

BOROUGH OF SOUTH PLAINFIELD
ZONING BOARD OF ADJUSTMENT MINUTES
December 20, 2016

Chairman Leonardis opened the meeting at 7:00 pm.

Please stand for the PLEDGE OF ALLEGIANCE.

This meeting was held in accordance with the Open Public Meeting Act and as such, proper notice of this meeting was published in The Observer and The Courier News and providing same to the Borough Clerk.

It is the policy of the South Plainfield Zoning Board of Adjustment, not to hear any new applications after 10:00 pm and no new witnesses after 10:30 pm.

ROLL CALL:

Present:

**Gino Leonardis, Chairman
Ken Bonanno
Maria Campagna
Cindy Eichler
James Gustafson
Frank Lemos, 1st Alternate**

Absent:

**Darlene Cullen, 2nd Alternate
Robert Hughes
David Miglis, Vice Chairman**

Also attending: Larry Lavender, Esq.; Nicholas Dickerson, PP, AICP; Peter Ciliberto

MINUTES: December 6, 2016

Mrs. Eichler made motion, seconded by Mrs. Campagna to accept the above stated Meeting Minutes. Those in Favor: Mr. Bonanno; Mrs. Campagna; Mrs. Eichler; Mr. Lemos and Chairman Leonardis. Those oppose: None.

RESOLUTIONS: (2)

**A. Case #11-16 -- A-Tech Landscape Design Inc.
Block 294: Lot 1: M-3 Zone
1525 New Market Avenue**

Mr. Lemos made motion, seconded by Mrs. Campagna, to accept the above stated Resolution. Those in Favor: Mr. Bonanno; Mrs. Campagna; Mrs. Eichler; Mr. Gustafson; Mr. Lemos and Chairman Leonardis. Those oppose: None

**B. Case # 6-16 -- Peak Equipment, LLC
Block 284: Lots 19 & 24: M-3 Zone
512 New Market Avenue & Dover Place**

Mrs. Eicher made motion, seconded by Mr. Lemos, to accept the above stated Resolution. Those in Favor: Mr. Bonanno; Mrs. Campagna; Mrs. Eichler; Mr. Gustafson; Mr. Lemos and Chairman Leonardis. Those oppose: None

HEARING: (1 Commercial - 2 Homeowners)

**A. Case # 6-16 -- Peak Equipment, LLC
Block 284: Lots 19 & 24: M-3 Zone
512 New Market Avenue & Dover Place**

The applicant is requesting Preliminary and Final Site Plan with Bulk and Use Variances – Bifurcated Preliminary and Final Site Plan. Returning for Preliminary and Final Site Plan with Bulk Variances.

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Chairman Leonardis reads a letter from Walter K. Abrams, Esq. requesting an adjournment to the second meeting of January 2017. The site plan has not been completed. The Board grants the request and notices will carry to the January 17, 2017 meeting.

B. Case #20-16 -- Steven Van Der Werf
Block 167: Lot 27: R-7.5 Zone
538 Franklin Avenue

The applicant is requesting front yard setback – expansion of a non-conforming structure. Required – 30'. Existing – 25.51'. Proposed – 19.56'.

Steven Van Der Werf – 538 Franklin Avenue, South Plainfield, New Jersey – is sworn in. He is before the Board requesting a variance to build a front porch. Mr. Lavender states there are several defects in the notices. Therefore, he cannot be heard. Mr. Van Der Werf states that in the information packet, the instructions were unclear. Mr. Lavender states that the Borough does not give legal advice. Mr. Van Der Werf requests leniency from publication. Unfortunately, no. He suggested that Mr. Van Der Werf may consider hiring an attorney. Mr. Van Der Werf asks what the deficiencies are. Mr. Lavender states he is unable to give legal advice to the applicant. Mr. Van Der Werf will return at a later date once the 2017 meeting calendar has been established and will re-notice.

C. Case #19-16 -- Vanessa Londono
Block 147: Lot 13.01: R-7.5 Zone
1554 Dumont Avenue

The applicant is requesting a use and two (2) bulk variance.

Mr. Lavender has reviewed the Affidavit and Notice of Publication. The Board has jurisdiction.

