

BOROUGH OF MIDLAND PARK - ZONING BOARD OF ADJUSTMENT MINUTES

September 9, 2020

PLEASE TAKE NOTE:

ON WEDNESDAY, SEPTEMBER 9, 2020, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULARLY SCHEDULED MEETING THROUGH TELE-CONFERENCE VIA GO-TO-MEETING. THE MEETING BEGAN AT 7:30 P.M.

FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Glen Biswurm-Chairperson	excused	Mr. Nick Papapietro- Vice Chair	present
Mr. David Zuidema	present	Mr. Harry Parker- Secretary	absent
Mr. John Meeks	present	Mr. Mark Braunius	present
Mr. Richard Formicola	present	Mr. Les Andersen, Alt #1	present
		Mr. Mark Divak, Alt #2	excused

D. Siss, Esq., acting board attorney, and David Novak, board planner, were present on behalf of the board.

Minutes of August 12, 2020 meeting were approved.

COMMUNICATIONS:

Oosting, Rudolf- Interpretation of ordinance- Andrew Kohut, Esq. represented applicant for interpretation of ordinances related to the permitted size of an accessory building. Atty. Kohut questioned the permitted size of an accessory or garage building, the policy has been to allow a building up to 864 sf however there is no limit as far as square footage in the ordinance re: 34-4.3 and 34-13.1. A garage may be constructed for up to three vehicles which can be the type of vehicle allowed to be garaged in a residential zone. Exhibit A-1, Atty. Kohut letter dated 8/5/2020, the application and attachments. Brigitte Bogart, professional planner, sworn in, accepted as expert. Section 40:55D70b gives the Zoning Board of Adjustment the power to interpret zoning code. Her opinion is that the 864 sf is not accurate based upon the ordinances currently in place. Per Ordinance 34-4.3, a 1 car garage is required, Ms. Bogart described types of vehicles allowed to be stored in the garage. Review of ordinances that define commercial vehicles and number of commercial vehicles allowed. The application of a limit of 864 sf does not seem to allow for the types of vehicles allowed to be stored in a garage. Ordinance 34-13.1a- limits accessory buildings are limited to 16 ft in height, 5 ft from property lines, 10 ft from principle dwelling and 30% of yard its located in. That is the only ordinance that limits the size of a detached garage in a residential zone. The last three master plans, 1995, 2008 & 2019 never identified this as a planning issue. The 2002 ordinance reflects the borough wanting to limit the size of garages however the 864 sf limit is not in the ordinance. Exhibit A-1, there is a 2014 permit that a garage was approved for a building 30' x 50' with no variance granted. It is her opinion that the garage should be approved as of right. Mark Berninger, zoning officer, and David Novak, board planner, sworn in. Mark Berninger noted his interpretation of the accessory structure; definition of accessory structure should be incidental or accessory to the principle structure. The size of 864 sf is determined by the size of a typical vehicle plus a storage area. Atty. Kohut questioned Mr. Berninger re: 30% yard limit and type of commercial vehicles allowed. Atty. Siss questioned the limit of a garage for only three vehicles and the definition of the maximum size of a commercial vehicle. Atty. Kohut noted that the size of a three garage may hold three vehicles plus have room for other uses in the garage. Mr. Berninger noted that 34-4.3, garages and commercial vehicles in residential districts, were placed together for a reason; they wanted to include them in the same paragraph. Atty. Kohut stated that the letter of the code should apply. Mr. Formicola questioned if the 30% applies to all number of accessory structures. Mr. Berninger applies the standard of an allowed commercial vehicle size to determine the size of a three vehicle garage. Mr. Andersen noted that the only limits to the garage is 30% of the yard and also the building coverage 30% maximum. David Novak, board planner, also included improved lot coverage as a limiting factor. Board noted that a commercial vehicle is defined in the code. David Novak noted the ways accessory structures and garages are limited and all structures are added together to get the 30% yard and reviewed the definition of a residential garage. Atty. Kohut discussed the 30% limitation of an accessory structure.

Board members noted and questioned the difficulty of maneuvering a 20' truck and the weight of prior zoning officer's decisions. Board questioned Mr. Berninger on past history of accessory garage rules applied and discussed ordinance language. Atty. Kohut discussed the 1994 decision and a garage housing more than three vehicles; the code permits 30% of yard to determine size and not a specific square footage for three vehicles; that designated 864 sf is not in the code. He agrees that it is an enforcement issue to make sure no more than three vehicles are stored in a garage, regardless of its size. Board discussed ordinances and zoning officer interpretations. Atty. Siss discussed 34-4.3 vs 34-13.1; what was intent. Board members discussed size limitations. Atty. Kohut advised that the ordinance applies to all size lots; the 30% limits the size of the structures. The ordinance does not establish different limits for larger lots; the ordinance was updated in 2002. Atty. Kohut summarized; interpretation of ordinance only, only three vehicles are allowed in the garage, however the size is limited by the 30% yard requirement. The change in the 2002 ordinance was intended to limit the size of the garage. The ordinance is clear and should guide the board. There is a 2014 permit for a garage that exceeded the 864 sf that did not require a variance. Motion by Mr. Braunius to find that the zoning officer's interpretation that a three car garage, not to exceed 864 sf, based on 34-4.3 which states that a garage not more than three vehicles, based on standard practice of more than twenty years, seconded by Mr. Papapietro, based on zoning officer testimony of over twenty years; Messrs. Zuidema, Formicola, Papapietro, and Braunius all voted to uphold that motion, Mr. Meeks and Mr. Andersen voted no.

Borntrager, Allen & Diane- 66 Zimmer Ave- BL 10.08 LT 16- Motion by Mr. Braunius to recommend the return of unused escrow in the amount of \$39.95, seconded by Mr. Formicola; all voted in favor.

Meeting adjourned: 8:31 pm

Janet Giardino - Board Secretary