

# ZONING BOARD OF ADJUSTMENT

**JULY 27, 2021**

PRESENT: John Hutchinson, Phil Greig, Mark Fitzgerald, John Lisko, Chuck Ross, Bob Cupoli, Mike Melango, Annemarie Drazenovich, Tom Palmisano, Michael Druz

ABSENT: Holly Deitz

ALSO, PRESENT: Board Attorney Kevin Kennedy, Zoning Official Ted Bianchi, Board Secretary April Claudio, Borough Engineer Jerry Freda and Borough Planner Christine Bell

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 July 6, 2021 by posting a copy of said notice at the Municipal Complex on the same date.

Mr. Kennedy administered the Oath of Office to Michael Druz.

Mr. Fitzgerald made a motion to waive the reading and approve the resolution of approval for Janis Fitch and Steven Mayhew, 1206 River Road, which was seconded by Mr. Hutchinson and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Fitzgerald, and Mr. Melango

NAYS:

ABSTAIN: Mr. Cupoli, Mr. Greig, Mr. Lisko and Mr. Ross

Mr. Greig made a motion to waive the reading and approve the resolution of denial for Verizon Wireless, 1715 Ocean Avenue, which was seconded by Mr. Melango and approved by the following vote:

AYES: Mr. Hutchinson, Mr. Fitzgerald, Mr. Melango, Mr. Greig, Mr. Lisko and Mr. Ross

NAYS:

ABSTAIN: Mr. Cupoli

## DANIEL DEFRANCO – 1905 SURF AVENUE

Appearing for this application was Daniel DeFranco, his fiancé Samantha Lewis, and his attorney Lisa Krenkel. Mr. Fitzgerald recused himself because he lives within 200 feet. Mr. Palmisano took his place. Mr. Kennedy stated this is an attempt to settle litigation involving an appeal of the Board's denial.

Ms. Krenkel stated Mr. DeFranco spoke to his neighbor Ms. Oliver and her son who were the objectors. They have worked out an agreement to continue the use of the second driveway. She submitted a packet of photos marked as exhibit A16. Since their application, Ms. Oliver has put up a fence to delineate the properties which they have no objection to. Mr. DeFranco is proposing to pave his driveway with a double apron to match the other driveway on the property. She stated the Oliver's have one concern that nobody can park in the street in front of the driveway. Mr. DeFranco already has it in his lease that they cannot park there and must use the driveway. Mr. Kennedy suggested there be a written shared agreement between Mr. DeFranco and Ms. Oliver regarding the maintenance of the shared driveway apron.

Mr. Cupoli asked if there are any other properties in the area that have two driveways. Mr. DeFranco stated there is a home about two or three blocks away and across the street are two houses with a shared driveway. Mr. Cupoli asked for clarification. Mr. DeFranco explained they are only joining the driveway apron not the whole driveway. He added there will be a paver strip down the middle of the apron to delineate each side of the apron.

Mr. Melango asked if there is a plan with new impervious coverage. Mr. DeFranco stated there is no change in impervious coverage. He felt the stone and paver coverage would be the same.

Mr. Kennedy explained the Board can reverse the Zoning Officer's initial decision or the Board can say they affirm the Zoning Officer's decision and grant variances. Reversing the decision would be easier but can discuss it with Mr. Bianchi. Mr. Greig just wanted to make sure it was

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clear that Mr. Bianchi's decision was made correctly with the information he had at the time. Ms. Krenkel agreed that Mr. Bianchi did not have the 1989 survey at the time.

Public: none

Mr. Hutchinson stated he is in favor of this given the agreement with the neighbor. Mr. Greig, Mr. Ross, Mr. Palmisano, Mr. Cupoli, Mr. Melango and Mr. Lisko agreed.

