

PRINCETON ZONING BOARD OF ADJUSTMENT
Minutes of Regular Meeting
Wednesday, July 24 2013– 7:30pm
Main Meeting Room
400 Witherspoon Street, Princeton, NJ 08540

PRESENT: Barrie Royce, Penelope Baskerville, Richard Kahn, Steve Cohen,
Louisa Clayton, Michael Floyd

ALSO PRESENT: Karen Cayci, Attorney; Derek Bridger, Zoning Officer; and
Debra Rogers, Secretary

ABSENT: Ravi Manchi, Sara Segal and Doreen Blanc-Rockstrom

There were nineteen (19) members of the public present.

The meeting commenced at 7:31 p.m. with Chairman Royce reading the Open Public Meetings Act statement.

1. MINUTES:

Upon motion made by Steven Cohen and seconded by Penelope Baskerville, a motion was made to approve the minutes of June 26, 2013 as written and approved.

ROLL CALL: **Aye Penelope Baskerville**
 Aye Richard Kahn
 Aye Steven Cohen
 Aye Barrie Royce

2. APPLICATIONS:

- a) RODAN INVESTMENTS**
27 Morgan Place
Block 6802, Lot 18, R-5
C1/C2 – Lot Area and Lot Width
File No. Z13 13-050V

Present for the hearing were Daniel Barsky, applicant; and Christopher Tarr, Attorney.

Attorney Cayci said all of the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Attorney Cayci swore in Derek Bridger, Zoning Officer.

Mr. Bridger reviewed his memo stating that the subject property 27 Morgan Place is located in the R-5 zoning district. He said the applicants are seeking a C1 variance and in the alternative a C2 variance in order to permit a new dwelling on the lot. He said the lot is non-compliant with respect to lot area and lot width. He said the applicants would like to demolish the existing structure and re-build a new structure on the lot. He said the applicants should address whether or not they have contacted the adjoining property owners regarding the augmentation of additional land or selling the lot in order to create a conforming lot. He said the applicant must meet all applicable bulk requirements when the new structure is built or seek variance relief.

Mr. Tarr said he is the attorney representing the applicants RoDan Investments. He said Mr. Daniel Barsky will be making a presentation to go the details of the variance requests.

Attorney Cayci swore in Mr. Barsky.

Mr. Barsky had handed out a PowerPoint presentation to the Board members prior to the start of the meeting. He went through the presentation slide by slide saying that RoDan Investments purchased this property through an estate attorney as the owner had passed away in 2010. He noted that the current structure has not been maintained and has become an eyesore in the community. He said they are requesting two (2) variances; one for lot area – the requirement is 21, 780 s.f and the lot is 10,222 s.f; and also a variance for lot width because the requirement is 100 s.f and this lot at its widest point has 82.6 sf. He noted that they will be complying with all other zoning requirements as well as the tree ordinance. He stated that with regards to water runoff, they will be working with the Municipal Engineer – the situation may improve but the flooding will not increase. He showed a picture of the house next door at 21 Morgan Place saying they may build something similar to this structure. He said all 14 lots on Morgan Place are similar in size and all 14 lots are non-conforming as to lot area. He said they tried to sell/purchase land from the adjacent land owners and were not successful at either. He also discussed the lots on Mountain Ave saying they vary in sizes and shapes.

Mr. Tarr said this application is for a C1/C2 variance. He said these lots were laid out in 1949 as ¼ acre lots and now the zoning is ½ acre. He said there is no detriment in tearing down the eyesore that exists there now with a newer home. He said the easiest way to evaluate this request would be through the C2 criteria; however, the application also meets the criteria of a C1 as all of the lots are non-compliant to the ½ acre minimum. He said the facts support both a C1 and C2 variance.

Chairman Royce said he would like to know if all of the other setbacks would be met.

Mr. Tarr said the lot is non-conforming to lot area and lot width all other requirements will be complied with. He said the applicants have no intention of coming back to the Board for additional variances for the proposed structure.

Chairman Royce asked if there were members of the public who wanted to comment on the application.

Attorney Cayci swore in Mr. Cohen, 21 Morgan Place.

