

**ZONING BOARD OF ADJUSTMENT
MAY 28, 2015**

PRESENT: Messrs. Hutchinson, Fitzgerald, Lisko, Cupoli, Fowler, and Greig; and Ms. Casserly

ABSENT: Ms. Young and Mr. Ross

ALSO PRESENT: Board Attorney Kevin Kennedy, Esq., Board Secretary April Claudio, and Zoning Official Ted Bianchi

The secretary stated that adequate notice of this meeting of the Zoning Board of Adjustment was sent by email to our official newspapers, the Coast Star and the Asbury Park Press on December 22, 2014 and by posting a copy of said notice at the Municipal Complex on the same date.

Mr. Cupoli made a motion to waive the reading and approve the minutes of the April 23, 2015 regular meeting, which was seconded by Mr. Greig and approved by the following vote:

AYES: Messrs. Hutchinson, Lisko, Cupoli, and Greig; and Ms. Casserly

NAYS:

ABSTAIN: Mr. Fitzgerald and Mr. Fowler

Ms. Casserly made a motion to waive the reading and approve the resolution granting approvals to Karl & Theresa Meier, 216 Ninth Avenue, which was seconded by Mr. Hutchinson and approved by the following vote:

AYES: Messrs. Hutchinson, Lisko, Cupoli, and Greig; and Ms. Casserly

NAYS:

ABSTAIN: Mr. Fitzgerald and Mr. Fowler

Ms. Claudio explained the Board discussed granting an extension to Jerry and Barbara Krumeich, 202 B Street at last month's meeting, however there was some miscommunication about the end day for the extension. She stated the applicant had requested it be extended to October 2016 not October 2015. Mr. Kennedy stated the permit extension act only goes until June 30, 2016. Mr. Cupoli made a motion to grant the extension until June 30, 2016, which was seconded by Mr. Fitzgerald and approved unanimously.

Ms. Claudio explained she received a request for a one year extension of the approvals granted to Edward Kloss, 603 Ocean Avenue. Mr. Greig made a motion to grant an extension until June 30, 2016, which was seconded by Ms. Casserly and approved unanimously.

ALEX & ALICIA REESE – 1007 14TH AVENUE

Appearing for this application was Mr. and Mrs. Reese and their architect Mary Hearn. Mr. Reese stated they have owned the property since 2006. It is a single-family home that they live in. Their proposal is to add a second floor addition. They have done some work to the house since they bought it.

Ms. Hearn submitted two photo boards and illustrated site plans. The proposal is a second floor addition on the back half of the house. They would gain a master bedroom and bathroom, and some additional closet space. Requesting variances for existing side yard setback on the west side, rear yard setback, and building coverage. The building coverage is already over the maximum and they would only be adding 20 square feet.

Mr. Fowler asked when construction would start if approved. Mr. and Mrs. Reese want to start right away. Mr. Fowler asked about water runoff. Ms. Hearn stated the roof leaders would be connected to underground drainage.

Mr. Greig asked if there are any changes to the front portion of the house. Ms. Hearn stated they would just do new siding if it's in the budget.

Ms. Casserly asked if there would be any changes to the utilities. Ms. Hearn stated only interior changes.

Mr. Fitzgerald asked about the chimney coming out of the roof. Ms. Hearn stated it would be removed.

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Public: none

Board Comments:

Mr. Fowler stated he would be in favor of the application. Mr. Cupoli agreed.

Mr. Greig stated he is always pleased when someone comes before them with needs instead of wants.

Ms. Casserly stated she is pleased they want to stay in Belmar.

Mr. Fitzgerald stated this is a minimal request and is in favor of it.

Mr. Hutchinson agreed with Mr. Greig and added it will be a nice addition.

Mr. Lisko stated it will be an excellent project.

Mr. Greig made a motion to approve the application, which was seconded by Mr. Fowler and approved by the following vote:

AYES: Messrs. Hutchinson, Fitzgerald, Lisko, Cupoli, Greig, Fowler and Ms. Casserly

NAYS:

REED FRAASA – 405 5TH AVENUE

Appearing for this application was Mr. Fraasa. Mr. Fraasa stated he has owned the property since 2008. It has a single family home used as his second home. He stated he has relocated the a/c condenser so he no longer needs a variance for that. His application is for just the pool and patio. He doesn't plan on doing the pool until next spring. He requested a variance for impervious coverage of 56% where 50% is the maximum permitted. He appeared before the Board a few years ago to request an addition on the house. He has completely restored the house. His neighbors have pools. The increase in impervious coverage is to have a patio around the pool for sitting.