Mr. Lisko stated he would propose to overturn the Zoning Officer's decision from 2019. Mr. Ross made a motion to overturn the Zoning Officer's decision, which was seconded by Mr. Greig and approved by the following vote:

AYES: Mr. Cupoli, Mr. Hutchinson, Mr. Melango, Mr. Greig, Mr. Lisko and Mr. Ross  
NAYS:

### MICHAEL DEBLASIO & ANTHONY FONTANA – 902/904 E STREET

Mr. Fitzgerald rejoined the Board. Exhibits: A1 application, A2 series of photographs, A3 minor subdivision plan, A4 average alignment plan, A5 Board engineer review letter, A6 letter regarding half story calculations. Appearing for this application was Mr. DeBlasio, Mr. Fontana, planner Allison Coffin, and attorney James Pryor.

Mr. DeBlasio stated he and Mr. Fontana have owned the property since 2015. The property currently has a side-by-side duplex known as 902 and 904 E Street. 902 E Street has three bedrooms and one bathroom and is currently occupied. 904 E Street has three bedrooms and one bathroom and is also currently occupied. The home is in disrepair. They have renovated both units. Each unit has their own driveway, garage and separate water/sewer, gas and electric. A fence has been installed in the rear to separate both units. The variances being requested are existing conditions. He would like to split the lot so that they would be separate properties with just a shared wall. The new lots would be 2415.5 square feet and 2284 square feet where 7500 square feet is required. Several other variances for setbacks, floor area ratio, impervious coverage and building coverage are also required for both lots but are existing conditions. There will be no change to the exterior of the structure. If approved there would be no change in occupancy or use of the sites.

Mr. Prior explained the number of variances is due to the function of the properties. Ms. Coffin stated the lot is currently 4700 square feet. She explained this would be a subdivision to create fee simple lots which would change the ownership. There will be no changes to the property. The existing home is a pre-existing nonconforming use. A "D" variance is required because of the ownership of the lot not the use. The site is suited for the use as it has been used that way since 1905. The application is only for a subdivision line. There is no detriment to the surrounding properties since there is no change to the site except for separate ownership. There is no impact to the master plan and zoning regulations. The existing structure does not conform to floor area ratio, so the proposed subdivision creates smaller lots and creates an FAR variance for lot 12.01 but not lot 12. There is no actual increase in floor area. The lot is currently undersized and will be further made into two undersized lots which creates the setback variances. The existing conditions are nonconforming and will stay nonconforming with no changes.

Mr. Lisko explained if this house is torn down at some point then we are left with two small lots and asked how that would affect planning. Ms. Coffin stated the subdivision would be contingent that the structure remains, or a similar structure be built. If not, then they would have to be combined back into one lot.

Mr. Bianchi pointed out that each lot would need a variance for number of stories because they are each three stories and not two and a half stories.

Mr. Melango asked if an operating agreement between the two owners has been discussed. Mr. Prior stated he will prepare one. Mr. DeBlasio stated it would happen when they are deeded. Mr. Prior offered they could submit it as a condition of approval.

Mr. Cupoli asked why. Mr. DeBlasio stated it would give them the option to split their ownership or sell one side. Mr. Cupoli asked if there would be a condo association. Mr. DeBlasio

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stated no. Mr. Prior stated there would be an operating agreement. Mr. Prior felt making it a condo association instead would be a legal nightmare and felt the subdivision is a much cleaner process.

Mr. Melango asked if the interior shared wall will have to be fire rated. Mr. DeBlasio stated if it is a requirement of the construction office he would do so.

Mr. Lisko questioned Mr. Prior's comment about the subdivision being a cleaner process than making it a condominium. He was concerned about leaving the Borough with two undersized lots.

Mr. Ross questioned why a subdivision application was appearing before them and not the Planning Board. Mr. Kennedy stated there are two reasons: the use variance and the floor area ratio variance. Mr. Ross stated he heard the benefit to the owner but asked why this would be beneficial to the community.

Mr. Prior stated they are arguing that the use of the site is beneficial and suitable for the site. Mr. Ross stated he doesn't see where subdividing an undersized lot into two smaller lots is a suitable use. Ms. Coffin stated the use doesn't change; the two-family building already exists. She stated whether its subdivided or made into a condo it would still have two tax lots. Mr. Ross asked if there are any other properties that are 24 feet wide. Ms. Coffin did not have that information. She added this is unique application. Mr. DeBlasio stated there are other properties similar to theirs that did not go before a Board.