Mr. Cohen said that Morgan Place is a street that time forgot. He said his house is the largest home on the block and the others are considerably smaller. He stated that this application is perhaps the first of many more to come in the future. He urged the Board to think about the planning of Morgan Place over the next several years. He said the street is underserved by storm drains and it may reach a point where the flooding is much worse. He said some of the homes are occupied by their original owners who depend on the equity for retirement. He said the price of the proposed home would put it outside of the current affordability of the street.

Chairman Royce asked Mr. Cohen how the hydrology will worsen with the new structure.

Mr. Cohen said the impervious coverage will increase which will increase the water issue.

Mr. Clark, Pardoe Road, said he would like to see the applicant stay with the same footprint and maintain the same setbacks as exists now. He said his main concerns are drainage and tree preservation. He said he is hoping that the applicant does not clear-cut the lot of all the trees. He also noted that there are mature trees along the property line and he hopes that they remain.

Mrs. Cohen, 21 Morgan Place, said she is concerned that the character of the neighborhood will not be maintained. She also noted that although within the guidelines of the law, the noticing time of 10 days is very short and there are a few of the neighbors who are out of the country right now and will not have the opportunity to voice their concerns.

Bonnie Tivenan, 15 Morgan Place, said that she lives a couple houses down from the subject lot and she too would like to see the character of the neighborhood maintained. She also noted that there were 3 neighbors out of the country who would not be able to voice their opinions.

Mr. Hlafter, 33 Morgan Place, said he echo's the sentiments that have been expressed already and noted that most homes in the neighborhood are only about 2,000 sf. He said it would be nice if the contractor kept the size of the new homes close to the size of the other homes in the neighborhood.

Chairman Royce asked if there were any other members of the public who wanted to comment on the application. Hearing none, he closed the public portion and the Board went into deliberative session.

Chairman Royce asked Mr. Tarr if he had any closing statements to make.

Mr. Tarr said that eventually this situation will come to the forefront for other neighbors as the homes are sold in the future. He said the applicants have been very diligent in the past and worked very well with the Engineering Department regarding drainage issues. He also noted that the Barsky's have always tried to retain as many trees as possible on past projects and will do the same with this project. He stated that Daniel Barsky has met with the neighbors, sometimes more than once, to discuss the project. He said under the former Township Code

10B-330 the applicant is permitted to adjust the FAR because the lot is smaller than what is required. He respectfully asked the Board to approve the application.

Chairman Royce asked if the FAR and the height requirements would be adhered to.

Mr. Bridger noted that the height is regulated by a setback to height ratio whereby for every foot the applicant comes in from the property line, the structure can be built up one foot. He also noted that the storm water issues will be reviewed by the Engineering Department prior to the issuance of a building permit.

Member Cohen said the applicants have demonstrated the constraints on the property and have met the criteria to be granted the requested variance. He noted that any concerns the neighbors have with the future planning of Morgan Place should be brought to the Planning Board for them to review.

Member Clayton said by her calculations a 3,100 s.f home could be built, she asked if the Board could limit the total square footage of the house.

Member Kahn said that is not something that the Board can do; if the Board were to do that, it would be arbitrary and would set the Board up for litigation. He said the Board and/or the neighbors may not agree with the size but it is what is allowed.

Chairman Royce discussed the drainage and noted that if approved, he would like to see a condition placed on the approval that the drainage is reviewed by the Engineer.

Member Floyd said the applicants made a good case and he supports the approval of the application.

Upon motion made by Steven Cohen and seconded by Michael Floyd, a motion was made to approve the application of RoDan Investments with the conditions that the new structure meets all of the other bulk requirements and that the drainage is reviewed by the municipal Engineer.

ROLL CALL:

Aye	Penelope Baskerville
Aye	Louisa Clayton
Aye	Michael Floyd
Aye	Richard Kahn
Aye	Steven Cohen
Aye	Barrie Royce

b) 52 AIKEN AVE LLC
52 Aiken Avenue
Block 52.01, Lot 85.01, R-3
C1/C2 – Front-yard Parking
File No. Z13 13-058V

Present for the application were Clifford Zink and Emily Kroll, applicants; Tamara Lee, Planner; and Thomas Letizia, Attorney.