Mr. Hutchinson asked Mr. Fraasa if he looked into permeable pavers. Mr. Fraasa was unaware of these type of pavers and would be willing to use them.

Mr. Fitzgerald questioned if the only variance is for impervious coverage. Mr. Fraasa agreed. Mr. Fitzgerald asked if the pool was included in the calculation because it's not supposed to be. Mr. Fraasa stated he did not include it. Mr. Fitzgerald asked Mr. Bianchi about a ground level deck. Mr. Bianchi stated it would be a 50% credit like the permeable pavers.

Mr. Cupoli asked about the location of the pool equipment. Mr. Fraasa stated it would go near the garage and be in compliance with the 3 foot setback. Mr. Cupoli suggested some screening be put in around the equipment to block noise. Mr. Fraasa stated both of his neighbors have 6 foot fences and he put landscaping along the rear already.

Mr. Lisko pointed out that with the credit for permeable pavers the impervious coverage would be reduced to roughly around 51%.

Public: none

Board Comments:

Mr. Hutchinson stated he is in favor of the application. The rest of the Board members each agreed.

Mr. Greig made a motion to approve the application, which was seconded by Ms. Casserly and approved by the following vote:

AYES: Messrs. Hutchinson, Fitzgerald, Lisko, Cupoli, Greig, Fowler and Ms. Casserly

NAYS:

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At approximately 8:17 PM the Board took a recess.

At approximately 8:30 PM the Board reconvened and the Board Secretary took Roll Call. All were still present.

PAUL ELIA – 106 19TH AVENUE

Appearing for this application was Mr. Elia and his attorney Barbara Burns. Mr. Kennedy and Mr. Lisko explained this application is for an appeal of the Zoning Officer's decision relating to the location of a/c condensers on the property. He stated the applicant appeared before the Board in 2013 and they believe they received a variance for the a/c unit, however Mr. Bianchi disagrees.

Mr. Elia stated he owns the property along with his two brothers. The property has been in his family since 1962. He stated on sheet A2 of the proposed elevations, elevation 6, shows 3 a/c units mounted on the west elevation. He stated they had difficulty finding ways to run ductwork for a conventional a/c. They decided to go with a mini split HVAC unit that does not require ductwork. He stated the elevation showing the units must have been overlooked when he appeared before the Board previously. He stated those drawings were an approximate size and in an approximate location. He submitted a poster board with an enlarged site plan and rendering, original zoning elevation which shows the condenser units, a plan showing the location of the condensers now, four existing elevations and photographs of the existing conditions.

Mr. Elia stated the two condensing units are on the east and west elevations towards the rear of the property. They are mounted on brackets and are the size of a large suitcase. They have a decibel reading level of 54 which is equivalent to the hum of a residential refrigerator. A portable window air conditioner has a decibel rating of 60-67 which would be louder. The units project 19.5 inches off the sides of the house. He pointed out in his photos that the one neighbor's stones in their side yard setback protrude into his side yard setback.

Ms. Burns stated they are looking to reverse Mr. Bianchi's decision as the Zoning Officer. She referenced the Borough ordinance pertaining to the section regarding what is allowed in a side yard setback. She stated the ordinance lists various items and adds language "including but not limited to". She feels an a/c unit would fall into the "not limited to" category and would be permitted as it does not protrude more than the 24 inches into the side yard setback. Mr. Elia added that electric and gas meters are not listed in the ordinance and those project into side yard setbacks. Ms. Burns stated window a/c units project into side yard setbacks more than their proposed one does.

Mr. Elia stated he had letters of support from the neighbors. Mr. Kennedy stated the Board does not accept letters of support or opposition but people are allowed to speak during the public comment section.

Mr. Kennedy submitted into the record exhibits from the 2013 Board hearing. Mr. Bianchi read his notes from the minor land use application he originally denied in 2013. He stated he did not site a setback variance for the a/c units because when looking at the elevations submitted to the Board originally they do not show any projections. Mr. Bianchi stated he did see a note about a condensing unit in the rear on one of the copies of plans submitted. He showed the Board the rear elevation that shows a box at the bottom corner of the house that looks like a condensing unit and has a note stating such. He added that he did not see any units projecting off the house. He stated he thought it was going to be a conventional a/c unit and had no idea it was going to be a mini split system and it was done without permits.

