

**BERGENFIELD ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
April 7, 2025**

Chairman Ben Cabrera called the meeting to order at 8:01 P.M.

**OPEN PUBLIC MEETING STATEMENT**

In compliance with the Open Public Meetings Act, the notice requirements have been satisfied. Meeting dates are confirmed at the Annual Meeting. Notice of this meeting was provided to the Record, Star Ledger, and Cablevision, posted on a municipal public notice bulletin board and published on the borough website.

Any board member having a conflict of interest involving any matter to come before the board this evening is reminded they must recuse himself/herself from participating in any discussion on this matter.

**PLEDGE OF ALLEGIANCE**

Led by Board member Smith.

**ROLL CALL**

**Present:** John Smith, Amnon Wenger, Jose Morel, Jason Bergman, Ben Cabrera, Yitz Novak, Richard Morf, and Oriole Familia

**Also Present:** Gloria Oh, Zoning Board Attorney, Antonios Panagapoulos, Board Engineer, Councilman Thomas Lodato, Council Liaison, and Hilda Tavitian, Zoning Board Clerk

**Absent:** No one.

**INTRODUCTORY STATEMENT**

Welcome to the Zoning Board of Adjustment. Let me briefly explain what we do. We are appointed by the Bergenfield Council to decide when a property owner should get relief from the strict application of the zoning regulations that are set forth in Bergenfield's zoning ordinance. Typically, we hear two types of variances. The first is whether an applicant can vary from land use restrictions including rules on sideline distance, height, and lot coverage. That is commonly called a bulk variance. The second type of variance is a use variance, where an applicant wants to use the property for a purpose not permitted under the zoning ordinance in that zone.

In these cases, the applicant has the burden of meeting certain criteria set forth in the Municipal Land Use Law, which is available online. We carefully listen to the testimony, including objectors, and review all relevant documents. If a majority of the Board concludes that the applicant has satisfied those criteria for a bulk variance, we must grant the requested variance. Approval of a use variance requires five affirmative votes.

**APPROVE MINUTES OF PREVIOUS MEETING – March 3, 2025**

**Motion By:** Board member Smith

**Second By:** Board member Bergman

**All present, voting in favor. None opposed.**

**CORRESPONDENCE**

None.

**PUBLIC COMMENT**

Comments by members of audience on matters not on evening’s agenda  
None.

**OLD BUSINESS**

None.

**NEW BUSINESS**

- 1. Applications:           Yitzchak Yosef Cohn  
                                  67 Hallberg Avenue  
                                  Pool and Spa

Board member Smith recused himself as he is within 200’ of applicant’s property.

Mark Madaio, 29 Legion Drive, Bergenfield, NJ, attorney for applicant, stated they are before the Board for an addition of a swimming pool. The property is located on the corner of Hallberg Avenue and Van Valkenburg Avenue with two front yards. They have incorporated the comments from the board engineer’s review letter into the plan. Mr. Madaio stated the only deviation which they require is for impervious/improved coverage. Swimming pools count as improved coverage. They hold water, don’t shed or flood water. It’s an oversized lot in the R-5 zone, but they have to comply with R-6 standards. The permitted impervious coverage is 35%, currently it’s 37.12%, and they are seeking 44%. The entire increase is the swimming pool.

Paul Ercolano, licensed engineer from Ercolano Engineering, 826A Lincoln Avenue, Maywood, NJ stated revised plans dated 3/18/25 were submitted to address the board engineer’s comments in the review letter. Square footage is 11,780 sq. ft. It is approximately 120 ft. x 100 ft. Mr. Ercolano stated it is a corner lot that fully complies with the zoning ordinance other than improved lot coverage currently. The minimum rear yard is ½ a foot off. The existing impervious coverage is 24.24% for lot coverage and 37.12% for improved lot coverage, being over the allowable existing coverage. Mr. Ercolano stated they are proposing to add a pool, patio, and pool equipment. The pool will be located on the side rear yard along Hallberg Avenue. It fully conforms to the setback requirement. The only variance required for the pool is because it increases the impervious coverage. The proposed pool is almost 1,200 sq. ft. total. The water coping is 550 sq. ft., patio around the pool is 608 sq. ft., and the pool equipment pad is about 21 sq. ft. Runoff is captured within the pool. The coping elevation is typically higher than the water elevation and there’s some degree of capacity it can hold.

Chairman Cabrera stated they have recently seen torrential downpours not seen before due to climate changes. He has concerns that they are over the limit already by 8%. A storm can add to it. Mr. Cabrera inquired how old is the home. He inquired if there ever was a variance on the original as it is already over coverage.