Attorney Cayci said all of the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Attorney Cayci reminded Mr. Bridger that he was under oath.

Mr. Bridger reviewed his memo stating that the applicant's property is located in an R-3 zoning district in the former Borough section of the town. He said they are requesting a C-1 variance to allow front-yard parking on the subject lot. He said the subject lot is non-conforming with regards to the lot area and lot width and is non-conforming with regards to combined side-yard setbacks, smaller side-yard setback, front-yard setback and height to setback. He noted that the applicant is also the owner of the adjacent property as well.

Mr. Letizia said he is the attorney representing the applicants who are seeking a C variance to construct 1 parking space in the front-yard of 52 Aiken Avenue; he also noted that the lot was non-conforming. He said 52 Aiken Avenue is ½ of a duplex unit and if the front-yard parking is granted, it will mirror the condition at 54 Aiken (also owned by the applicant). He stated that front-yard parking spaces are prevalent in the neighborhood. This lot is one of the only ones without a parking space. He said the applicant's properties are located at the end of the street by Harrison Street Park. He said the applicants will present testimony about why the easement that had been in place was terminated.

Mr. Zink introduced 2 exhibits – A-1 titles the Design Plan and A-2 titled Existing Conditions and Proposed Parking. He said that they moved to 50 Aiken Avenue in 1955. He said the land was owned by Harry Warren and he built 50 and 52 Aiken in 1913 for family. He said Mr. Warren owned the lot at 54 Aiken and that become the contractors lot where they parked approximately 8 cars and trucks. He said when the deed was transferred to his son; an easement was created so the son could have further access to the lot. He said as time went on there were problems with the shared driveway. He said Joyce stopped driving in 2009 and when she moved to an Assisted Living Facility they purchased the lot from the family. He said they wanted to restore the home and create a separation between the properties so they constructed a fence to free up the use of the backyard. He said this benefitted 50 & 54 Aiken as well and the easement was terminated. He said after the easement was terminated they realized that they needed to apply for a variance in order to gain parking in the front-yard instead of the backyard. He said he does not feel that the variance will have any negative effect on the neighborhood. He said no one in the neighborhood parks on the street, most of the parking occurs from visitors to the Harrison Street Park and the downtown.

Chairman Royce said he noticed there were garages on the adjacent block.

Mr. Zink said those garages are used strictly for the 5 unit apartment building.

Mr. Zink went to explain that parking is only allowed on one side of the street and most of those spaces are utilized during the day by park visitors. He described the parking variance that was given to adjacent house and he said they will replicate the space to look very much like it. He said there is existing landscaping and they will be changing it slightly to provide additional screening.

Mr. Letizia asked Mr. Zink if he had met with the neighbors.

Mr. Zink said he met with the owners of 55 Aiken and they had no problem with the proposal; 53 Aiken, also no problems; 48 Aiken had no concerns; and 50 Aiken had no concerns, they liked the plans.

Chairman Royce asked how the parking space would be screened so that it is not an eyesore in the neighborhood.

Mr. Zink said some of the landscaping will be cut down to 6 feet, they will remove the azaleas and plant boxwood so it will screen from the sidewalk as well.

Member Cohen verified that the applicant owns 52, 54 and 56 Aiken Avenue.

Mr. Zink replied yes, further stating that he lives at 54 Aiken Avenue.

Member Cohen verified that the on-site parking space was on lot 52 and then the easement was terminated which created the non-conforming situation.

Mr. Zink replied yes, but asked Member Cohen to keep in mind that the easement was created 100 years ago by Harry Warren.

Member Floyd asked Mr. Bridger when the parking permit system went into effect in the Borough.

Mr. Bridger said he was not sure, but thinks it was about 30 years ago.

Attorney Casey cited the resolution from the variance on lot 50 saying that the owners did not have access to other parking.

Mr. Letizia said that was correct.