Mr. Kennedy marked into the record the minutes of the September 26, 2013 meeting when the application was originally heard. Mr. Bianchi stated he does not recall nor did he see any discussion in the minutes regarding the location of the a/c condensers. Mr. Kennedy marked into the record the resolution from that hearing granting approvals to Mr. Elia. Mr. Kennedy and Mr. Bianchi pointed out that there was no reference for a variance for the a/c condensers listed in the resolution.

Mr. Bianchi stated during his inspections of the construction on the house he observed two a/c condensers projecting off the east and west elevations. He submitted a packet of photos taken by

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the Code Enforcement office of the a/c condensers. He stated they project off the house into the side yard setback and they make noise because they have motors on them. He notified the homeowner and issued a violation notice because they were installed without permits and any inspections. He stated he reviewed the file and did not see anything showing them projecting into the side yard setback.

Mr. Kennedy submitted a letter into the record from Ms. Burns requesting an appeal of Mr. Bianchi's decision.

Mr. Bianchi stated Mr. Elia's plans show three a/c units mounted on the west elevation when in fact they installed one on the west elevation and one on the east elevation. He added that if the plans presented in 2013 had shown the a/c units projecting off the sides of the house like they are now he would have flagged it as requiring a variance.

Mr. Kennedy asked Mr. Bianchi how he feels about Ms. Burns' comment that these units are similar to a gas and electric meter. Mr. Bianchi stated meters don't have any motors in them and he has no authority on the placement of meters by the utility companies. Mr. Bianchi stated the Borough ordinances state that if it's not specifically listed then it's not permitted.

Mrs. Burns questioned why Mr. Bianchi did not flag the a/c units during the previous meeting. Mr. Bianchi stated they were not shown on the illustrated renderings submitted to the Board. Mrs. Burns stated that nobody seemed to notice that these a/c units were on the plans and the Board approved the application with the assumption everything was fine.

Mrs. Burns stated the condensing units were installed on the building at the time of the rough electric and plumbing inspections. Mr. Bianchi stated he did not see them there. She stated she has photographs showing them there. Mr. Bianchi stated the electrical inspector informed him that they were not installed when he did his rough inspection. He also stated that the electrical contractor had stated he did not do the installation of these units or do the wiring. Mr. Elia stated there was a separate electrical contractor that did the condensers. Mr. Bianchi stated there were no permits for it so he did not know who did the installation.

Mr. Elia stated he submitted permits immediately after he was advised that he did not have permits. Mrs. Burns stated the units and wiring were done by licensed contractors.

Mr. Greig asked if the windows on the west elevation project from the house as well. Mr. Elia replied yes. Mr. Greig asked if those projections were shown on the plans. Mr. Elia replied no. Mr. Greig stated that since neither the windows nor the a/c units are shown as projections on any of the other elevations one would assume they are flush with the house. Mr. Greig stated he approved the application as he sees it and there's nothing that shows projections. He added that if they were actually shown as a projection on the north elevation he would still say that something different was done than what was approved. He added that the items they referenced as being permitted to project into the side yard setback don't make noise and these units do.

Mr. Elia stated as an architect elevations are usually flush to depict a picture.

Mr. Greig stated the a/c units aren't listed in the resolution either. A side yard setback was granted for the building but the a/c units project more than the building into the setback. Mr. Bianchi agreed the side yard setback variance that was granted was measured to the structure not the condensing units.

Ms. Casserly asked that since the units are in a different area than what is shown on the plans does that require an additional review from Mr. Bianchi. Mr. Bianchi stated that even if the Board had originally approved the condensing units they are not in the location shown on the plans and therefore he would have referred Mr. Elia back to the board because it was a change in the plans.

Mr. Fitzgerald stated the condensing units are there and he feels a variance is needed so the discussion should move forward into that direction instead of continuing discussion on whether or not they agree with Mr. Bianchi's decision.

Public:

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Maryann Ranieri, 107 19th Avenue, stated she lives across the street. Everyone in their neighborhood was deeply affected by Hurricane Sandy. She understands there were some oversights but from the view from her house she now has a beautiful house across the street from her. She would like to see them get back into their home.

Patricia Derillo, 104 19th Avenue, stated the Elia family grew up with her family. She is next to one of the condensing units and was surprised to see it but didn't even know what it was. She stated she doesn't know what the laws are but it is kind of close to her house and doesn't know much about it.

