

**BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
September 15, 2022**

The meeting was opened by Chairman Battista at 7:35 PM.

Chairman Battista read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

This is a special meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Coaster and the Asbury Park Press.

Chairman Battista then led the meeting in a salute to the flag.

Ms. Acken took roll call.

Present: Chairman Battista, Vice-Chairman Palmieri, William Kuzmin, Charles Lomangino, Steven Porzio, Marc McKinley, Emily DeMaio, Scott Provines

Absent: Sheila Hatami

Also Present: *Ms. Regina Acken, Board Secretary
Mr. Thomas Neff, Board Engineer
Mr. Thomas Hirsch, Esq., Board Attorney*

Chairman Battista read the Statement of Procedural Guidelines for Public Hearing.

MINUTES

Chairman Battista indicated that the minutes of the August 4, 2022, meeting have been previously distributed via email for the Board Members to review.

Mr. Porzio offered a motion to approve the minutes of the August 4, 2022, meeting. The motion was seconded by Mr. Kuzmin.

ROLL CALL

AYES: Chairman Battista, Vice-Chairman Palmieri, Mr. Kuzmin, Mr. McKinley, Mr. Porzio, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Ms. Hatami

INELIGIBLE: Mr. Lomangino

RESOLUTIONS

BA2022-05 Joel Patterson, 55 Apple Orchard Drive

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Chairman Battista advised that the proposed Resolution in this matter has been previously distributed to the Board Members prior to tonight's meeting. The Board previously approved this application on August 4, 2022.

Chairman Battista asked if any Board Members have any comment regarding the Resolution? Hearing none, Chairman Battista asked for a motion to memorialize BA2022-05.

Mr. Porzio offered a motion to memorialize Resolution BA2022-05. The motion was seconded by Mr. Kuzmin.

ROLL CALL

AYES: Mr. Porzio, Mr. Kuzmin, Chairman Battista, Mr. Lomangino, Mr. McKinley, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Ms. Hatami

INELIGIBLE: Vice-Chairman Palmieri

NEW BUSINESS

BA 2022-06, Monmouth by the Sea, LLC, 439 Tinton Avenue, Block 56, Lot 37

Attorney Hirsch stated for the record that he has reviewed the proofs and affidavit of service from the Applicant. He stated that all is in order as to form and that the Board has jurisdiction to hear this matter.

Mr. Kuzmin offered a motion to accept service. The motion was seconded by Vice-Chairman Palmieri. All present voted in favor.

Dante Alfieri, Esq., Attorney on behalf of the Applicant

Mr. Alfieri explained that the variance being sought is for two sheds on the existing working farm which exceed the 400 square foot maximum ordinance.

Attorney Hirsch swore in the following witness:

Eric Stern, 100 West 23rd Street, New York, NY 10011, Managing Member of the Applicant

Mr. Alfieri asked Mr. Stern to describe the property and its current functions. Mr. Stern explained that the property consists of a residence and is a working farm with horses and chickens. He stated that the farm area consists of a barn with approximately eight stalls, two sheds, chicken coops, a well system and eight paddocks. He stated that the sheds contain food and supplies for the animals. Mr. Stern said that the buildings preceded the Applicant's purchase of the property in November/December 2021. Vice-Chairman Palmieri asked if the client received a CO upon purchase of the property? Mr. Neff and Mr. Stern agreed that the Applicant was aware of the violation upon purchase. Mr. Stern explained that

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upon closing, the Applicant was granted a CO for the residence and subsequently, applied for the variance for the farm structures in February 2022. Mr. Neff explained that there are four accessory structures whereas only two are permitted and 2,893 square feet of accessory space whereas only 400 square feet are permitted. Chairman Battista reiterated that this is a five-acre working farm and inquired as to what the zoning requirements are for a farm? Mr. Neff answered that the Borough ordinance does not have specific farm requirements, therefore, it is the Board's responsibility to make the determination.

Mr. Hirsch inquired as to whether the Applicant performed a title search to determine how long the farm has been in operation? The Applicant responded that he had not. Mr. Neff referenced the conditional use ordinance which states that a property with an operating farm and a residence requires a minimum of six acres of farmland. Mr. Hirsch stated that the barn alone would have needed a variance upon construction and inquired if there is a permit for that structure.

Mr. Hirsch commented that there is a pre-existing non-conforming condition based on the size of the farm. He noted that the Applicant is not cited for that or for the use of the property for farming.

Chairman Battista suggested incorporating a condition in a potential approval indicating that upon the sale of the property, the new owners must continue to operate the farm.

Mr. Neff pointed out that one of the sheds is only 1.8 feet from the property line and asked if the shed can be relocated? Mr. Stern responded that the structure has been reported to be too heavy to move by professional movers.

Mr. Porzio inquired as to who is running the farm? Mr. Stern indicated that the renters run the daily operations.

Ms. DeMaio commented that the MLS listing for the property indicated that the barn was "newly built." Mr. Hirsch inquired if the seller provided the year the barn was built? The Applicant answered that the seller did not.

Chairman Battista asked the public if they have any questions for the Applicant?