Chairman Royce said that the applicant has a self-created problem and is coming to the Board for a variance where in principal, front-yard parking is not permitted.

Mr. Zink said the easement was terminated in order to cure a bad parking situation that was onerous. He said the conflicts created in the driveway were constant and not beneficial to anyone. He said by terminating the easement, they tried to remedy the situation and create a bit of privacy for the other lot.

Mr. Letizia said also in attendance is Tamara Lee, a Professional Planner and he would like her to be sworn in.

Ms. Lee said she is a Professional Planner, and has been for about 30 years with 18 years in her own business. She said she has testified in front of many Board and Commission and also in Superior Court regarding planning issues.

Chairman Royce accepted Ms. Lee as an expert witness.

Ms. Lee said this variance request can speak to both a C1 and a C2 variance. She said the character of the neighborhood is very important with 20 houses, 6 corner houses and 14 interior lots. She said of the 6 corner lots, 5 of them have parking in the front-yard. She referred to the 14 interior lots saying 2 have no parking on site, 5 have parking in the front-yard; 5 have a driveway that extends past the street but the owners park close to the street, and 2 have a long driveway and park behind the house. She said virtually no one parks on the street in the neighborhood. She said in essence it is almost a “self-policing” of the neighborhood. She said what the applicants are proposing is very consistent with the neighborhood and she did not see any detriments to granting the variance. She also noted that by granting the variance it will complete the symmetry of the house and it will enhance the streetscape. She said with regards to the proofs, a C-1 variance could be granted because the lot is undersized and there is no room for a driveway. She said technically this was a self-created hardship but the easement was terminated in order to end continuous conflicts for the owners. She said to force them to park on the street does not meet the intent of the ordinance and would cause more detriments than benefits. She said with regards to the proofs for the C2 variance, the benefits will out weight the detriments because there are no detriments, and it preserves the pattern that was already created on the street and it preserves the on-street parking for the public. She said there will be no detriments to the character of the neighborhood and it will not impair the zone plan or the zoning ordinance. She said this will help the home blend in better. She said the applicants have satisfied both the positive and negative criteria.

Chairman Royce asked Ms. Lee to describe the screening.

Ms. Lee said most if not all of the homes have hedges along the sidewalk and some have fences but it is very common to see cars on the street as people utilize the park quite frequently.

Attorney Cayci asked who took the photos and approximately when they were taken.

Mr. Zink said the photos were taken by his son around January 7 & January 13, 2013 when there was less vegetation.

Member Cohen said the 3 properties created congestion and from a planning standpoint when the homes were built it created congestion.

Ms. Lee said the parking space started immediately when 54 Aiken was built – Joyce Warren used that easement and the apartment that was rented didn't help the situation. She said by eliminating the easement, it now gives them control over the parking.

Member Clayton said she felt it was actually better to keep the cars on the street and the sidewalks clear for pedestrians.

Ms. Lee said this end of the street has less available parking because of the park.

Mr. Letizia said one of the goals of the Master Plan is to encourage off-street parking. He said it has been the applicant's testimony that there will be negative impacts and it is actually part of the character of the neighborhood.

Attorney Cayci swore in Emily Kroll.

Ms. Kroll said she has lived in the neighborhood for 17 years and she cares about the character of the neighborhood. She said this proposal will actually improve the quality of neighborhood because there really is not a lot of available on-street parking.

Mr. Letizia said it is the applicant's belief that they have met the criteria for a C1/C2 variance because of the physical constraints of the property and the impossibility of being able to construct a driveway. He said the easement was creating much more of a detriment. He said the granting of the variance will improve the situation and the homeowners can operate independently. He said the applicant spoke with the neighbors and as you can see there is no here in objection and they have agreed to the landscaping. He said if the variance is granted the applicants will be able to use their backyard and not have to worry about cars coming in and out.

Chairman Royce asked for comments from the Board.

Member Cohen said all of this was conforming when the easement was in place and the applicants created a non-conforming situation.

Member Clayton said an easement can cause an issue when there are two different property owners – but the applicants own both properties.

Member Cohen said it is more desirable to have landscaping but it creates a visibility issue.

