

**ZONING BOARD OF ADJUSTMENT**  
**REGULAR MEETING MINUTES**  
**JANUARY 25, 2016**

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A **REGULAR MEETING** of the Zoning Board of Adjustment was held on Monday, January 25, 2016, in the Dorothy E. Harrington Municipal Council Chambers, 630 Avenue C, Bayonne, New Jersey.

Chairman Urban called the meeting to order at 6:13 p.m. and Secretary Egan called the roll. Present at the meeting were Chairman Urban and Commissioners, Adams, Egan, LeFante, Weicker, Lombardi, and Dorans. Commissioners Rivera, Pellitteri, Ferrante and Kushnir were absent.

Also present were Robert Russo, PE, consulting City Engineer, Anthony Rodriguez, PP, consulting City Planner, Richard N. Campisano, Esq., Board Counsel and Lillian Glazewski, Land Use Administrator.

After the Pledge of Allegiance to the Flag, Chairman Urban declared a quorum and advised that the Board had complied with the Open Public Meetings Act/Sunshine Law.

**Adoption of Minutes:**

Chairman Urban called for the adoption of the minutes from the regular meeting held on December 21, 2015.

Commissioner Adams made a motion to adopt the minutes and Commissioner Lombardi seconded the motion. A unanimous vote of eligible members followed.

**Communications:**

None

**Public Hearing:**

**Z-16-001 GABRIEL MEGALE – Site 376 Avenue C in City Block 246, Lot 50** *[The applicant is seeking a Certificate of Nonconformity to allow the continued use of a deli on the ground floor and residences on the second floor of the existing building.]*

William J. Finnerty, Esq., attorney for applicant advised that the applicant has decided to withdraw his application for a Certificate of Nonconformity and he will file a new application for a use variance at a later date.

**Public Hearing:**

**Z-15-029 Public Service Electric and Gas Company – Site: 159-163 West 63<sup>rd</sup> Street in City Block 3, Lot 3** *[The applicant is seeking preliminary and final major site plan approval as well as use and bulk variance to allow the upgrade and expansion of the Bayonne Switching Station.]*

Glen Kienz, Esq., attorney for the applicant, gave a brief opening statement, offered his exhibits into evidence and called his first witness.

**Witness:**

**Gino Leonardis**, Senior Project Manager for PSE&G was sworn to provide factual testimony in support of the application. Mr. Leonardis testified that he is responsible for working with outside consultants. He described the proposed upgrade to the Bayonne Switching Station and testified that this project is also connected with the Bergen Linden corridor project. Mr. Leonardis described the proposed lighting, emergency generator and addressed possible sound that may emanate from the generator at the site. He further addressed the City engineer's comments and pointed out that all proposed improvements are within the fenced area of the site.

**Board questions**

Chairman Urban and Commissioner Egan questioned Mr. Leonardis.

**Audience questions:**

There were no questions from the general public.

**Witness:**

Mark Lennon, PP with PS&S Professional Planners was sworn to provide expert planning testimony. Mr. Lennon said that the proposed application is an essential service that is inherently beneficial. He addressed the positive and negative criteria and said that the positive criteria outweighs the negative. He emphasized that the switching station would not change the character of the neighborhood, affect the health and safety of the workers or residents on adjacent properties, create any potential congestion of vehicle traffic or create an undue hazard. The project would not affect the use and enjoyment of adjacent properties, change the nature and intensity of the use or cause a detrimental effect to the water and sanitary facilities or effect the drainage in the area. Mr. Lennon also said that visually there would be minimal effect because this is an existing site that is used as an electrical switching station. The new equipment will be located within the interior of the site in an area that already contains electrical equipment that is similar in size and appearance to the proposed improvement. Mr. Lennon concluded that there is a compelling regional need for the upgrade of the facility in order to provide for increased service needs.

**Board questions:**

There were no questions from the Board.

**Audience questions:**

There were no questions from the general public.

**Closing remarks:**

Mr. Kienz respectfully requested the Board look favorably upon this application.

**Caucus:**

Chairman Urban said that this is an essential service to our community and the criteria has been met for the granting of an approval.

Commissioner Adams said that he feels the height variance will not negatively impact the surrounding neighborhood and he agreed with Chairman Urban that relief should be granted.

Commissioners Weicker, Lombardi, LeFante concurred.

Commissioner Dorans concurred and added that this will be a positive impact to our community and he supports this application.

Commissioner Egan said that the biggest issue is the proposed height however, he feels that the applicant's experts have adequately addressed the issue to his satisfaction.

Commissioner Adams made a motion to approve the application subject to any and all conditions spread across the record. Commissioner Lombardi seconded the motion and a unanimous vote followed.

**Public Hearing:**

**PR Builders, LLC – Site: 82-84 East 31<sup>st</sup> Street in City Block 413, Lot 8** *[The applicant is seeking use and bulk variance relief along with preliminary and final major site plan approval to construct a luxury three-story apartment house with a total of seven dwelling units and one penthouse.]*

William J. Finnerty, Esq., attorney for the applicant, briefly described the site and proposed construction. He moved his exhibits into evidence and called his first witness.