Mr. Madaio stated a pool will never add to the water that hits the ground. At some point, its effectiveness as a retention structure will diminish just like any other retention system. The home is relatively new as it was a part of a subdivision. There was an OPRA request done and there was no variance.

Board member Morel requested more information regarding the proposed stormwater system. He inquired if there are any limitations. Mr. Morel inquired if it’s tied into the house system. Mr. Morel inquired if it would help if it was tied to the home system. It’s not shown on the plan.

Mr. Ercolano stated they are proposing a French drain around the pool patio area to capture any runoff from the patio surface. The capacity of the stormwater system is 158 cubic feet, enough to catch 2 inches of runoff over the patio, pool, and over the new impervious. No, it's not tied to the house system. It's based on the increase in the impervious coverage. It was added as a recommended improvement to avoid causing any adverse impact to the stormwater.

Mr. Madaio inquired if it should be linked to the house system. Mr. Madaio stated the house was constructed and inspected according to code within the last 10 years. It has a complete drainage system on its own per code. There isn't any information for the house drainage because they are not building the home. In addition to that, they put in another system just for the patio.

Mr. Ercolano stated he doesn't have any information for the existing house system.

Board member Wenger stated in the 2023 Zoning Board of Adjustment annual report, there were 3 different pool applications. All of them were granted because a pool doesn't have a detrimental effect.

Board engineer Panagopoulos stated he disagrees with a pool being considered as a holding area. According to DEP, pools are considered impervious. The 5,000 sq. ft. lots should also be 35%, not 40%. All lots should be 35% maximum. Mr. Panagopoulos stated they should try to do as much as possible to get closer to 35%. He stated they didn't discuss the trees that will be cut down. He inquired if any screening will be provided in place of the trees.

Mr. Madaio stated they will comply with the tree ordinance. Mr. Madaio stated they are agreeable to show the landscaping. He stated in the event the application is approved, it could be a condition that tree replacement and screening be at the discretion of the board members.

Mr. Ercolano stated there will be landscaping, but is not shown on the plan.

Mr. Panagopoulos explained the DEP has recently passed rules requiring trees to be replaced when they are cut down. The town is in the process of passing an ordinance to be up to speed with DEP. He stated one of the comments in his review letter was if the applicant considered reducing the size of the patio to get closer to 35%. He inquired if they considered using pervious pavers instead of the standard paver system. The rest of his comments are technical, should the application be approved favorably, the comments need to be addressed as part of resolution compliance.

Mr. Madaio stated he doesn't see why a couple of feet from one or both patios can't be shaven off. The pool and spa is 11 ft. to water's edge. That could be changed to 9 ft. on the north side of the patio near the spa. They could provide a couple feet of green grass. The pavers proposed in the back, instead of being 11 ft. from the water's edge will be 9ft. from the water's edge. They will be using regular pavers, not converting to pervious pavers. They will be reducing the patio coverage by 40 sq. ft. Mr. Madaio explained pools are permitted accessory uses in the town code and also not an uncommon accessory use in a suburban environment. The board has a history of granting exactly this type of variance.

Mr. Panagopoulos stated they will be taking away 40 sq. ft.

Board member Morel stated they are only reducing coverage from 44.55% to 42.2%. It's not a significant change.

Chairman Cabrera inquired if the pavers there now can be replaced by permeable ones.

Mr. Madaio stated, if necessary, if the whole patio is changed to pervious pavers, it would be reduced by 48 sq. ft. It would just make the pavement pervious. He suggested taking 2 ft. off the side of the existing patio also, reducing it by another 40 sq. ft.

**Questions and Comments from Residents with 200' and beyond:**

John Smith, 50 Hallberg Avenue, stated this application is not the homeowner's problem. It was the developer that caused the non-conformity. A month ago, the board members had a meeting to discuss the R-5/R-6 35% lot coverage issue and agreed it should be 35%. Mr. Smith stated someone was supposed to write a letter to the Mayor and Council, which never got to them or to the Planning Board to recommend this. The non-conformity should not be taken into consideration in making a decision how to vote for this application. The developer cut down the trees. The board should consider that the applicant is trying to compromise. The problem is the size of the lots.

Mr. Panagopoulos stated the letter would not impact this application and that he will write the letter in the next week.

Chairman Cabrera stated he recalls the discussion regarding the letter and agreed with Mr. Smith.

