

**ZONING BOARD OF ADJUSTMENT  
OCTOBER 14, 2021**

PRESENT: Mark Fitzgerald, Phil Greig, Mike Melango, Robert Cupoli, Michael Druz, John Lisko, John Hutchinson

ABSENT: Chuck Ross, Holly Deitz, Annemarie Drazenovich, Tom Palmisano

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

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 September 23, 2021 by posting a copy of said notice at the Municipal Complex on the same date.

EDELMAN INVESTMENT GROUP LLC – 112/114 12<sup>TH</sup> AVENUE & 108/108 ½ 12<sup>TH</sup> AVENUE

This meeting is a continuation from the August 26<sup>th</sup> meeting. Appearing for the application were attorneys David Lonski and William Shipers, architect Mary Hearn, real estate appraiser Theodore Lamicello, and engineer/planner Rich DiFolco.

Also appearing was objecting attorney Rick Brodsky.

Mr. Kennedy submitted exhibit B3 which is a certification that Ms. Drazenovich listened to the recording of the August 26, 2021 meeting. He also marked B4 similar certification from Mr. Ross. He marked a letter from Mr. Shipers regarding electric vehicles as exhibit A33. A letter from Mr. Shipers with the appraisal report and feasibility study was marked exhibit A34. The review letter from the Borough Fire Marshall was marked exhibit B5.

Mr. Shipers spoke about the new legislation regarding electric vehicles as referenced in exhibit A33. Any new development in excess of five residential units must comply with the legislation. Fifteen percent of the parking must be EV ready. They are required to have 48 parking spaces, proposing 47 spaces and are required to have 5 EV ready but will have all 47 EV make ready.

Mr. Brodsky cross examined Mr. Lamicello regarding his report, exhibit A34. He questioned how Mr. Lamicello determined various aspects of his report.

Mr. Lisko thought it was said at the last meeting that Mr. Lamicello's testimony was not relevant for the Board to make a decision on. Mr. Shipers explained that economic feasibility of the development of the property is in the Board's right to consider, but not developer profit. He added that it is up to the Board to determine how much merit Mr. Lamicello's testimony has. Mr. Kennedy stated he will address this later but agreed with Mr. Shipers that some Board members may put more weight on the testimony than others.

Public: Steve Bloom, 1104 A Street, questioned the value of building and selling 8 townhomes and it creating a larger profit than the proposed condominiums. Mr. Shipers felt Mr. Bloom is giving hypothetical scenarios. Mr. Lisko reminded Mr. Bloom he is supposed to be asking Mr. Lamicello questions relative to this application and not hypotheticals.

Mr. Shipers asked Borough Fire Official and Fire Dept. Administrator Ryan Dullea to speak. Mr. Dullea explained his letter which was exhibit B5. He gave a history of his experience with the Belmar Inn going back to 2017. In 2017 they were not compliant with the fire code and had to bring it up to the new retro fit standard. Only one stairwell had a fire sprinkler, new sprinkler heads were required, doors were not functioning properly, and other violations existed. They appealed the violations to the County, but by 2018 it was heard and withdrawn. A complaint came in about the heat in 2018 and it was determined the heat was not working. The building had to be evacuated and shut down due to that and other violations. The building sat vacant for about a year. Complaints from neighbors were made stating people were still going in and out of the hotel. It was found that people were occupying it and it had to be evacuated again and closed down. Six months later, repairs were made, and they reopened. This year his office has been there about 20 times for violations and inspections. They have been fined several times and have fines for this year for several property maintenance and fire code violations.

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Mr. Hutchinson asked if the building is a fire hazard. Mr. Dullea replied yes due to the consistent violations, egress issues, storage of combustibles, etc.

Ms. Deitz asked what violations would require it to be closed down again. Mr. Dullea stated there are five reasons it could be shut down. Ms. Deitz stated other than those five reasons it seems the property can continue to be a yearly problem with these reoccurring violations. Mr. Dullea agreed the recurring violations are an issue and are created by management and the tenants.

Mr. Cupoli asked if a fire did occur at the site what the feasibility is of it engulfing neighboring homes. Mr. Dullea stated it is always a possibility and based on several factors. The fire protection in that building is very limited and it is a wood structure.

Mr. Melango asked how frequently it is inspected. Mr. Dullea stated it is inspected actually in May unless they are called in for a complaint. Mr. Melango asked how many complaints there were this year. Mr. Dullea stated there were five complaints and ten inspections.

Mr. Fitzgerald asked if the town has any recourse on trying to get the building addressed with the current owner. Mr. Dullea explained stated is regulated by the State. The Borough has property maintenance authority. Mr. Fitzgerald asked if there is anything more the town can do. Mr. Dullea stated we are enforcing the codes. Mr. Fitzgerald stated if there was a disaster, and the building was closed up with plywood and they pay their taxes and maintain the law there is nothing the town can do. Mr. Dullea agreed and further explained what is needed to leave the building vacant.

Mr. Greig stated a major gas leak could be devastating to the entire neighborhood. Mr. Dullea agreed.

Mr. Brodsky asked if the building is currently required to be vacated. Mr. Dullea replied no. Mr. Brodsky asked if there are open violations. Mr. Dullea replied yes and explained the process.

Public: Art Ammermuller, 106 12<sup>th</sup> Avenue, asked if a more consciousness owner could fix the violations and maintain the building. Mr. Dullea stated he has seen a change in management and the violations have not changed.