James F. Clarkin, III, Esq - Clarkin & Vignola, PC., 1100 Centennial Ave, Suite 203, Piscataway, New Jersey – the attorney for the applicant addresses the Board. This application is a use variance to permit the continued use of two (2) separate single family structures. The first structure is a two (2) story wood frame which is setback approximately thirty feet (30') from the property line. The second structure is a one (1) story house that was previously a garage. It is located towards the rear of the lot. It was converted as some point in the past before the applicant took title. The lot has a depth of two hundred fifty feet (250'). The setback for the second house is at least one hundred sixty feet (160') from the property line and a rear yard setback of fifty-five feet (55'). The survey was included in the application. In addition to the use variance, two (2) bulk variances are required - Side yard setback for the back house which is only three plus feet (3'+) and front yard setback of the front house. The survey shows a porch, which has been enclosed as living space. Therefore, the setback is twenty-nine feet (29') where thirty feet (30') is required. There are not too many properties that have two (2) separate single family homes on one (1) property. The applicant purchased the property in October 2015 at a Sheriff's Auction sale. The property was foreclosed on and purchased from Bank of America. The front house was constructed in 1924 – ninety-two (92) years old. The applicant will testify that she purchased the property with the rear structure already converted into a one (1) bedroom apartment. Since the purchase, they have been gutting and renovating both structures. This is not the only property on Dumont Avenue that has this situation. A few doors down at 1544 Dumont Avenue has the exact same situation – two (2) single family structures. This sets a precedence – there is one (1) such approved situation. There is a Certificate of Zoning Compliance signed by Mr. Pabst. The neighborhood is stable and there have not been any negative zoning impacts from these two (2) properties with two (2) single family structures. Mr. Clarkin introduces Exhibit A1 - a photograph and a copy of the photograph showing the Certificate of Municipal Compliance for 1544 Dumont Avenue. Mr. Clarkin reads from the Exhibit A1 - "Two (2) Pre-Existing Non-Conforming Single Family Homes on Same Lot". Signed by John Pabst who was the Zoning Officer in 2008.

Vanessa Londono – 1554 Dumont Avenue, South Plainfield, New Jersey – is sworn in. Mr. Clarkin questions Ms. Londono. She is the owner of the property. Purchased it in 2015 from Bank of America through an auction by the Sheriff's Office of Middlesex County. It was a foreclosure sale. Has been attempting to live there.

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Mr. Clarkin introduces and Ms. Londono describes the following pictures:

- Exhibit A2 – a picture of the rear structure when first purchased it in October 2015.
- Exhibit A3 – a partial picture of the front house and the back house.
- Exhibit A4 – a picture of the back house with new siding and roofing.

Mr. Clarkin continues to question Ms. Londono. Ms. Londono, her husband and four (4) children will live in the front house which has three (3) bedrooms. The back house is one (1) story with an attic. There is water and sewer lines that run to the back house. It has its own separate water line and sewer line. The back house has a total of four (4) rooms... a bedroom, living, bathroom and kitchen. The attic will be used for storage. No one will be living in the attic. She expects the rent for the back house to be approximately \$1,000 with utilities. Neighbors have told her that the back house was rented out before she bought the property. Has letters from the neighbors stating so. Mr. Clarkin stated he advised Ms. Londono that those letters cannot be introduced as evidence because they cannot be cross examined.

Chairman Leonardis questions Ms. Londono when she purchased the house was it sold to you as two (2) houses on one (1) property or a single-family house with a garage? She was told it was 'as is'. She did not know the back was an apartment. She thought it was just a garage.

Mr. Clarkin states that when you go to these Sheriff Sales, it is 'as is'. No representation with respect to zoning or any other matter.

Chairman Leonardis asks if she ever saw the back house? Mr. Londono states that she did the auction over the internet. To clarify, Mr. Clarkin asks if Ms. Londono visited the property prior to bidding. Ms. Londono states no.

Mr. Lavender states through his practice he has seen internet type of sales. People go on websites and purchase homes sight unseen.

Chairman Leonardis asks, after the purchase when you went to the house, what was in the back house. Ms. Londono states there were cabinets, stove was removed but you can see the gas line that connected to the stove, living room and bedroom. They renovated it.

Mr. Gustafson asks Mr. Clarkin if he was aware that the prior owner was issued a 'Stop Work' order. Mr. Clarkin states he is aware that there were some difficulties with the back house. This is what prompted Ms. Londono to continue with the back house. She was before the board in June, realized it was overwhelming and it was suggested to her to get an attorney. Mr. Clarkin believes there is no malice. More of a lack of knowledge and understanding of zoning and building laws.