Mr. Fitzgerald asked if there are other properties that have a 24 ft. lot with shared walls. Mr. DeBlasio stated there are some. Mr. Fitzgerald felt it would have been beneficial if they shared the list ahead of time. He was concerned that an operating agreement would be legally the same as a condo association. Particularly if one side wanted a different paint color than the other it could become problematic. Mr. Prior suggested the resolution could be recorded with the condition that an operating agreement be made. Mr. Fitzgerald felt a condo agreement would be more of a benefit to the town.

Mr. Greig stated he doesn't see why after six years they want to separate the lot just to have two tax bills. If one of them wanted out there is probably a clause in their arrangement to do so. Mr. DeBlasio stated there is no plan to sell but want it as an option for the future. Mr. Greig did not see why the property needs to be divided to create two small lots. He felt they bought the house knowing what they are getting into. He did not see a benefit to the town. If the house was destroyed by fire or flood, they would be coming back to the Board to build tiny homes. Mr. Prior felt that the two owners wouldn't want to do that but rather would work together to build another duplex.

Mr. Hutchinson stated he is having trouble with this being "well suited" for the property. He asked why we would divide a property right down the center of the structure that is already on a severely undersized lot for the zone. The condo association route would be much better for the town than creating two severely undersized lots.

Ms. Drazenovich shares some of the Board's concerns and asked the Borough Planner if she has any comments.

Mr. Palmisano was concerned about if the house burned down what could be there. Mr. Druz asked if there is a zone for duplexes. Ms. Coffin stated there is no zone for it but there are many that exist.

Ms. Bell stated it is not typically good planning practice to create nonconforming lots. The lot is already nonconforming for the zone. She agreed with the concerns the Board has already brought up. If the house was destroyed or demolished variances would be required to build a new duplex. If the lot wasn't subdivided and someone wanted to build, they could build a more conforming home.

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Public: George Komitas, 111 3<sup>rd</sup> Avenue, stated the house survived hurricane Sandy. He thought there were some properties on the street that are subdivided with separate ownership and shared walls.

Mr. Melango stated he would like to see the operating agreement. He is not crazy about the undersized lots and therefore is not in favor of the application at this time.

Mr. Cupoli stated it is too many variances for one piece of property which he is not comfortable with.

Mr. Ross stated over the years the Board has seen applications for weird, shaped lots and he always wondered how they became that way. This application would be doing the same which he would not be in favor of.

Mr. Fitzgerald felt they haven't proven a benefit or hardship to grant the variances.

Mr. Greig agreed with the Board and Ms. Bell. Creating this situation is not good policy. Mr. Hutchinson agreed and felt it doesn't seem to be a reasonable ask.

Ms. Drazenovich agreed with the consensus and feels it goes against the master plan.

Mr. Lisko agreed with the Board and felt this is not a good planning decision.

Mr. Prior stated he would be happy to submit a draft operating agreement.

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

AYES: Mr. Cupoli Mr. Hutchinson, Mr. Fitzgerald, Mr. Melango, Mr. Greig, Mr. Lisko and Mr. Ross

NAYS:

At approximately 8:00 pm the Board took a brief recess. The Board reconvened at 8:14 p.m. All were still present.

### EDELMAN INVESTMENT GROUP LLC – 112/114 12<sup>TH</sup> AVENUE AND 108/108.5 12<sup>TH</sup> AVENUE

Appearing for this application was attorney David Lonski, attorney William Shippers as the applicant, engineer Rich DiFolco, architect Mary Hearn, and traffic engineer Scott Kennel. Edelman Investment Group LLC is the contract purchaser of the Belmar Inn lot which is owned by Rainbow Hospitality LLC. Mr. Shippers is the principal in Edelman Investment Group LLC. 12<sup>th</sup> Ave Redeveco LLC is the current owner and applicant of lot 13. The principals of 12<sup>th</sup> Ave Redeveco LLC are David Lonski and William Shippers.

Attorney Rick Brodsky appeared representing Brian and Cecilia Matthews, owners of 109 11<sup>th</sup> Avenue.

Attorney Karen Shelton appeared representing herself as a potential objector.