John Walsh, B Street, asked if the building is up to code now. Mr. Dullea stated there are still open violations. Mr. Walsh questioned if we could require them to have a fire safety officer on site. Mr. Dullea stated that isn't something allowed under the fire code, it would have to be a local ordinance that applies to all hotels. The current violations are not an imminent hazard.

Mr. Shippers asked Director of Code Enforcement Robert Poff to speak. Mr. Poff has worked for the Borough for 40 years. He stated he can't say how many times he's been to the property since the last time he testified because it's so many. He was concerned that the building will catch fire eventually. He was also a Special II Police Officer for the Borough and reported to many police calls over the years. The worst time was in 2018 when they had no heat in January. He has written many summonses over the years, at least 20 a summer. Something needs to be done. The summons go to the property owner and the tenants. He estimated the Borough spending thousands of dollars for code enforcement, fire, police, the county and state to respond to the property yearly. Mr. Shippers stated his OPRA request found the police respond at least once a week. Mr. Poff agreed with that.

Mr. Shippers asked if Mr. Poff if he had a professional opinion on the impact to services the proposed 24-unit condominium would have as compared to the Belmar Inn. Mr. Brodsky objected. Mr. Poff stated he believes the proposal would be beneficial to the town. Mr. Brodsky asked if three single family homes would be preferred over the Belmar Inn. Mr. Poff did not have a preference.

Public: Mr. Ammermuller asked what constitutes a noise violation. Mr. Poff stated it is anything that disturbs the neighbor.

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Mark Presto, 110 13<sup>th</sup> Avenue, asked if the violations he mentioned are seen at rental units, specifically the houses across the street. Mr. Poff stated he has closed down the houses across the street when there were certain violations.

Mr. Walsh asked if we could make them hire a police officer like we do with the bars.

Ms. Deitz asked what violations would cause a building to be shut down. Mr. Poff stated it would have to be a life safety issue.

At approximately 7:50 pm. the Board took a brief recess. At approximately 8:00 pm the Board reconvened. Roll call was taken. All were still present.

Mr. DiFolco submitted a new exhibit marked A35 which is an illustrated impervious coverage plan. It was illustrated to show the green landscaping and pervious pavers, as well as the agreement of narrowing the driveway and how that affected the impervious coverage. The new lot coverage is 74%.

Mr. DiFolco reiterated his previous testimony. He explained the current use of both properties. The one has been a seasonal rental and is an animal house. The other lot has the hotel. Both have stigmatized the neighborhood. Redevelopment of the block has been stalled because of the Belmar Inn. The proposal has no detriments to the surrounding area and is consistent with the 2016 master plan re exam report. He referenced the multi family cluster ordinance and how that could apply to the properties. He read some case law regarding the granting of "D/use variances" throughout the state regarding the criteria that must be met for the Board to grant these types of variances. He spoke about the D and C2 variances being requested and the power the Board has to grant these variances.

There was discussion as to what standards apply, D3 or D1 variance standards. Mr. DiFolco felt it was D3, but Ms. Bell felt it was D1. Ms. Bell stated the MF zone is for townhomes not condominiums. Mr. DiFolco stated from a use perspective whether they are a townhouse or condominium it is the same. He felt their application agrees with the townhouse style mentioned in the ordinance.

Mr. DiFolco stated exhibit A30 should be revised to reflect the new proposed impervious coverage of 74%. Mr. Freda stated building coverage is part of impervious coverage and felt the 74% was not accurate. Mr. DiFolco disagreed. He then calculated if he excludes the roof it is 76%. Mr. Freda agreed 76% is the correct number. Mr. DiFolco discussed the other variances being requested as the proposal relates to the MF75 zone requirements. Parking is increased compared to what is there now. Setbacks are increased as compared to what is there now. Impervious coverage has been decreased since originally presented. The current properties are a blight on the neighborhood with several fire and code violations. The rooming house usage trends towards transient users with little income. He spoke about the number of incidents where Borough resources were called. The houses at 108-108 ½ 12<sup>th</sup> Avenue are multi family structures with little parking. The property is an animal house and has been cited with quality of life violations. Both properties are a detriment to the neighborhood. The properties surrounding the subject site consist of single family and multi family uses. Multi family homes are the norm of the immediate area. He explained the lots with multi family uses. Most of which are used seasonally. The proposed building is innovative, upscale, and ADA compliant. The investment of the property will increase property values in the area. He spoke about the special reasons for granting "D" variances and how it relates to the proposal. Removing the existing structures and replacing it with a less intense use will be better for the neighborhood. It will increase quality of life, increase revenue in taxes for the Borough, and reduce the nuisances and burden on the Borough's resources. The goal of the master plan is to remove non confirming uses which this plan does. A commercial use is being removed and replaced with a residential use.

Mr. Lonski had Mr. DiFolco explain why the proposed use is suitable for the site which is a criteria to be met for the D1 variance. Mr. DiFolco stated the multifamily use is not changing but the density and intensity of the use is decreasing.

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Mr. Brodsky cross examined Mr. DiFolco. He asked if the proposal complies with the MF75 zone. Mr. DiFolco stated there are some areas it does not. Mr. Brodsky asked if Mr. DiFolco is relying on the D1 or D3 variance criteria. Mr. DiFolco replied both.

At some point between 9:00 pm and 9:30 pm Mr. Druz had left the meeting.

At approximately 10:00 pm. Mr. Lisko ended the meeting. Mr. Lisko made a motion to carry to the application to the December 16<sup>th</sup> meeting, which was seconded by Mr. Cupoli and approved unanimously.

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