Chairman Leonardis asks Ms. Londono if she hired an architect. For the first time... no. Then we had to hire an architect. The architect pointed out what they were doing wrong and helped to fix it.

Mr. Clarkin states that building permits were issued. That is why the front structure is almost complete. It would be totally completed but wanted to do both.

Mr. Gustafson questions if the permits were issued for the back house. Mr. Clarkin does not know. Certainly, for the front. Mr. Gustafson continues... the building property cards are before the board and the permits are listed. However, it does not indicate which structure.

Mrs. Campagna questions Ms. Londono. She thought if she replaced a beam that was rotten that a permit was not needed. However, she found out that was not true. When you change something, you have to do it by code, not how it was existing. The work was done by her husband and herself. When we called for an inspection, the inspector asked if they had a permit. She said no because she didn't think they needed one to replace what was there. That's when they found out you can't just replace what was there, you have to do it by today's code and get a permit. Never purchased a house before.

Mr. Clarkin states, it's the distinction of repair and replace.

Chairman Leonardis questions Ms. Londono. On June 7, 2016, he visited the house and the foundation for the expansion was already constructed. At that point in time, did not know they needed a variance. Found out recently that they needed a front yard setback. Mr. Clarkin states that he looked at the survey and it seemed like there was sufficient

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room. Mr. Clarkin called the Zoning Official and discussed it with her. This was approximately one (1) month ago. When the footings were in, they called for an inspection and were inspected. The Zoning Official had approved them originally. The front porch is now enclosed.

Mrs. Campagna asks Mr. Clarkin if the two (2) structures are lined up behind each other at 1544 Dumont Avenue. Mr. Clarkin states he does not know. Mr. Bonanno states that it's situated the same way as the subject property. The only difference maybe that there is more distance between the front structure and the back structure. Mr. Lemos states that when you look at it from the street, it looks like it is on the property line. Mr. Clarkin states just like this property. That's how they built garages back then.

Mr. Gustafson states that it was previously stated the rent for the back house will include utilities. You stated that the back structure has separate sewer, electricity etc. That is leading the Board to believe that they are not separate. Ms. Londono states they are separate. They receive separate water bills. Through translation from her husband, the back house has its own electric and gas meter. He does not know if it has a separate water meter. However, they receive two (2) water bills so it must. Mr. Clarkin states that he doesn't believe they have to be separate metered. There are many two (2) family homes – side by side or up and down – that do not have separate utilities. Mr. Gustafson states because there is discussion that this was pre-existing. However, our information shows that it was not pre-existing, that this was a garage illegally converted. Mr. Clarkin states he agrees that it was a garage and converted sometime in the past. He is not saying that this is to be grandfathered. That this is not a pre-existing valid non-confirming protected under section 36. However, somewhere in the past someone converted it into an illegal apartment. Mr. Gustafson states that 2001 it was indicated on the building property record card that it was to be vacated and deconstructed. In 2014, more violations. Mr. Clarkin states it was illegal. Someone found out it was illegal. They were told to stop and didn't.

Chairman Leonardis questions Ms. Londono. She plans to move into the front house with her family and rent the back house. As a condition, would Ms. Londono be willing, if she ever sold the property that the back house must be reverted back to a garage. The Board understands they may have gotten into a hardship and did not understand. All the appliance would have to be removed.

Mr. Clarkin requests a recess to discuss the condition.

Mr. Clarkin returns and states yes, they do accept this as a condition.

Chairman Leonardis states that the Board will continue with testimony. If the application is favorable, if the house goes up for sale it is understood that the property will be returned to a single family with a garage and all appliances in the back house must be removed. Mr. Clarkin states they agree.

With no further questions for Ms. Londono, Mr. Clarkin addresses T&M Associates review letter dated December 20, 2016. Beginning on page 3 Item F:

- 1a – number of bedrooms. Three (3) in the front house and one (1) in the rear house.
- 1b – internet search says there was a home business. There is no knowledge of that. Statements from neighbors indicated it was used for residential purposes. If this application is approved, as a condition they will eliminate all business use.
- 1c – clarified that attic as storage use only with respect to the rear house.
- 2 – testimony given for utilities.
- 3 – Sketch drawings were proved for the rear house. If approved, will give a sketch of the front house.
- 4 – Not intended to be an affordable unit.
- 5 – Yes, there is sufficient parking area. However, the gravel area in the rear of the front house will be expanded.
- 6 – Exempted from Middlesex County Planning Board approval. There is no sufficient disturbance of soil to require Freehold Soil.

