

Borough of West Paterson

Board of Adjustment



Passaic County, NJ

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BOARD OF ADJUSTMENT MINUTES

March 22, 2010

MEETING CALLED TO ORDER AT 7:33 P.M. by Chairman Holloway.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS IN ATTENDANCE: JERRY KISS, GIANNI INTILI, RUSSEL JUZDAN, PHILIP DICRISTINA, GARY HOLLOWAY AND TRACY KALLERT.

ALSO PRESENT – JOHN FIORELLO, BOARD ATTORNEY
TOM SOLFARO, BOARD ENGINEER
ROBERT PERRY, BOARD PLANNER

FLAG SALUTE

A motion to approve the minutes of the January 25, 2010 meeting was made by Ms. Kallert, second by Mr. Kiss and approved.

ORDER OF BUSINESS

DOCKET # 10-01 – E. SCHUMACHER – 1231 MCBRIDE AVE. – BLOCK 96 LOT 13 – USE VARIANCE/PRELIMINARY & FINAL SITE PLAN

Mr. John Pogorelic, applicant's attorney, stated since there were only 6 members present this evening and 5 affirmative votes are needed for use variance approval he has conferred with his client and they are requesting the application be carried until the April 26, 2010 meeting with no further notice and waiving time.

DOCKET # 10-02 – F. KOSAR – 52A HAVERHILL AVE. – BLOCK 68 LOT 3 – BULK VARIANCES

Mr. Furkan Kosar, applicant, was sworn in. He explained that there was a 2-car garage and a 2 car driveway on the property and he would like to close up one garage and convert it to a

playroom for his children. The home is a duplex and the other unit does not have a garage. He will not be renting the area in question to any one else. The home was built in 2003.

PUBLIC OPEN – questions only – CLOSED

Mr. Intili asked if this property was before a Board before it was built and thought he remembered an application on this property and there was some relief requested at the time. Mr. Kosar said he was never before the Board. Chairman Holloway asked if he was the owner of the property. Mr. Kosar said he was the owner but he sold it and he is now the tenant. He has permission from the owner to make the application. He did not build the house but bought it in 2004. Mr. Intili asked if he testified that he was the only one who has garages and the other tenant does not have a garage. Mr. Kosar said the other tenant only has a driveway. Mr. Intili asked why the other unit did not have a garage. Mr. Kosar said he did not know and he did not build the house.

Mr. Juzdan said it was probably built as a two family with two garages but now it has been sold as a condo and one side has the two garages and the other one does not have a garage. Mr. Intili said that is what he is trying to get to because as per the zoning ordinance each unit must have a garage. Mr. Kosar said when he bought the house 6 years ago the deed says 2 car garage, 3 bedrooms and one living room. The other guy has 3 bedrooms, one living room and a basement. This was stated on the deed. Mr. Juzdan asked if he wanted to close up both garages. He wants to make it living space by closing them up.

Mr. Dicristina asked if the home was built as a two-family and then turned into a duplex. Mr. Kosar did not know how that happened but it does not say on the deed that it is a two-family home. He did not know if they came before the Board to convert it to condos.

Mr. Holloway thought that he and Mr. Intili were on the Board at the time the home was built and that each unit had a garage.

Mr. Juzdan asked if there is any area behind the garage. Mr. Kosar said half of it is a finished basement.

Mr. Intili said they are showing the L-shaped room and garage and asked what the area was that was marked boiler room. Mr. Kosar pointed out where the boiler was located. Mr. Intili pointed it out for the Board members.

Suphi Tuzun, 9 Trimble Ave., Clifton, NJ, stated he is from Turkey and is an architect but he is not licensed in NJ. He will not be testifying as an architect. He stated there is access from the two garages to Mr. Kosar's apartment and not to the other unit in the house. It is one 2-car garage.

Mr. Fiorello asked if there is an exit or entrance from the garage to the outside. Mr. Kosar said no. The other unit has one but he does not.

Mr. Intili asked about the electrical room. Mr. Kosar said he does not want the children to be able to touch anything.

