

**BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
APRIL 19, 2010 MINUTES  
7:30 PM PUBLIC MEETING**

1. Adequate Meeting Notice: Chairwoman Desjourdy called the meeting to Order and read into the record the Open Public Meeting Law Statement.
2. Roll Call: Members present: Chairwoman Desjourdy Vice Chairman Biba, Members: Ms. Dee, Mr. Greenebaum, Mr. Negri, Mr. English, Ms. Robertson, Ms. Lincoln and Mr. Sailliard.

Members absent: Messrs. Omlor and Peterson

Professionals present: Board Attorney John Lynch, Board Engineer Robert Brightly and Board Planner P. David Zimmerman.

3. Approval of Minutes: April 5, 2010 as amended  
Motion to approve: Mr. Greenebaum  
Second: Mr. Biba  
Voice Vote: All members present voted in the affirmative. Ms. Dee is not eligible to vote.
4. Communications: None

Ms. Desjourdy suggested that the Board amend the Agenda to begin the hearing on the new application. Board concurred.

5. New Applications:  
10-02: Adam Szewczyk, 55 Bernards Avenue, B: 104 L: 8 R-5 Zone  
Certification of Non-Conforming Use  
Time is: 7:35 PM

Mr. David Scalera, attorney for applicant from the firm, Kalison, McBride, Jackson and Robertson, 25 Independence Boulevard, Warren, New Jersey introduced himself to the Board. Mr. Scalera represented his educational and professional background. Board accepted Mr. Scalera as an expert. Mr. Scalera presented application history and noted this evening he will present four witnesses. Mr. Scalera represents the potential purchaser for the property, Mr. Adam Szewczyk.

Mr. Scalera reported that in 1960 the Board of Adjustment granted a variance on the property to permit an addition to the front building for an enclosed porch. During that variance hearing the meeting minutes indicate that there were three families living in the front building and two families living in the rear building. The variance was granted with the condition that the front building be converted from a three family to a two family. The rear building would remain a two family. However, this conversion did not occur. The applicant Mr. Szewczyk wants to restore the property to two two-family uses in compliance with the 1960 Resolution.

The first witness called is the son of the current property. Robert Nanfelt, 584 Van Buren Road, Harding, New Jersey. Mr. Nanfelt explained that his father passed away in 2000, his mother suffers from dementia and he has Power of Attorney. Mr. Nanfelt has actively managed the property since 2000.

Mr. Negri questioned how many total units are between the two buildings. Mr. Nanfelt noted there are five units and four are vacant. Mr. Negri questioned if the units are properly identified for fire response. Mr. Nanfelt answered that all entrances are marked to identify each unit.

Mr. Neil Schetelick, 27 Mine Avenue was recognized by the Board. Mr. Schetelick stated that the years of illegal occupancy with children residing at this location should be reported to the Board of Education. Ms. Desjourdy answered that this is not within the Board of Adjustment's jurisdiction.

There was further discussion regarding Fire Inspections. Ms. Lincoln noted that a Fire Inspection type certificate is posted showing a date of 1/1/97.

Mr. Scalera reported that he has been in frequent contact with Code Enforcement Official, Elaine Broyles and said that all issues will be addressed. It is because of the non conforming use that his client is here to make the property compliant with municipal codes.

Mr. Scalera called his second witness, applicant Adam Szewczyk

Mr. Szewczyk, 303 Mendham Road, Mendham, New Jersey 07926. Mr. Szewczyk was administered the Testimonial Oath by Mr. Senders. Mr. Szewczyk stated that it is his intention to refurbish the units and bring the two structures within compliance with the 1960 Resolution.

Mr. Szewczyk presented the concept plan for each of structure. This concept plan was part of the application packet. There was clarification that there would be no human occupancy of the 3<sup>rd</sup> floor. There were no questions for Mr. Szewczyk from the Board or public.

Mr. Scalera called this third witness, Mr. Michael J. Tobia, PP. Mr. Tobia presented his educational and professional background. Mr. Zimmerman noted that Mr. Tobia is well qualified to testify. Mr. Michael J. Tobia, 4 John Glenn Road, Morristown, New Jersey 07960. The Board accepted Mr. Tobia as a expert and was administered the Testimonial Oath

Exhibits A1 [Front Building ] and Exhibit A2 [Back Building with Garage] Photos. These photos were taken April 14 by Mr. Tobia. Mr. Tobia testified that with garages there are perhaps seven parking spaces on site. Historically, parking has never been as issue for the site. No variance is sought for site plan.

Exhibit A3 Time Line was then presented by Mr. Tobia noting that upcoming witness Mr. Bob Fidler's grandparents resided on the site in the early 1950s and that there has been continuous occupancy of all five units until two years ago when units began to be vacated. Only one unit in the rear building is currently occupied. The property has never been abandoned.

There were no questions from the public or Board for Mr. Tobia.,

Mr. Scalera called his fourth and final witness, Mr. Robert Fidler. Mr. Fidler stated that he was born at this address and resided there for twenty years. The Board accepted Mr. Fidler has a witness and was administered the Testimonial Oath by Mr. Senders.

Robert Fidler, 147 Sand Spring Road, Morristown, New Jersey testified that his maternal grandparents and his mother Mary owned and resided at this address. He was born in 1953 at this address and lived there until

1973. His family still resided on the property until 1985. Between 1973 up to 1985 before the property was sold he frequently visited with his family members. Always there were five units. Three units in the front building and two units in the rear building.