Mr. Slachetka asks other than increasing the gravel area, are there any other site changes, changes to circulation or anything else. Mr. Clarkin states no.

Chairman Leonardis states there is a Traffic Safety Advisory Committee review letter from Lt. DeLair regarding access to the back. Mr. Clarkin states he has Office of Health Services, no objections. Dr. Tempel, no objections. Fire Official

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would like back up smoke detectors in both structures which they agree to. However, do not have the Traffic Safety review letter. Mr. Clarkin is given a copy of the letter.

Mr. Gustafson asks would the applicant agree to leaving the driveway area open and park behind the main house as a condition of approval. Mr. Clarkin states yes. There is sufficient room to widen the driveway. Chairman Leonardis states it does not have to be paved, no structures or anything impeding the driveway for emergency vehicles. Mr. Clarkin states they except as a condition of approval that the common area of the driveway cannot be impeded at all times.

Mr. Clarkin begins his justification for the variances.

- The lot has tremendous depth of two hundred fifty feet (250').
- Second structure hardly visible from the street.
 - Set back one hundred sixty feet (160') from Dumont Avenue.
 - Approximately seven hundred (700) square feet of floor area.
 - One (1) story.
- Structure already there.
- Already setup as a separate residential unit even though illegally done.
- Back house has a rear setback of fifty-five feet (55').
- Dense vegetation buffer from the rear neighbor.
- Providing adequate light, air and open space.
 - Approximately one hundred feet (100') of separation between the two (2) structures.
- Appropriate population density.
 - This is a one (1) bedroom unit only.
- Promoting a desirable visual environment.
 - Both houses are being remodeled.
- Consistent with one (1) of the goals with the Master Plan. Providing a variety of housing types.
 - One (1) bedroom detached standalone home.
- Negative criteria
 - No detriment to the public good.
 - No one in audience to object.
 - Stable street from a zoning perspective. Two (2) of these situations in the neighborhood for decades has not caused any negative impacts.

Mr. Lemos asks when the back house was being renovated did the applicant have a building permit? Mr. Clarkin states there are permits but it is unclear as to which structure. Mr. Lemos continues... shouldn't the back house be subject to the same rules as the front house? Mr. Clarkin states absolutely. The rear house will have to go through all the codes as a dwelling. Mr. Clarkin states there are proper egress and ingress in the back house. Mr. Lemos states his concerns to the construction of the back house... a garage is built differently than a house. Mr. Clarkin states that as a condition that the back house must pass all building code requirements in order to receive a Certificate of Occupancy.

Mr. Slachetka asks what is behind the back house. Per Mr. Clarkin grass and a line of vegetation. The tree directly behind the back house has been removed. No other structures.

Chairman Leonardis opens the hearing to the audience.

Angelo DeAndrea – 1562 Dumont Avenue, South Plainfield, New Jersey – addresses the Board. He lives and owns the house next door. He states since the applicant has purchased the property, they have cleaned it up and fixed the house. The last few years, the house was in disrepair.

Chairman Leonardis closes the portion to the public.

Mr. Clarkin discusses the waivers the applicant is seeking. Waiver for all site plan requirements except drainage. The applicant agrees to work with Mr. Bucco to resolve any drainage issues.

Chairman Leonardis states that he believes the back house has been previous used as living quarters illegally. The applicant did hire an architect. With the understanding if the property gets sold, the back house will revert back to a garage – all appliances and utilities would be capped and sealed. The property would be sold as a single-family residence. Believes this is fair. They spent lots of money to fix both structures and they should have the opportunity to

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collect rent. The property has been there and has been used. None of the professionals have any issues why it should not continue.

Mrs. Campagna would like the condition that the driveway should be wider and restrict parking along the common area of the driveway. Chairman Leonardis states they will have to check with the building department to clarify what is the proper width of the driveway so emergency vehicles can access. Mrs. Campagna asks if the address is the same for both structures. Per Mr. Clarkin, yes. How do they distinguish in an emergency situation? Mr. Clarkin will speak with the Assessor and ask if they can designate one house as 'A' and the other as 'B'.

