

BOROUGH OF MIDLAND PARK – ZONING BOARD OF ADJUSTMENT MINUTES

February 14, 2024

PLEASE TAKE NOTE:

ON WEDNESDAY, FEBRUARY 14, 2024, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULAR MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Les Andersen	present	Mr. Mark Divak	present
Mr. David Zuidema	present	Mr. William Placier	present
Mr. Richard Formicola	present	Mr. David Barlow	present
Mr. Nick Papapietro	present	Mr. Joseph Eliya, Alt #1	present
		Mr. James Capalbo, Alt #2	present

Attendance by Board Professionals: L. Herlihy, Esq., Attorney; R. Wostbrock, Engineer; D. Novak

Minutes of the 1/10/24 meeting – approved

PUBLIC HEARINGS:

Stirone, Christopher & Walsh, Jennifer – 112 Prospect Street – BL 11.03 LT 40.01 – Christopher Stirone and Jennifer Walsh, owners – sworn in. Applicants would like to put a shed for storage on their property, which is considered as having two front yards due to it being a corner property and creates a need for them to place an accessory structure in the front yard. The proposed shed location is the only feasible place to have it, and it is covered by greenery at both the back and side. Applicant reviewed existing structures on the property including the driveway with a two-car garage, pool, patio area. The shed was on the previous property the applicant owned, and then was able to store it on a friend's property, the applicant got permission to move it to its proposed location with the understanding that if the Board did not approve it, they would remove it. Mr. Stirone and Ms. Walsh have lived on this property for two years, the existing structures were put in place prior to their purchasing the property, and there is no other location on the property to place the shed and have it comply with all relative setbacks. Chairman Andersen advised that he went by and could barely see the shed through the arborvitae, proposed a condition that the applicant be required to maintain that greenery to shield the shed; which the applicant is agreeable to. Board questioned the size and location of the shed; it is 10' x 12' x 10' high, and it sits over 3' beyond the required setback from Payne Avenue. Mr. Papapietro confirmed he is familiar with the area and agrees you cannot see the shed from the street and would prefer the condition regarding screening be in place. Per Mr. Stirone, the arborvitae there are 14-15' tall.

Meeting opened to the public for any questions or comments. With none, meeting closed to the public.

Motion to approve the application with the condition that the greenery/screening has to be maintained so as not to see the shed from the street made by Mr. Formicola. Seconded by Mr. Papapietro because the nature of the lot creates a hardship for the applicant. Chairman Andersen commented that due to the other lawfully erected structures, there is no other place to put it. All voted in favor.

DeLucia, James – 330-336 Prospect Street – BL 10.27 LT 1 – carried from 1/10/24. Atty. Andrew Kohut of Wells, Jaworski & Leibman on behalf of the applicant. Atty. Herlihy explained the background of this application; property does not meet the definition of a single-family dwelling per our ordinance, and it is in a single-family zone. Owner has opted to apply for a use variance for a two-family home. There was a previous application for this property seeking approval for two-family use in 1985 that was denied. The doctrine of res judicata prevents an applicant or property from making the same application multiple times under certain circumstances. Atty. Herlihy reviewed the components of res judicata for the benefit of the Board and the public, Board will have to find that this application is not substantially similar to the previous application in order to proceed with hearing it.

Atty. Kohut stated that when his client purchased the property, there were two kitchens, a fire wall, and a door leading into the two units, so the creation of a two-family dwelling was done prior to that purchase. A CO was issued showing it is a single-family home with no conditions on the CO; Atty/ Kohut maintains that a mother-daughter layout, which this is, constitutes a single-family – per Mr. Andersen there is no such thing as a mother-daughter in our ordinance. Atty. Kohut also reviewed the components of res judicata, and how this application is different from the previous application. The intention is to make this property generational housing to provide independence for the applicant's mother, and not rent the additional "unit" to a 3rd party, that only one single familial unit will be dwelling there. Applicant also proposes a deed notice to be filed against the property advising any potential future buyers of the status of the home. Per Atty. Kohut, statewide policies and the principles of the MLUL support this type of housing, with proper protocols in place. Chairman Andersen questions the distinction between the applicant's mother living there versus a third-party tenant should the Board determine this property can be used as something other than a single-family dwelling, the Board cannot say who can live there and who cannot.

