the application pertains is currently under moratorium, and that the applicant will need to work with the City Engineer on the proper restoration of the roadway during the driveway apron installation.

Mr. Lowden inquired about the use of the proposed basement and the number of proposed bedrooms and bathrooms. Mr. Oliveira stated that the basement will be used for storage, and confirmed that the plans propose three (3) bedrooms and two and a half (2.5) bathrooms.

Mr. Wolbert inquired if the applicant's realtor made it clear to the applicant prior to purchase that the lot was undersized. Mr. Oliveira stated that no such disclosure was made.

Ms. Cronin stated that her own property is a small lot, and is therefore cognizant about the privacy concerns raised by Ms. Dennen. However, Ms. Cronin noted that if the application is not approved, the lot will be rendered useless and will not be a ratable for the City. Ms. Cronin also expressed that the City of Beverly is an older community with limited development space, and that the purpose of responsibly granted variances will allow the City to evolve.

Mayor Miller added that the City also needs to balance the needs of limited development space with a growing population.

Mr. Lucca stated that while he understands an empty lot may be preferred by the neighboring properties, a house existed on the lot only a few years prior. Additionally, the lot could have been purchased by a neighboring property for consolidation to preserve the open space. Finally, Mr. Lucca, referring to his previous question about the foundations of the neighboring properties, noted his concern that heavy construction on the empty lot may have an impact on same.

Mr. Fox stated that the applicant has provided sufficient testimony to be granted a bulk variance, and that a special exception exists since a residential structure long existed on the lot prior to its recent demolition.

A motion was offered by Ms. Kelly and seconded by Ms. Cronin to approve the bulk variance application for 465 Laurel Street, with all agreed to conditions during tonight's meeting. Motion carried on a Roll Call Vote, as follows:

Aye: Cronin, Kelly, Lowden, Lucca, Miller, Wolbert, Haaf
Nay:
Abstain:
Absent: Benson, Robertson

OLD BUSINESS

No old business was presented at this time.

NEW BUSINESS

No new business was presented at this time.

CORRESPONDENCE

No correspondence was presented at this time.

BOARD/PROFESSIONAL COMMENTS

No comments.

PUBLIC COMMENT

Chairman Haaf opened public comment.

Gary Centinaro, 503 Cooper Street, expressed that the zoning code should be amended to allow for more flexibility to build on lots of smaller size.

There being no further comments, a motion was offered by Ms. Kelly and seconded by Ms. Cronin to close public comment. Motion carried.

ADJOURNMENT

A motion was offered by Ms. Kelly and seconded by Ms. Cronin to adjourn the meeting. Motion carried. Meeting adjourned at 8:56PM.

Approved:

John Haaf
Chairman

Respectfully Submitted By:

Caitlin D'Alfonso
Land Use Board Secretary

Approved: May 15, 2024