**Motion to Approve Application with Changes Presented – Taking 2 Feet Off Ends of Both Patios, Adhering to Engineer's Comments, and Planting of Trees**

**Motion By:** Board member Bergman

**Second By:** Board member Wenger

1 recuse. 6 ayes.

Board member Wenger stated he is not in support of the letter and is opposed to it. It is necessary for undersized lots to have the benefit of going to 40%.

Mary Villa  
176 E. Main Street  
Pavers

Mary Villa, applicant, stated her daughter will be translating for her in Spanish. There are three fluent Spanish speaking board members and will know if there are any changes in the translation. Ms. Villa's daughter stated her mother had filled papers for her daughter to have a more comfortable life. Her father passed away two years ago and her mother is a single mother with three children. Ms. Villa's daughter uses a ventilator and oxygen machine to breathe 24 hours a day and eats through a tube in her stomach. The only way she has fun and have a hobby is being in the backyard. It's hard for her to walk and easier for her to move around with the wheelchair in the backyard is with the pavers. The construction in the backyard was done for her.

Chairman Cabrera inquired how long ago was the work done. He stated there were no permits requested, the work was just done.

Ms. Villa's daughter stated the work was done last year in July. Yes, she did request a permit and did get one.

Board member Smith inquired if she was issued a permit to do the work. The building department says no.

Vargas, from CVS Construction, stated they submitted for a permit to change the asphalt to pavers in the driveway. They also put pavers around the pool. The 4 ft. wooden deck was around the pool and there already were pavers before they did any work.

Mr. Smith stated the permit was only to put pavers in the driveway. The construction company was the cause of going over the lot coverage that made it worse. Google shows pavers in the backyard going back to 1990.

Mr. Panagopoulos stated he found a picture from 2010 that had some coverage. He inquired what was under the deck. The water would go through the deck and then go into the ground. Now, all the water is going somewhere on the surface. His concern is that it was somewhat pervious before and now it's not. The water can't go into the ground now and may have caused a problem somewhere. If this had come to the Board before, it would have not been allowed.

Mr. Vargas stated there was stone underneath the deck. He stated the water has a pitch all the way to the front and does not go to the neighbors. There is a proposed drainage system. After the 4 ft. of decking, there were 2x2 pavers.

Chairman Cabrera stated there have been pavers for a number of years.

Board member Smith inquired what type of pavers are there. He stated all that work was done without permits. There is a lot water in front of the house and the road. He saw this this past weekend after it rained. The drainage there is what they are proposing. All of the roof water is going out to the road.

Mr. Panagopoulos stated when you build something new, you're not allowed to put the water right out into the street. The water should be spread out, not concentrated in one area.

Board member Wenger inquire if Ms. Villa would agree to putting in a drainage system.

Board member Smith inquired when the deck was built.

Mr. Vargas stated the deck around the pool was built more than 15 years ago.

Chairman Cabrera inquired when the house was bought. He inquired if the house already had the pavers. The problem is what applies to one, applies to all. It's over double the coverage. There are serious flooding issues in town. DDD may have funded it, but the law is the law for everyone.

Ms. Villa's daughter stated the house was bought December 2006. It had half of the deck and part of the pavers. She stated her mother understands what is being said. But, half of the work was done by DDD as part of a fundraiser. If they put in a tank for drainage, it's going to cost her mom a lot of money and will be hard for her as she is a single mom.

Mr. Smith inquired if the pavers along the side, from the paper driveway to all the way back, were removed and grass put in, how much coverage would be reduced.

Board member Wenger stated he understands the concern of setting a precedent. One of the things the board is allowed to consider is hardship and disability being the full totality of the hardship.

Board attorney Oh stated that is correct. The exception would be to limit to the extend necessary for the hardship.

Mr. Wenger stated considering there is a disability and a single mother, is there a way to write into the record that this should have no precedential value going forward and this is just because of the unique hardship.

Mr. Smith agreed with Mr. Wenger, but they need to watch what they're doing. There won't be as much runoff if the pavers were replaced with grass.

Ms. Villa's daughter stated her mom understands the board is suggesting to put grass in place of the pavement.

Mr. Panagopoulos stated every application is looked at separately. He stated what is approved goes with the property in perpetuity. If they move out in the 10 years, and the next owner comes in, they are allowed to keep this the way it is.

Board member Morel suggested instead of the board dictating where the pavers should be removed, they should identify, if the goal is to reduce the overall usage, a 20x50 area (1,000 sq. ft.) and make it grass. This would bring down the coverage percentage to 67%, and still be comfortable with the hardship situation.