Brigette Bogart, planner – accepted as expert and sworn in. Ms. Bogart reviewed her opinion on the changes between the 1985 application and this application; including how the site is particularly suited for this use, how the economic and social conditions have changed from a planning perspective since 1985, and how the plans for this application are completely different than the previous. Ms. Bogart feels that generational housing and having a family member incorporated into your home is not the same as a typical two-family. Atty. Kohut described the dwelling, how it consists of a two-story dwelling with a one-story addition attached and how even if the separate entrances were removed, it still would not flow like a single-family dwelling. Ms. Bogart described how the layout is particularly suited to generational housing and is of the opinion that the applicant meets at least three of the five criteria making it a different application than 1985. Atty. Kohut reminded the Board of the distinction between similar and substantially similar – since the applicant does not plan to rent it to a 3rd party tenant, and he is reducing the second "unit" from a two bedroom to a one bedroom, as well as other factors, then it is not substantially similar.

Motion to open to the public for questions. Wendy Van Cleeve – has lived near the property for a long time, questions the zoning of the area; the property is in a single-family zone. Ms. Van Cleeve was also advised any variance granted would run with the land. Meeting closed to the public.

Chairman Andersen, Mr. Zuidema, and Mr. Barlow expressed that they feel the application should be heard. Motion that this application is not substantially similar to the prior application and the Board should proceed made by Mr. Formicola. Seconded by Mr. Barlow; all voted in favor.

James DeLuccia - owner, sworn in. Described his mother's residency situation, Mr. DeLuccia would like to have a place for her to live where she can maintain her privacy and independence but also be close by. There is no intention to rent out the living space. The property was purchased with this in mind specifically because of the way it is set up. The property was in disrepair and Mr. DeLuccia has made significant upgrades to cabinets, bathrooms, appliances, etc; upgrades were specifically done with his mother in mind and not for at tenant/renter. Mr. DeLuccia takes no issue with filing a deed notice to any one would know it is not a standard two-family dwelling.

Board questioned why it would not work for applicant to just remove the separate entrances for the unit since they intend to live as one family; per Mr. DeLuccia, they want his mother to have a sense of independence and access to her backyard. Board discussed with the applicant whether he was given a CO at closing; he was and it indicated it was a single-family home, per Mr. DeLuccia he was not seeking a two-family home he was seeking a home with two separate areas to live in. Atty. Kohut asserts that the CO should not have been issued if the home was not compliant as is, Mr. DeLuccia made no changes to the general design. The proposed deed notice was discussed; what it entails, how would someone change or remove it, what it would say, etc. Chairman Andersen expressed concern that the Board can regulate the land and not who lives on it by limiting the use to straight familial line, and how that would be enforced. Board discussed with the applicant what would have to be done to the home to make it compliant with the single-family use; the partition door would have to be removed as well as the front/rear doors of the smaller unit or the kitchen in that unit. Mr. DeLuccia maintains that he purchase this property for the purchase of living independently but alongside his mother, and has no intention to rent to a tenant. Per Mr. DeLuccia, there are two electric, gas,

water, and sewer services currently; would consider combining the utilities as a potential condition of approval.

Meeting opened to the public for questions. With none, meeting closed to the public.

Exhibit A1 – Rendering of 330-336 Prospect Street, 1 page. **Brigette Bogart** – still under oath. Ms. Bogart reviewed her planning process and history of the property. **Exhibit A2** – Site photographs, 2 pages. Ms. Bogart describes the photos and what they show, and how it would be difficult to combine the main building and the addition into one unit. The lot is approximately 18,000 SF in a 12,000 SF zone (12,500 SF) with an expansive backyard and two separate driveways, which is important for the independence of Mr. DeLuccia's mother, additionally the main driveway is very narrow and hard to get in and out of. The photographs show the way this building and site are particularly suited for this use of generational housing. Generational housing is recognized by state law and professional planning documents and it is a need in northern New Jersey particularly. Per Ms. Bogart, generational housing is unique and not identified by our ordinance. Reducing the number of bedrooms in the smaller portion reduces the impact. Purpose A, E, and G of the MLUL are furthered through this application. Applications like this are picking up in frequency in the area due to the need for similar generational housing. This application also furthers goal 4 and 5 of the Borough's Master Plan. There is no substantial detriment to the public good associated with this use, and there is no substantial detriment to the zone plan for all the reasons stated already. As Ms. Bogart already stated previously, this site is particularly suited for this use and accommodates what is proposed. The conditions of a deed notice, a door in the fire wall, and the combination of utilities all help alleviate any possible detriments as well.