Board Comments

Mr. Fowler stated he is inclined to be in agreement with Mr. Bianchi.

Mr. Cupoli stated all of our inspectors try to a good job and try to abide by the laws and regulations to the best of their ability. He stated he agrees with Mr. Bianchi.

Mr. Greig stated he agrees with Mr. Bianchi. Ms. Casserly agreed as well.

Mr. Fitzgerald stated he doesn't feel there are two standalone decisions. He would agree with rest of the Board with the caveat that a variance be granted. He feels if a variance is not going to be granted that would change his position because he doesn't want to create a hardship for the applicant.

Mr. Hutchinson stated he agrees with Mr. Bianchi.

Mr. Lisko stated he agrees with Mr. Bianchi. He doesn't agree with their argument that the units are an architectural element.

Mr. Kennedy requested a vote to affirm or oppose the decision of Mr. Bianchi.

Mr. Greig made a motion to affirm Mr. Bianchi's decision, which was seconded by Mr. Fowler and approved by the following vote:

AYES: Messrs. Hutchinson, Lisko, Cupoli, Greig, Fowler and Ms. Casserly

NAYS:

ABSTAIN Mr. Fitzgerald

Mr. Kennedy stated the next question would be is if the applicant would be entitled to a variance or not.

Mr. Bianchi stated the variance would be the projection into a side yard setback. Five feet is required, 3.9 feet has been granted for the structure, and the a/c units project another 19.5 inches into the setback.

Mrs. Burns stated the job is completely done and they are ready to move in. Mr. Elia stated moving the condensing units would cost thousands of dollars and would affect the efficiency of the units. Mrs. Burns stated it would be very difficult to relocate them while still maintaining the required distance from these units to the interior units.

Mr. Cupoli suggested they speak to the neighbor to see if anything can be worked out in regards to her view. He suggested lowering or raising them so they aren't near her window. Mr. Elia stated he would be willing to discuss it with her but they are bolted into the house so he's not sure what can be done.

Mr. Greig asked Ms. Derillo if she listened to the air conditioning unit. She stated she did try to listen to it today but they could not get it turned on. Mr. Greig stated based on his knowledge of decibels he believes it should be quiet. She stated her concern is safety and is it secure. He stated the construction inspectors would make sure that it is safe.

Ms. Casserly asked for clarification on safety features. Mr. Elia explained how the units are mounted and bolted to the side of the house. Mr. Bianchi stated they would have to submit drawings to the building official showing how it was mounted.

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Public:

Maryann Ranieri, 107 19th Avenue, stated she would like to see this move on. She's not concerned about safety. She feels they need heat and air conditioning and they need to put it somewhere.

Board Comments:

Mr. Fowler stated he appreciates the fact Mr. Elia's family has a long standing history in Belmar and that they want to continue living in Belmar. He stated the house is very nice and was tastefully done. He stated he would be in favor of the variance even though he has a concern about it being done without a permit.

Mr. Cupoli stated he would agree to grant a variance.

Mr. Greig stated he regrets the fact that everyone had missed it during the previous board meeting. He felt if it was known he would have suggested that it not be placed across from someone's window. Given the fact that it is there he would be inclined to grant the variance.

Ms. Casserly stated she doesn't see this being done maliciously and takes that into account and would be in favor of the variance.

Mr. Fitzgerald stated he would like to see them get back in their home soon and would be strongly in favor of the variance.

Mr. Hutchinson stated the units were put in a very poor position but since there aren't any major complaints from the neighbors he would be in favor of the application. He feels it wasn't Mr. Bianchi's or the Board's fault that this wasn't picked up the first time, the problem was that incomplete information was presented to them by Mr. Elia.

Mr. Lisko agreed with Mr. Hutchinson. He felt if this plan was originally proposed he would have asked the unit be moved from the east elevation. He stated he would not be in favor of the variance given the location of the units being less than five feet from somebody's window. He feels there were better options for the location of it and if things were done properly and with permits it could have been addressed sooner.

Mr. Cupoli made a motion to approve the application, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Messrs. Hutchinson, Fitzgerald, Cupoli, Greig, Fowler and Ms. Casserly
NAYS: Mr. Lisko

Ms. Casserly made a motion to adjourn the meeting, which was seconded by Mr. Lisko and approved unanimously.