PUBLIC – OPEN – CLOSED

Mr. Dicristina asked if the zone requires a garage for each unit. Chairman Holloway said yes. Mr. Fiorello said technically speaking he could close one garage if he owned both. He could do that without a variance but would have to eliminate the proposed bathroom. Mr. Intili said the other tenant does not use the garage. Chairman Holloway said apparently not and they do not know how that happened. Mr. Fiorello said there doesn't seem to be any access to the garage from the second unit. It seems when it was built it was built as a two-family and after it was built it was sold as condo units. Mr. Juzdan said the issue is that he wants to close both garages where the ordinance says you need one garage per unit. He also needs a variance for the bathroom because the ordinance only permits a bathroom in the basement if the only access is through the dwelling.

Mr. Fiorello said if the Board is of the opinion and this is hypothetical to deny the variance because of the ordinance the applicant could get a permit to close up one garage because his unit would have a garage. However, in regard to the bathroom in the basement he could withdraw that or state he will not have an outdoor entrance and he could put in the bathroom. Mr. Intili asked if the burden for a variance would fall on the other unit. Mr. Fiorello said they don't want a variance at this point because it is built already. Mr. Kosar said he could eliminate the bathroom, outdoor door and sink.

Mr. Dicristina asked Mr. Kosar if when he owned the unit if a tax bill came for 52A only. Mr. Kosar said yes. Mr. Dicristina said then it would be a totally different property from 52B. Mr. Juzdan said you can't have one block and lot for this property. Mr. Dicristina asked if there is one tax bill or two. Mr. Kosar said he was not sure. Mr. Fiorello said according to the application it is only one lot. Mr. Dicristina thought there would only be one bill. They would need to find out from the tax office. Mr. Kosar said they have two different mortgages. Mr. Fiorello said it would then have to be two different properties. If there are two separate properties by deed it should show in the tax office that they get two separate tax bills, then they are separate. If they are one property there may be a problem because one of those garages probably belongs to the other unit. Mr. Kosar said they pay two separate tax bills.

The Board Secretary located the Board of Adjustment file from when the home was proposed to be built. There was an old home on the lot that was demolished and the duplex was built on one block and lot. Mr. Fiorello said the resolution states the applicant would comply with all ordinances which means there should have been a garage for each unit. In 2004 the owner was granted approval to build the house and he did build it with two garages. Mr. Intili felt the two garages were placed there because of the topography. Mr. Fiorello said according to the resolution one of the garages belongs to one unit and the other belongs to the second unit. The plans show the only place they could put the garages were where they are because of the slope. He said he does not know what the builder told him but that does not bind the Board. Mr. Kosar said that does not bind him either and Mr. Fiorello

said it did. Mr. Kosar said he has a staircase that goes to the garages. If the other man used the garage he would be trespassing in his house. Mr. Fiorello said the plans show it that way and he would have to talk to the owner/builder. If he did not put in an interior way of the other unit getting in there he would have to get in from the outside.

Mr. Dicristina asked if he was the first person to live in the unit. Mr. Kosar said he was. The builder was the one who made the application to the Board for the variance.

Mr. Holloway asked if they could hear this application since it was granted back in 2004. Mr. Fiorello said they can hear the application but it would have to be amended if he wanted to close one garage and it would have to be his garage. He can't enclose two of them because according to the Board approval one of them should belong to the other unit. Mr. Kosar asked if the other tenant needed access from the house. Mr. Fiorello said you don't need access from the inside and you could come in from the outside. Chairman Holloway said a garage should have been made available for each dwelling and why it did not happen he did not know.

Mr. Intili asked if the other unit has its own boiler and hot water heater. Mr. Kosar said they have a finished basement in the other unit. When he bought the unit the owner gave him the option of buying a unit with a finished basement or a unit with 2 garages.

Chairman Holloway asked about the existing area behind the garages and if it was partitioned off. Mr. Kosar said there is a partition. Mr. Fiorello said he has a basement with a partition and a door to the garage. Mr. Kosar said that was correct.

Mr. Intili asked about the electrical room and if it was for his unit only. Mr. Kosar said it was only for his unit.