Mr. Kuzmin asked the Applicant if there is room to move the shed as per the ordinance? The Applicant confirmed that there is.

Mr. Hirsch asked if there is any buffering between the shed and the neighboring property? Mr. Stern responded that there are some trees, shrubs, and a split rail fence.

Mr. Lomangino asked Mr. Neff if there were any water concerns in that area? Mr. Neff said no.

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Chairman Battista asked the public if they have any statements for the Applicant?

Upon hearing none, he asked for a motion to close the public portion of the hearing.

Chairman Battista made a motion to close the public portion. The motion was seconded by Vice-Chairman Palmieri.

All present voted in favor.

Mr. Kuzmin commented that considering the necessity of the structures in operating the farm, combined with the ambiguity of the ordinance, he is in favor of granting the variance. Vice-Chairman Palmieri reiterated the need to add verbiage to the resolution that any new owners would need to keep the farm in operation. Mr. Hirsch confirmed that the accessory buildings can be predicated on the operation of a working farm. Chairman Battista suggested that if, upon the sale of the property, it is not operating as a working farm, then the property would need to return to what is permitted by ordinance. Mr. Hirsch confirmed that the Board does have jurisdiction to include that stipulation.

Chairman Battista asked for a motion.

Mr. Kuzmin made a motion to approve BA2022-06 with the conditions set forth by Attorney Hirsch. The motion was seconded by Vice-Chairman Palmieri.

Attorney Hirsch asked if the Applicant had any concern or comment with the conditions set forth? The Applicant responded that they are satisfied with the conditions.

ROLL CALL

AYES: Mr. Kuzmin, Vice-Chairman Palmieri, Chairman Battista, Mr. Lomangino, Mr. McKinley, Mr. Porzio, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Ms. Hatami

BA 2022-12, Georgette Cazeau, 42 Steven Avenue, Block 2.01, Lot 11

Attorney Hirsch stated for the record that he has reviewed the proofs and affidavit of service from the Applicant. He stated that all is in order as to form and that the Board has jurisdiction to hear this matter.

Vice-Chairman Palmieri offered a motion to accept service. The motion was seconded by Mr. Porzio. All present voted in favor.

Attorney Hirsch swore in the following witnesses:

***Georgette Cazeau, 42 Steven Avenue, Applicant
Kurt Ludwig, Architect, 77 North Main Street, Milltown, NJ***

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Ms. Cazeau explained that she would like to convert the attached garage, into additional space for her disabled husband. Chairman Battista referenced the application to confirm that 78% of the houses on Steven Ave do not have a garage and that the Applicant has access to three off-site parking spaces. Mr. Neff confirmed that the neighbors to both sides of the Applicant's home do not have garages citing that many of the houses were not built with garages. Mr. Ludwig stated that the living space in the home is 785 square feet which is similar or smaller than the neighbors. Attorney Hirsch inquired as to whether the Applicant has a handicapped vehicle? Ms. Cazeau stated that they do not. Upon inquiry from Mr. Kuzmin, Ms. Cazeau stated that her husband uses a walker as well as a wheelchair.

Kurt Ludwig provided the following Exhibit:

A-1 - Attorney Hirsch labeled the tax map, house, neighborhood, elevation, photographs, conceptual plan of parking vehicles which was submitted with the application.

Chairman Battista asked how the proposed renovation would affect the appearance of the home? Ms. Cazeau stated that the new frontage will match the existing structure. Mr. Kuzmin asked if the Applicant considered extending the home into the driveway? Mr. Ludwig responded that wasn't an option due to budget constraints. Mr. Neff contributed that adding an addition would trigger a side yard setback variance. Mr. Kuzmin confirmed with the Applicant that she purchased the house in 2017, years after the carport was converted into a garage by the previous owner.

Mr. Porzio questioned why the variance is needed since the home originally did not have a garage? Mr. Neff responded that the home is in conformance and is requesting to no longer be so.

Chairman Battista asked the public if they have any questions for the Applicant?

Chairman Battista asked the public if they have any statements for the Applicant?

Upon hearing none, he asked for a motion to close the public portion of the hearing.

Mr. Lomangino made a motion to close the public portion. The motion was seconded by Vice-Chairman Palmieri.

All present voted in favor.

Vice-Chairman Palmieri made a motion to approve BA 2022-12. The motion was seconded by Mr. Porzio.

ROLL CALL

AYES: Vice-Chairman Palmieri, Mr. Porzio, Chairman Battista, Mr. Kuzmin, Mr. Lomangino, Mr. McKinley, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Ms. Hatami

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BA 2022-14 Down to Earth Landscaping, LLC, 2 Gallant Fox Drive, Block 62.04, Lot 1

William J. Shippers, Esq., Shamy, Shippers & Lonski, PC., 334 Milltown Road, East Brunswick, NJ

Attorney Hirsch stated for the record that he has reviewed the proofs and affidavit of service from the Applicant. He stated that all is in order as to form and that the Board has jurisdiction to hear this matter.

Mr. Pozio offered a motion to accept service. The motion was seconded by Mr. Kuzmin. All present voted in favor.