Last week Mr. Fidler visited the site and testified that the property remains the same today as this last walk thru in 1985.

There were no questions of Mr. Fidler from members of the public or Board.

Mr. Scalera called again Mr. Nanfelt who was previously sworn. Mr. Nanfelt addressed his involvement with the property since 1985. Mr. Nanfelt stated that he resided in one of the apartments in 1988 – 2000. In 2000 his father passed away and he then began to manage the site. Always there were five units. Mr. Nanfelt explained that the units are registered. He has some previous registration difficulties, but this was addressed in municipal court. He was issued a Summons, fined and is certain the units are in compliance with Housing. The units were last inspected in December 2009.

Mr. Scalera called again Mr. Szewczyk. During Mr. Szewczyk's testimony he stated that he has been involved in the construction industry since 2001. Kitchens and baths will be renovated and he will write terms into the Lease that there will be no human occupancy of the third floor open space. The building will be converted to natural gas and he will comply with Construction Official direction regarding the preferred heat source for third floor open space. In the rear building it is not his intention to have access from the garage interior to the units.

There were no questions posed by the public or Board.

The Board then discussed general habitability. There were concerns that the units should again be inspected by Housing. Discussion was varied and it was concluded after a Straw Vote that since all but one unit is occupied and this matter was addressed in a recent court proceeding that the Board will not further require a housing inspection at this time.

The time is 10:05PM. Mr. Lynch then presented the framework for the Resolution with noted conditions.

Hearing concludes 10:10 PM

Motion to approve application with noted conditions: Ms. Desjourdy

Second: Mr. Biba

Roll Call: Aye: Ms. Desjourdy, Mr. Biba, Mr. Greenebaum, Ms. Dee, Mr. Negri, Mr. English, Ms. Robertson, Ms. Lincoln and Mr. Sailliard

Nay: None

6. Resolutions: Application 10-03: Kolassa and Seifu, 16 Elmer Avenue, B: 43. L: 9 R-5 Zone

Mr. Biba read into the record the full text of the Resolution.

Motion to adopt as amended: Mr. Greenebaum

Second: Mr. Negri

Roll Call: [Ms. Dee is not eligible to vote.]

Aye: Ms. Desjourdy, Mr. Biba, Mr. Greenebaum, Mr. Negri, Mr. English and Ms. Robertson.

Nay: None

7. Bill List: April 19, 2010

Motion to approve Bills List in the amount of \$11,963.51: Mr. Greenebaum

Second: Mr. Negri

Roll Call:

Aye: Ms. Desjourdy, Mr. Biba, Mr. Greenebaum, Ms. Dee, Mr. Negri, Mr. English, Ms. Robertson, Ms. Lincoln and Mr. Sailliard

Nay: None

8. Old Business:

Shade Tree Completeness Review

Mr. Zimmerman addressed the Board about the concerns expressed in Mr. Matlack's March 24 correspondence regarding greater attention to tree on plans and applications. Mr. Zimmerman reported that he has contacted Mr. Matlack and awaits a date to schedule a meeting to further address this matter. However, Mr. Zimmerman assured the Board there will be an increase due diligence in his review of the checklist and recognition of trees.

9. Pending Applications:

09-11: Proposed House: Chua property, 445 Mine Brook Road, Block 28, Lot 43, R-2 Zone, continued from January 19, 2010. Applicant has not submitted requested data nor re-noticed. Ms. Lyons was requested to write to applicant as to the status of his application so the Board can determine the proper action to take.

10. New Business: None

11. Comments from Members:

Both Chairwoman Desjourdy and Ms. Dee acknowledged their attendance at the April 7 New Employment Practices Liability Training sponsored by the Joint Insurance Fund.

12. Comments from Staff: None

13. Adjournment:

Time is 10:55 PM

Motion to adjourn: Mr. Greenebaum

Second: Mr. Biba

Voice Vote: All members present voted in the affirmative.

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Respectfully Submitted,

Teresa Lyons, Administrative Officer

Minutes Approved: Were revised May 17, 2010

Keywords: minutes-board-of-adjustment-adam-szewczyk-55-Bernards-Avenue-Block-104-Lot-8-Kolassa-Seifu-16-Elmer-Avenue-Block-43-Lot-9-Chua-445-Mine-Brook-Road-Block-28-Lot-43

See Email for April 5 Meeting Minutes

Agenda Attachments:

Resolution: Application 10-03: Kolassa and Seifu, 16 Elmer, B: 43 L: 9

April 12, 2010 letter to Mr. Edgar Chua

Application 10-02:

- March 17, 2010 correspondence from David Scalera, Esq. noting application
- Application, date received March 17, 210 for Certification of Non-Conforming Use
- Memorializing Resolution of Board of Adjustment dated February 20, 1960 w/ meeting minutes
- Survey dated January 25, 2010
- Concept plans for proposed interior renovation
- Real Estate Tax Statement and Certified List of Property Owners
- March 22, 2010 M. Mondok Zoning Officer Report
- March 24, 2010 correspondence from P. David Zimmerman
- March 24, 2010 correspondence from Shade Tree Committee
- March 29, 2010 correspondence from Bernards Township Dept of Health
- March 30, 2010 correspondence from P, David Zimmerman
- April 14, 2010 email from Sherry Frawley c/o Environmental

Bill List: April 19, 2010