Exhibits: A1 application, A2 application checklist, A3 survey, A4 architectural plans, A5 engineering plans, A6 stormwater report, A7 3D-colored renderings, A8 applicant's binder with appendix A-O, A9 and A10 3D colored rendering poster boards, A11-28 are poster board exhibits. B1 is Board engineer's review letter.

Mr. Lonski stated they are proposing a use variance with bulk variances application associated with replacing the existing Belmar Inn and a neighboring multifamily property with a 24-unit condominium building with parking underneath.

Mr. Brodsky objected to exhibit A8 because this is a new application and separate from any evidence or exhibits presented at any prior hearings. Mr. Kennedy suggested it will be marked into the record, but the Board can determine later what weight it has on the application. Mr. Kennedy agreed this is a new application.

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Ms. Hearn stated they came before the Board in 2018 with a 24-unit condo building that was ultimately withdrawn. The developer has since obtained a neighboring property making the new property 150 x 140 feet. Now proposing an updated Mediterranean look with staircases on each end and an elevator in the middle. The units would run east to west with a corridor in the middle. The new proposal is still 24 units ranging 1362-1439 square feet with two viable bedrooms and 2 or 2 ½ bathrooms. She explained the proposed setbacks, building coverage, impervious coverage, floor area ratio and height for the 2018 application as a comparison to the new application. Proposing 47 parking spaces where 48 are required. The a/c units will be on the roof and hidden with a screen. The northerly section of the roof will have solar panels. This creates a buffer from the people gathering on the roof and the properties to the north. The parking plan will have electric car spaces around the perimeter of the parking layout as well as two in the right of way on the street for the public. The parking area will be a mix of concrete and pervious pavers. There is a trash room at the rear of the covered garage. There will be two handicap spots in the garage.

Ms. Hearn stated the proposal's aesthetics is modern, which is a trend nationwide. The increase in height is due to the parapets and the roof pitch. The previous application had a flat roof which the new proposal does not. The elevator/stair tower is set in the middle of the roof and cannot be seen from street level.

Mr. Kennel compared the existing uses of the two lots and the proposed application. Each unit is required to have 2 parking spaces, 48 total. The proposal is 47 parking spaces which in RSIS standards is deminimus. A building of this size would have a demand of 31-32 parking spaces. Based on the number of bedrooms the demand would be less than the 1.96 spaces per a unit being proposed. The proposal is less intensive than what exists on the two lots today. Some of the parking spaces are 8.5 feet not 9 feet but the parking spaces are being used for residents not commercial. Belmar also has a transient nature with ride share programs and the train station. The parking is adequate for the building. The current Belmar Inn site has no parking and there is a driveway easement between the Belmar Inna (lot 12) and lot 13. The new proposal would eliminate those conditions.

Mr. Brodsky cross examined Mr. Kennel. Mr. Brodsky asked why the building can't be made smaller to comply with the parking requirement. He stated the parking requirements for a permitted use on the property would be significantly less. He asked if the parking spaces will be assigned or not and asked about guest parking. Mr. Kennel stated that hasn't been determined yet.

Mr. Kennel stated based on the 40 rooms of the hotel and the neighboring 3 dwellings the existing conditions are more intrusive than the proposal because the Belmar Inn has no parking. The proposal would reduce the parking impact on the roadway.

Ms. Shelton asked Mr. Kennel if he considered how many people live in the rooms at the Belmar Inn. Mr. Kennel stated he was advised they can have two per a room for a total of 80. She asked if he considered how many people in the Belmar Inn drive cars. Mr. Kennel stated there is an assumption of one car per a room. She felt Mr. Kennel's testimony did not include how many people in the Belmar Inn actually drive a car and therefore the impact would not be as intrusive. Mr. Kennel stated there is also the potential that the new units could be used as summer homes which would mean cars would only be parked there seasonally.

Mr. Brodsky asked how many spots are on the existing lots. Mr. Kennel stated lot 12 has no parking and lot 13 has 8-12 stacked parking spaces. Mr. Brodsky asked if the proposed parking would have a detriment on neighboring properties. Mr. Kennel stated they are proposing a more conventional parking layout with landscaping and fencing to minimize impact.