Ms. Villa's daughter stated the problem with putting grass is that it would attract bugs, pollen, and her sister has allergies, making her uncomfortable.

Mr. Cabrera inquired what is stopping the neighbor's bugs and pollen from coming into their backyard.

Ms. Villa's daughter stated it's different. Their backyard is cleaner, without having actual grass right there. It's safer. She stated her mother understands everything being said about the law. She's tried very hard to explain her situation, and getting here to be heard by the board has cost her a lot. It already cost a lot having done the backyard to make her daughter comfortable. The backyard is the thing her daughter has right now. DDD had recommended her daughter being outdoors would help her daughter have a better life. Ms. Villa's daughter stated when her father was around, he would help his daughter move around with the wheelchair.

Mr. Smith stated every board member feels for your family. The board is trying to come up with a viable solution. It's a hard decision as he has never voted yes for improved lot coverage for over 10%. The applicant before this one compromised to come up with a decision. The board has come up with a solution. He inquired what her mother is willing to do. Mr. Smith inquired which way her sister goes into the house.

Mr. Cabrera suggested instead of replacing the area of pavers with grass, gravel can be used instead.

Mr. Panagopoulos stated DEP looks at stone as impervious. Mr. Panagopoulos inquired if there is a number the board feels comfortable with. He inquired if there is a percentage of coverage the board is comfortable with, just to give them some direction. The board doesn't want to design it for them.

Ms. Villa's daughter stated her sister goes into the house through the back. The car goes into the backyard. Her mom then carries her into the house. The car stops right where the back door is to go into the house, right next to the pool.

A five minute recess was taken at 9:30 pm. The meeting resumed at 9:40 pm.

Chairman Cabrera stated the proposal is to take a 400 sq. ft. area, remove the pavers, and cover it with mulch. It would make the backyard look nice.

Mr. Panagopoulos stated they are required to install drainage. Two tanks are proposed to pick up all the drainage over the 40% allowable. Each tank covers 20%.

Mr. Smith stated the land is the hardship. They compromised on the pavers. He inquired if the two tanks are needed. There should be at least one tank to cover the 40%.

Board member Morel inquired what the estimate for the cost of a seepage tank is.

Ms. Villa's daughter stated it's around \$15,000.

Mr. Smith inquired if all front leaders go to the mulch.

Mr. Panagopoulos stated that won't help and wouldn't recommend it.

Chairman Cabrera stated the pavers have been there for some time now. If there were flooding issues, they would have heard about it from the neighbors. They also have to take into consideration the neighbors.

**Motion to Grant Variance with Modification of 400 sq. ft. of Pavers Removed and Replaced with Mulch or Grass as Approved by Board Engineer**

**Motion By:** Board member Wenger

**Second By:** Board member Bergman

**7 ayes. None opposed.**

2. Appointment of Board Planner

Chairman Cabrera stated he would like to table this until next meeting so they can have some time to discuss it amongst themselves.

Mr. Smith stated he doesn't want the borough planner. They had the planner from T&M Associates last year who did a good job. The borough planner, previously, refused to show up for board meetings.

Mr. Wenger stated in the interest of fairness, they should get RFQ's.

Board attorney stated regardless of who the planner is, the applicant still needs to pay for the planner. If the borough attorney states the board can use the borough planner for the one application only, then he can be sworn in at the next meeting.

Mr. Panagopoulos stated if the borough planner is used, an RFQ is not needed. If you want to hire T&M Associates or another firm, then you have to go out for RFQ's through the fair and open process to pick who you want.

Councilperson Lodato recommended putting out RFQ's rather than using borough planner. The board would have the opportunity to select whoever the board wants. They can seek the opinion of the borough attorney prior to making any decisions. The borough attorney is not going to tell you you can't advertise for RFQ's.

Board member Bergman stated the question is what happens during the interim time. Even if they get RFQ's and hire someone by the next meeting, they will need a planner at the next meeting. He inquired if they will use the borough planner in the interim.

Ms. Oh stated she will ask the borough attorney.

**Motion to Release RFQ for Long Term Board Planner**

**Motion By:** Board member Novak

**Second By:** Board member Bergman

**All members present, voting in favor. None opposed.**

**MOTION TO ADJOURN MEETING**

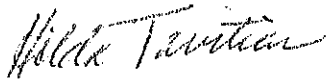
**Motion By:** Board member Bergman

**Second By:** Board member Wenger

**All ayes. None opposed.**

Meeting was adjourned at 9:59 pm.

Respectfully Submitted,



Hilda Tavitian, Clerk  
Zoning Board of Adjustment