Chairman Leonardis calls for a motion. Mrs. Campagna states she will call for a motion with the condition of the driveway. No second motion.

Chairman Leonardis asks if there is anything any member would like to know about.

Chairman Leonardis calls a recess.

Chairman Leonardis call the meeting back to order.

Mr. Slachetka asks if there are any hardships? Mr. Clarkin states there are no hardships in the legal aspect. However, they had some expectations that they were going to have a second structure that would provide them rental income. Mr. Slachetka continues... We did hear from the applicant and the neighbor that the property has been in decline and through the efforts of the applicant there is improvements to the property. Whether or not the ability to use the second structure created an incentive for those improvements is hard to measure. If they purchased the house through auction and planning to live there they would improve the property regardless. There is some benefit to the community that these structures are being improved and brought to code. However, this does not justify the second dwelling.

Mr. Slachetka asks Mr. Clarkin to reiterate the other aspects of promoting the public good. Adequate light and open space is being preserved. Even though you have a second structure. You have hundred feet (100') separation between the structures. Back structure is small and one (1) story. It will generate an appropriate amount density. It is a one (1) bedroom unit. Desirable visual environment of both houses being remodel. Improving the housing stock. This is a ninety-two (92) year old home. This improvement may spark other homeowners in the neighborhood to improve their homes.

Mr. Slachetka asks how is the second unit advancing the planning rational? How is that different any other property? Per Mr. Clarkin, by only creating the appropriate population density and providing a housing type that is not generally available in the Borough.

Mr. Slachetka asks what is the size of the entire property? Mr. Clarkin states fifteen thousand square feet (15,000').

Mr. Slachetka states that the minimum lot size in the Borough is seven thousand five hundred square feet (7,500'). Therefore, the population density is consistent with the Master Plan. Mr. Clarkin states that he would never bring a subdivision or flag lot. This can also be a condition. People do not want two hundred fifty feet (250') deep lots. There will be an incentive for someone to come along and try to do a subdivision. That can be eliminated by the condition of no subdivision.

Mr. Slachetka asks what makes this property uniquely suited. The uniqueness includes the depth with a sixty-foot-wide (60') which hides the back house. Mr. Clarkin states this would not hurt the zoning or Master Plan.

Mr. Gustafson states the comments are helping. There are couple of single bedroom homes that have been approved throughout the town. Looking at Exhibit A3, there is a residence to the right. Even though there are no residences objecting there should be a buffer. The applicant is willing to help with the property line by making a buffer and less obvious from the street. Possible conditions... adding buffers and no more expansions. Mr. Clarkin states there will be no more additions to the structures. Driveway runs to the other structure so there is no green space in the front of the property. No delineation or buffers between structures. Foundation plantings and landscaping will be used along the driveway and the wall of the back building.

Mr. Slachetka states he agrees that flag lots is not the direction to go. There would be a variety of variances that would go along with the flag lot. Control an existing condition by limiting the existing size along with landscaping and screening

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is more appropriate. The portion of the property behind the back house should be limited to no pools or athletic court yards. The dwelling in the front may do so. Mr. Clarkin states there is no issue to keep behind the back house clear.

Chairman Leonardis reiterates what the applicant has agreed to:

- No subdivision of the lot.
- No expansion of either structure from where it is today.
- Landscaping across the front of both structures and along the right side of the rear structure.
- Behind the second structure, no accessory structures – open space.
- All construction must go through the building department. Get inspected. Meet current codes for both structures.
- At the sale of the property, the back structure is to revert to a garage and all utilities capped.
- Deed restrictions:
 - No subdivision.
 - Must revert to single family home upon sale.
- Driveway widen to meet the building requirements.
- Parking area in the back.
- No home businesses in either structure.
- Common driveway cannot be obstructive.

With the above conditions, Chairman Leonardis calls to vote. Mrs. Campagna made motion with the above conditions, seconded by Mr. Gustafson. Those in Favor: Mr. Bonanno; Mrs. Campagna; Mrs. Eichler; Mr. Gustafson; Mr. Lemos; and Chairman Leonardis. Those Oppose: None.

INFORMAL HEARINGS: None

OLD BUSINESS: None

NEW BUSINESS: None

CORRESPONDANCE: None

EXECUTIVE SESSION: None

ADJOURNMENT: 8:35 PM

Respectfully Submitted,
Joanne Broderick
Recording Secretary