Mr. Freda asked about the depth of the parking spaces and if there are any concerns with 16 ft. requirement backing up to a 22 ft. aisle. Mr. Kennel stated it is no different than an urban parking set up they will not be heavily used, and it is not uncommon. Mr. Freda stated he has seen it work in an urban setting, but we are in a recreational area and felt this needs to be looked at further. Mr. Kennel stated the parking spaces are 16 feet with a 2 ft. overhang which functions

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as an 18 ft. stall. The site engineer will testify more about it. RSIS allows 9 x 18 with a deviation. Ms. Bell pointed out that there are some spaces that appear to only be 16.5 ft. long against the paver walkway. Mr. Freda requested more testimony on the parking.

Mr. Greig asked if the EV spots on the street are for EV only. Mr. Shipers stated there would be one charging station for two vehicles. Charging time is an average of two hours. The town could limit parking to two hours. Mr. DiFolco will give more testimony on them. He felt the state is promoting EV parking and the town has none. The idea is that most charging is done overnight. The town would get the revenue for the charging.

Mr. Greig asked what the standard is for aisle width. Mr. Kennel stated it is 24 feet. Mr. Greig stated the proposal is 2 feet short.

Ms. Drazenovich asked if there is two-way traffic. Mr. Kennel replied yes. She asked if 12<sup>th</sup> Avenue was measured specifically where it narrows towards Main Street. Mr. Kennel stated is 40 feet. Ms. Drazenovich asked if two-way traffic in a small area on a busy area of the street is an issue. Mr. Kennel stated the site would function if the driveways are made one way, whatever is the Board's preference. Ms. Drazenovich thought one way traffic would help given the narrow aisles. Mr. Shipers agreed one way would be sufficient for them if the Board prefers. Ms. Drazenovich asked if the driveways could be narrower if they are one way. Mr. Shipers stated Mr. DiFolco will address that.

Public questions to Mr. Kennel: Steve Bloom, 1104 A Street, asked for the height of the garage. Ms. Hearn stated is 9.5 feet. Mr. Bloom stated if 25 cars are starting up at peak hours the sounds coming out of the garage would be excessive. Mr. Kennel stated is unlikely that 25 cars would be starting at the same time. He added he did not do an acoustical analysis. Studies show 9-10 vehicles would be exiting at peak hours. Mr. Bloom asked how many spaces there would be if they did angle parking. Mr. Kennel did not but assumed it would be less. Mr. Bloom was concerned about large vehicles with bike racks on top being able to access the garage.

Brett Lomas, 609 9<sup>th</sup> Avenue, asked if the two parking spaces for EV parking will replace two spaces for the Borough. Mr. Shipers stated they would be Borough spots used for EV charging but if the Board doesn't like it then they will donate the chargers to the Borough to be placed elsewhere. Mr. Lomas was concerned about traffic being stopped if a vehicle is waiting for the charging station.

John Walsh, 1101 B Street, asked Mr. Kennel if he is aware that B Street is narrower than 12<sup>th</sup> Avenue. Mr. Kennel stated he is familiar with the area and is aware the road is skinnier. Mr. Walsh was concerned about more traffic in the area creating a safety hazard.

Art Ammermuller, 106 12<sup>th</sup> Avenue, asked if the EV charging areas will have fire suppression. Mr. Shipers stated the building and parking garage will have fire sprinklers.

Brandon Louhier, 1607 River Road, stated it was said that the Belmar Inn didn't have any parking and it was said that the tenants of the Belmar Inn don't have a vehicle, but if they did, they would be parking on the street. If half of the rooms had a car they would be parking on the street. If the proposal has a parking garage, then there are no cars on the street.

Ms. Drazenovich asked if a traffic count was done for the traffic light at 12<sup>th</sup> and Main Street. Mr. Kennel did not prepare one for this application.

At approximately 10:12 pm the Board and the applicant agreed to postpone the application to the August 26<sup>th</sup> meeting at 6pm. Mr. Kennedy stated there will be no further noticing.

Mr. Fitzgerald made a motion to adjourn the meeting, which was seconded by Mr. Hutchinson and approved unanimously.