Attorney Hirsch swore in the following witness:

Mary Hearn, Architect, 1007B Main Street, Belmar, NJ

Ms. Hearn placed her credentials for the record and the Board accepted her as an expert witness in Architecture. Mr. Shippers asked Ms. Hearn to thoroughly detail her involvement with the application. Ms. Hearn provided an exhibit:

A-1 Photo Board with 8 colored photographs taken within the past week of the Applicant's backyard.

Ms. Hearn stated that the goal of the project is to cover the existing patio in the rear of the home, which is on a corner lot, while maintaining a clear view of the pool. The existing patio is depicted in Exhibit A-1. Ms. Hearn described the proposed structure as consisting of columns and a roof attached to the main house. She stated that the applicant is already over the 10% permitted building coverage and that adding this structure would raise the coverage from 11% to 12.73%. Ms. Hearn testified that the covered patio can be seen from Gallant Fox Drive as you proceed East, however, it is mostly blocked by the garage. The diagonal placement of the house on the property is unique, stated Ms. Hearn, and as a result has two front and two rear setbacks. She further stated that roof of the proposed covered patio is 640 square feet.

Chairman Battista asked if there was consideration given to creating a narrower patio which would enable a better sightline to the pool? Ms. Hearn responded that aesthetically, the proposed patio is preferable. Mr. Neff interjected that if the patio depth was lessened by a few feet, the Applicant would still be able to see the pool from the patio and would not need a variance. Ms. Hearn agreed. Attorney Hirsch concluded that the setback variance is required for 4.5 square feet of overage.

Vice-Chairman Palmieri inquired if the Applicant could put the deck on diagonally? Ms. Hearn said yes, however, it would create considerable complications.

Ms. Hearn stated that standing seam metal roof and wood for the trim to match the house.

Mr. Shippers confirmed that the fence around the pool has been moved and brought into conformity.

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Mr. Neff pointed out that the survey doesn't match the photographs in Exhibit 1-A. He noted an additional shed in the photographs which wasn't represented in the survey.

Attorney Hirsch swore in the following witness:

William Merkler, Owner, Down to Earth Landscaping, LLC., 219 Second Avenue, Belmar, NJ

Mr. Merkler placed his credentials on the record. He stated that he worked on the first project which was a permitted installation of the patio and the beautification of the entire property.

Attorney Hirsch asked Ms. Hearn if she knew that there were two sheds when she provided her testimony and site plan? Ms. Hearn said she did not know about the second shed.

Attorney Hirsch swore in the following witness:

Paul Haynes, Property Owner, 2 Gallant Fox Road, Tinton Falls, NJ

Mr. Haynes stated that, to his knowledge, his contractor acquired the permit to install the second shed. After researching, Mr. Neff discovered that a permit was never obtained.

Mr. Neff stated that, including the second existing 8 x 12 foot shed, the proposed building coverage is 13.1%. Vice-Chairman Palmieri asked how far the shed is from the patio? Mr. Haynes replied that it is 20-30 feet. Vice-Chairman Palmieri confirmed with Mr. Haynes that the ancillary shed near the pool holds pool supplies and equipment. Mr. Kuzmin asked if the previous owner applied for a variance for the 11% coverage? Mr. Neff interjected that when this neighborhood was built, the permitted building coverage was 11%.

Vice-Chairman Palmieri pointed out that the hardscaping and the proposed cover for the patio should have been proposed and completed simultaneously. Mr. Merker agreed, however, the pavers weren't installed as planned which prompted the need for a variance. Mr. Kuzmin and Chairman Battista concluded that although the lot coverage is permitted, the building coverage is a separate matter. Mr. Neff asked if the pergola on the survey has been removed? Mr. Haynes confirmed that it is no longer on the property.

Chairman Battista asked the public if they have any questions for the Applicant?

Chairman Battista asked the public if they have any statements for the Applicant?

Upon hearing none, he asked for a motion to close the public portion of the hearing.

Chairman Battista made a motion to close the public portion. The motion was seconded by Mr. Lomangino.

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All present voted in favor.

Mr. Lomangino and Mr. Neff advised the Applicant to apply for a zoning permit for the shed. Mr. Shippers offered to have proof of permit at the time of the memorialization of this resolution.

Mr. Kuzmin made a motion to approve BA 2022-14. The motion was seconded by Mr. Lomangino.

ROLL CALL

AYES: Mr. Kuzmin, Mr. Lomangino, Chairman Battista, Vice-Chairman Palmieri, Mr. McKinley, Mr. Porzio, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: Ms. Hatami

Mr. Hirsch explained to the Board that he has been in contact with Mr. Ken Pape, the Applicant's attorney for BA2022-01, 5171 Asbury Ave. LLC. Mr. Pape requested that certain language be changed in the resolution. The Board agreed with the changes and the resolution will be amended.

MOTION TO ADJOURN

Chairman Battista made a motion to adjourn. The motion was seconded by Mr. Lomangino.

All in Favor: Aye

Time: 9:36pm

Respectfully submitted,



Regina Acken
Board Secretary

APPROVED AT A BOARD OF ADJUSTMENT MEETING ON OCTOBER 6, 2022