Member Floyd said the character of the neighborhood is a lot of people who park illegally. He said front-yard parking violations cannot be enforced and the applicant is asking the Board to legalize it through a variance.

Member Baskerville said she doesn't have an issue with the proposal. She said it seems like a reasonable solution to the parking problem.

Member Kahn said he agrees that it is a “self-created” hardship but he can also see that the character of the neighborhood is that people park in their front-yards.

Chairman Royce said he believes that the landscaping will make it less intrusive to the streetscape. He said he felt torn; there are many cars that park in their front-yards.

Attorney Cayci reminded the Board that they need to be clear in its decision and if a favorable vote is decided, it should be clear whether it is a C1 or C2 variance that is being granted.

Member Baskerville made a motion to approve the variance request under the C-2 criteria.

There was no second to the motion so the motion failed.

Upon motion made by Michael Floyd and seconded by Steven Cohen, a motion was made to deny the application as it has been presented to the Board.

ROLL CALL:

Nay	Penelope Baskerville
Nay	Louisa Clayton
Aye	Michael Floyd
Nay	Richard Kahn
Aye	Steven Cohen
Aye	Barrie Royce

The motion was split by a 3 – 3 vote, the motion failed.

The Board recessed at 10:00 p.m.

The Board reconvened at 10:10 p.m.

Attorney Cayci asked Mr. Letizia if there were any further comments that he would like to make.

Mr. Letizia said he would like Ms. Kroll to provide a few more statements.

Ms. Kroll said that when they lived at 50 Aiken Avenue there was only on-street parking available and it very difficult and dangerous to cross the street to get to her property. She said by having the parking on-site it will be safer for all of the occupants. She said this really comes down to a safety issue.

Mr. Letizia said there has been testimony that this parking space will be a detriment to the neighbors and there are no neighbors here opposing it. He said he would like the Board to consider whether or not there really is a detriment issue.

Attorney Cayci said there has been a motion to approve under a C2 and there was no second so the motion failed; there was a motion to deny with a split vote, so the motion failed; she suggested perhaps a motion to approve as a C-1 or another motion to deny.

Upon motion made by Penelope Baskerville and seconded by Louisa Clayton, a motion was made to approve the application under C-1 criteria with the condition that the applicant creates the screening as he presented to the Board.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Nay **Michael Floyd**
 Aye **Richard Kahn**
 Nay **Steven Cohen**
 Aye **Barrie Royce**

3. CLOSED SESSION:

Attorney Cayci read the following resolution:

**RESOLUTION OF THE PRINCETON ZONING BOARD
OF ADJUSTMENT**

Whereas, the Zoning Board has determined that it is necessary to review the status of pending litigation known as Names v. Princeton Borough Zoning Board of Adjustment; and

Whereas, N.J.S.A. 10:4-12 permits the Board to conduct a meeting from which the public is excluded for the foregoing purpose; and

Whereas, the discussion conducted in closed session shall be made available at such time as the issues discussed therein are resolved and its disclosure would not subvert any particular exception for convening a closed session.

NOW THEREFORE BE IT RESOLVED, that the Princeton Zoning Board of Adjustment shall go into closed session for the purpose of discussing pending litigation as permitted by N.J.S.A. 10:4-12.

Upon motion made by Richard Kahn and seconded by Louisa Clayton, a motion was made to enter into closed session.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Michael Floyd**
 Aye **Richard Kahn**
 Aye **Steven Cohen**
 Aye **Barrie Royce**

Upon motion made by Richard Kahn and seconded by Louisa Clayton, a motion was made to return to the public meeting.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Michael Floyd**
 Aye **Richard Kahn**
 Aye **Steven Cohen**
 Aye **Barrie Royce**

4. ADJOURNMENT:

Upon motion made by Steven Cohen and seconded by Michael Floyd, a motion was made to adjourn the meeting at 10:38 p.m.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Michael Floyd**
 Aye **Richard Kahn**
 Aye **Steven Cohen**
 Aye **Barrie Royce**

Respectfully Submitted,



Debra Rogers, Secretary

Date Approved: August 28, 2013