Board questioned whether this layout would also be suitable for a home office, and the character of the neighborhood, which is generally all single-family dwellings and possible some other two-families. The Master Plan mentions preserving the single-family nature of the Borough but per Ms. Bogart it specifies from the intrusion of commercial uses, not other types of housing. Mr. Zuidema questioned whether a home occupation would have more of an impact on the surrounding neighborhood; per Ms. Bogart it would. Mr. Wostbrock questioned whether the second driveway could be reduced; the driveway is not as excessive as it looks, provides just enough room to turn around to exit. Any lot coverage issue is a pre-existing non-conformance. Mr. Novak questioned the lot size; this is an oversized lot, the average lot size for the surrounding properties is approximately 10,000 – 12,000 SF. Mr. Novak also questioned the difference between a mother-daughter dwelling and a two-family and an accessory dwelling unit. In other similar applications the problem tends to be the interconnecting door between the two units or a lack thereof. Board continued to discuss what modifications would have to be made to make this a conforming single-family dwelling. Board reviewed definitions from our ordinance.

Meeting paused at 9:53:38. Resumed at 9:58:29

Meeting opened to the public for questions. With none, meeting closed to the public.

Mark Berninger, Zoning Official/Construction Official – sworn in. The property in question has always been a problem, which has nothing to do with this applicant. There was previous difficulty in confirming whether or not the home was being used illegally as a two-family. Mr. Berninger discovered the applicant doing work without permits, so the work was stopped and the applicant was advised that the property could not be a two-family home, and that the front and back doors needed to be boarded up. Mr. DeLuccia was given a TCO pending the outcome of tonight's hearing. Mr. Berninger questions how he would enforce a deed restriction. Mr. Berninger reiterated that the primary issue is separate access since in the future it would be too difficult to enforce. Atty. Kohut pointed out that the issues with enforcement measures following the 1985 denial were not implemented. Per Mr. Berninger, the CCO indicating that this was a single-family home relied on the ordinance's definition of a single-family home. Per Mr. Kohut, there was no indication that the property was non-conforming in any way when Mr. DeLuccia purchased it. Atty. Herlihy and Chairman Andersen clarified, that the application needed to be made because the dwelling does not comply with the definition of a single-family, that no one on the Board would hold it against the applicant that he did work without permits, which has nothing to do with their variance application. Mr. Zuidema questioned if they took the two doors out, would this be compliant; per Mr. Berninger, it would be.

Meeting opened to the public for questions. With none, meeting closed to the public.

Meeting opened to the public for comments. Melissa Growers – sworn in. The concern for Ms. Growers mother-in-law, who lives in the neighborhood, is that there have been problems with the previous owner and they have watched the wrong thing go on for a long time. The potential this property could be used illegally as a two-family again is a concern for the family. Meeting closed to the public.

Mr. DeLuccia reiterates he would like to rectify the previous problems with this property but his intent in purchasing it was solely for a place for him and his mother to live together but independently. The intention has never been to rent the space out to anyone. Atty. Herlihy mentioned that the Board needs to consider potential future owners and enforcement needs as well. Board continued to discuss possible options to alleviate the concerns or modifications to the property that might be acceptable to the Board and the applicant. Atty. Kohut provided summation. Atty. Herlihy and the Board discuss case law and an opinion stated in Cox.

Mr. Formicola expressed support for what Mr. DeLuccia is trying to do for his family, but also concern for the potential problems associated with making this a two-family dwelling. Mr. Papapietro feels the positive criteria was met and thinks generational housing is important but has concerns about enforcement. Mr. Zuidema feels the two doors create a problem. Chairman Andersen agrees, the separate entrances make it a two-family. Mr. Placier supports the idea of generational housing proposed, but also has concerns.

Motion to deny the use variance made by Mr. Divak; due to it constituting a two-family under the definition in our ordinance and would change the character of the single-family neighborhood, and the applicant can make modifications to still accomplish what is proposed for his mother. Seconded by Mr. Papapietro, who added that it goes back to the enforcement issue. Mr. Zuidema, Mr. Formicola, Mr. Papapietro, Mr. Divak, Mr. Placier, and Mr. Andersen voted yes. Mr. Barlow voted no. Motion passed, application denied.

RESOLUTIONS:

2024 Contracts & Resolutions – Board Attorney & Board Engineer - approved

COMMUNICATIONS:

72 Lake Avenue, LLC – 72 Lake Avenue – BL 3 LT 2 – Resolution Compliance Review dated 1/23/24 – informational; no action taken.

CLOSED SESSION

Discussion of pending litigation –pursuant to NJSA 10:4-12(7). Motion to go into closed session made by Mr. Papapietro. Seconded by Mr. Barlow; all voted in favor.

There being no further business to discuss, the Board adjourned the closed session at 11:06 PM and resumed the regular meeting.

Meeting Adjourned – 11:06 PM
Jessica Harmon