Mr. Fiorello felt it was clear that the approval was given based on one garage per dwelling unit. Mr. Intili said he remembered the application and it was a proposal for a two family house and the only variance required was for the size of the lot.

Mr. Juzdan did not feel you could sell two units on one lot. Mr. Fiorello thought the owner could have requested a subdivision. The Board Secretary said there was no application for a subdivision. The units were sold as condos and received qualifier numbers in order for each unit to have a separate tax bill. The builder sold the units as condos but that was after he received the variance on his proposed two family home. Mr. Fiorello said the Board has no control on the property after the approval but the variance he received included each unit having a garage.

Mr. Dicristina said when he bought the property he should have checked the zoning laws one of which states each unit must have a garage. He felt the Board does not know if he actually owns both garages or not. If he owned them both he could close up one garage. Mr. Kosar said he understands the Board's point. Mr. Fiorello said the Board cannot ignore what they did back in 2004. He felt someone should have looked into before purchasing the units. Mr. Kosar said the Board could still grant the approval. Mr. Fiorello said they can't

do that because the original builder would not have gotten to build if he did not install two garages, one for each unit. The Board can't just forget about it.

Chairman Holloway asked if they could hear this since it is a proposal to close up both garages. The only way it could be done is if Mr. Kosar requested closing in only one garage. Mr. Fiorello said they cannot throw out the previous resolution. He suggested Mr. Kosar see a lawyer regarding the matter.

Mr. Intili thought the best thing for him to do is get a copy of the zoning ordinance and look at what pertains to the zone his home is in.

Mr. Fiorello suggested he withdraw the application without prejudice which means he can come back after doing some investigation. He thought he should find out the situation from his point of view. He left it up to Mr. Kosar to continue or withdraw the application. Mr. Dicristina felt he would have to clarify what exactly it is that the landlord owns. There is a zoning ordinance that says the units have to have a garage. Most people in town probably do not put the cars in the garages but the ordinance still requires a garage. Mr. Kosar asked if could make the application for the one garage. Mr. Fiorello said the Mayor & Council passed a law that says each unit must have a garage and if he closes in his garage he does not have one. He asked what the hardship to his property would be. Mr. Kosar said he can not prove a hardship and it is only for pleasure of a recreational area.

Mr. Tuzun said that he had two garages. Mr. Fiorello said as far as Board paperwork shows the applicant has only one garage. Mr. Juzdan said that is why Mr. Fiorello is suggesting he do some investigating. Chairman Holloway felt he should meet with Mr. Esposito. Mr. Fiorello said he could proceed. Mr. Kosar withdrew the application without prejudice. Mr. Fiorello said he would have to make a whole new application if he chose to come back to the Board. If the Board made a ruling he could not come back again until he discovered something further.

**DOCKET # 10-04 – E. MARITATO – 215 SALOMONE AVE. – BLOCK 44 LOT 1 & 2 --
BULK VARIANCE**

Eugene Maritato, applicant, was sworn in. He stated about 10 years ago he covered the driveway with a concrete patio. It is now leaking from the porch on the top. He does not want to redo it but would like to make a room on the top.

Mr. Juzdan asked if currently there is a carport on Taft Ave. Mr. Maritato said that was correct. He would like to cover it because when it rains it leaks and his cars are being wrecked. He would like an enclosed porch or sunroom. Mr. Juzdan asked if it would be heated. Mr. Maritato said he did not know but he could put in a heater. He only wants to cover it so it doesn't leak because his house is big enough. Mr. Juzdan asked if he thought the only way to keep the water off the cars is to build a room over it. Mr. Maritato said yes. Ms. Kallert said right now there is a door leading to the concrete patio and asked if the room would be attached to the house. Mr. Maritato said yes. Ms. Kallert said then it would be an addition.

Chairman Holloway asked if he can fit 3 cars under the carport and if he had an attached garage. Mr. Maritato said yes there is parking for 4 vehicles on the Taft Ave. side of the house. Chairman Holloway referred to the letter of denial where it says he is adding a sunroom.

Mr. Intili asked if he would be putting in garage doors. Mr. Maritato said if he has to he will put them in.

Ms. Kallert asked if his main concern was that the roof leaked and the cars get wet. Mr. Maritato said yes because he has had to repaint his cars because of the water. Ms. Kallert asked why he wouldn't just make it a more conforming garage with a roof instead of a room addition. Mr. Maritato said he can't put in a roof unless he raises it. Mr. Intili said from the door you go into the attic.

Mr. Juzdan said on the old resolution on page 2 it clearly says the deck area cannot be enclosed. There was already a condition placed on an approval. Mr. Maritato said he did not have the problem then but he does now. Mr. Dicristina asked if they are allowed to make a new application. Mr. Fiorello said yes but he is subject to the same laws and has to prove a hardship with the property. The question is if the only way to correct it is to put a room above it.

Ms. Kallert asked if it was a one or two family because the plan shows one and the letter shows two. Mr. Maritato said it is a two-family dwelling and the plans are incorrect.

PUBLIC OPEN

George DelGuidice, 111 Rockland Ave., was sworn in. He stated he received a letter addressed to 50 Rockland Ave. He lives at 111 Rockland. He said his address is officially 111 Rockland Ave. He contacted Washington DC about number changes and they told him he did not have to change his number. Mr. Fiorello said he received the notice and asked if he wanted to speak in favor or against this application. Mr. DelGuidice said he is in favor the application. He is here to let the Board know he lives at 111 Rockland Ave. The Board Secretary said she had a certified list from the tax assessor that says he lives at 50 Rockland Ave. Mr. Fiorello said he would have to go to the tax assessor regarding the number.

PUBLIC CLOSED

Mr. Intili stated based on the resolution on record he was also part of that application. The whole idea was the carport was a small structure and when you have two fronts it would not be predominant on the street. In this case if you look at the elevation there is a small garage and carport and behind you have the house but because of the elevation it is over two stories. The carport comes out to the property line. The existing deck is 21'. Mr. Maritato thought it was less. Mr. Intili said the plans show 21'. Mr. Maritato said they are not enclosing the whole deck and the sunroom would be 16'. Mr. Intili asked if the 5' would leak. Mr. Maritato said he will fix that. Mr. Intili asked if could make the sunroom 12'. Mr. Maritato said no because the middle is where he has the problem.

Mr. Dicristina thought 14' would cover the cars and the sunroom won't come out as far. He drove around the corner and felt it was too much to be so close. He thought the sunroom would be good but thought 5' was not enough.

PUBLIC OPEN – CLOSED

A motion to approve the application with the setback on the room being 14' was made by Mr. Dicristina. Mr. Fiorello said you could do that but you would have to justify the reason for the approval at 14'. Mr. Dicristina retracted the motion and asked if the reason he needs a variance is the setback. Mr. Fiorello said yes 20' is required and he would have 5'. Mr. Kiss felt it was 21' now and he is proposing 16' with the sunroom but he is still out to the property line. Mr. Fiorello said the new structure would have a setback of 5'. Mr. Kiss felt it was already in the line of sight. He was granted the variance for the carport and now he wants to enclose part of it. Mr. Kiss felt the present structure exists whether he extends it 14' or 16'.

Mr. Kiss made a motion to deny, second by Ms. Kallert. Application denied by a vote of 4-2.

Mr. Maritato asked if they wanted him to take down his carport. Mr. Maritato said he has paid \$3000 to repaint his cars and that is why he needs to enclose the patio. Chairman Holloway said the application for enclosing the patio was denied but he does not have to remove the carport/patio because he was granted a variance for that before.

Mr. Fiorello said in 1997 the Board gave him approval to build a deck and said it could not be enclosed unless he comes back to the Board and proves why he should be able to enclose it. He noted that you cannot have a personal reason and it has to relate to the property. He stated the applicant has the right to appeal the decision of the Board.

Chairman Holloway stated that Mr. O'Brien has moved out of town and resigned from the Board. He thanked Mr. O'Brien for his service. Mr. Juzdan made a motion to appoint Mr. Kiss the Vice Chairman, second by Mr. Intili and approved.

A motion to adjourn was made by Mr. Kiss, second by Ms. Kallert. All in favor. Meeting adjourned.