**Witness:**

Al Sambade, AIA was sworn to provide expert testimony in support of this application in his capacity as an architect. Mr. Sambade testified that he was retained by the applicant to prepare the architectural plans for this project. He described the three (3) floors having seven (7) units consisting of two (2) one-bedroom units, four (4) two-bedroom units and a penthouse unit and gave construction details. Mr. Sambade further testified that the project will be energy efficient and he will obtain a Leed Certification. LEED certification provides independent verification of a building or neighborhood's green features, allowing for the design, construction, operations and maintenance of resource-efficient, high-performing, healthy, cost-effective buildings. Mr. Sambade address the City consulting engineer and planner's comments in the reports submitted for this application. He testified that nine (9) parking spaces are proposed and described the parking garage would operate.

**Board questions:**

Chairman Urban and City consulting engineer, Anthony Rodriguez questioned Mr. Sambade.

**Audience questions:**

Peter Cresci, Esq., who was representing two residents Jeffrey Kapec and Bill Davis in opposition, questioned Mr. Sambade.

Resident Richard Wicke also questioned Mr. Sambade with concern about the parking.

**Witness:**

Pankul Verma, principal and managing partner of the LLC was sworn to provide factual testimony with regard to this application. Mr. Verma testified that he purchased property from Mr. Cresci's clients. He said that it is his intention to build an energy efficient building that will

reside in and have professionally managed. He also said that he intends use the light rail to get to work. Mr. Verma further testified that three of the parking spaces will be owner occupied and the remaining spaces will be used by the tenants.

**Board questions:**

Chairman Urban questioned Mr. Verma.

**Audience questions:**

Peter Cresci, Esq. and resident, Fiona O'Dougherty also questioned Mr. Sambade.

A short break was taken at 7:57 pm and the meeting resumed at 8:10 pm. Secretary Egan called the roll.

**Witness:**

Craig Peregoy, P.E., traffic engineer was called and sworn to provide expert testimony. Mr. Peregoy testified that he performed a Traffic Impact Analysis. He testified that he reviewed the number of vehicle trips per hour during peak traffic times and it is his professional opinion that trip generation will not have a negative traffic impact to the area.

**Board questions:**

Commissioner Adams questioned Mr. Peregoy.

**Audience questions:**

Peter Cresci, Esq. and resident, Fiona O'Dougherty also questioned Mr. Peregoy.

**Witness:**

Al Sambade, PP returned to the podium to provide expert planning testimony. Mr. Sambade described the present site conditions and surrounding area. He said that he reviewed the variances and waivers being requested and he addressed point by point each of the variances.

Mr. Sambade said that the applicant is willing to set back the penthouse 4 feet from the adjacent property to mitigate the impact to that neighbor.

**Board questions:**

Commissioner Egan and consulting City Planner, Anthony Rodriguez, PP questioned Mr. Sambade.

**Audience questions:**

Pete Cresci, Esq. also questioned Mr. Sambade

**Presentation of Objector Case:**

Peter Cresci, Esq., called his client Jeffrey Kapec who was sworn to provide factual testimony in opposition to this application. Mr. Kapec said that he is a professional designer by trade and that he sold this property in March 2015 to the applicant. He stated further that when he sold the property to the applicant he did not ask the applicant what his intentions were with regard to same. Mr. Kapec further commented that he feels that the proposed building is overwhelming and would be the dominant building on the block and would not fit well in neighborhood. He said it would change the character of the block. Mr. Kapec also said that although he now lives in Connecticut, he still has family that own homes in the neighborhood.

Mr. Cresci marked exhibit O-1, a rendering of the proposed building prepared by Mr. Kapec. Mr. Kapec said that the rendering clearly shows what the building would look like if the applicant receives approval from the Board to build it.

Mr. Finnerty cross-examined Mr. Kapec.

**Board questions:**

Chairman Urban, Commissioners Adams and Egan questioned the accuracy of the dimensions on the rendering submitted by Mr. Kapec.

**Opposing Witness:**

Bill Davis, was sworn to provide factual testimony in support of the objectors' case. Mr. Davis compared the sizes of the lots of the three homes closest to the subject property and said that this building would negatively impact his quality of life.

**Closing Remarks:**

Peter Cresci, Esq., pointed out that several neighbors have come out in opposition. They all feel that this building would negatively impact the area with its size and lack of parking.

William J. Finnerty in closing respectfully requested the Board look favorably on this application. He pointed out that the applicant gave great consideration as to what he wanted to build on this property.

**Caucus**

Chairman Urban said that he has taken into consideration the presentation of the experts who testified for the applicant as well as the witnesses for the objectors and it is his opinion that this building will not be overwhelming or detrimental to the surrounding neighbors.

Commissioner Adams said that the fact that light rail is within walking distance of this building that that would mitigate the parking issue

Commissioner Weicker concurred with his fellow commissioners.

Commissioner Lombardi said that the new building would be aesthetically pleasing and look better than an empty lot that is there right now.

Commissioner LeFante opined that change is coming with the light rail being the driving force.



Commissioner Dorans said he was comfortable with the expert testimony as well as the proximity of the project to light rail. He also felt that since the building would be owner occupied it was a positive thing.

Commissioner Egan said that the variances could be granted based upon the limited effect on the neighborhood as opposed to an as-of-right development of two (2) two-family homes. He also agreed that being so close to the light rail was a plus. He pointed out the vast increase in rentals around mass transit. Commissioner Egan stated that the applicant has met its burden of proof.

Commissioner Dorans said that he is satisfied with expert testimony. He further stated that the comparison presented by Mr. Sambade shows that two two-family homes would have a greater impact to the neighborhood than the one being proposed.

Commissioner Egan said that he is looking at the facts. The curb cut has been mitigated. With regard to the setbacks, Mr. Egan pointed out that there are no prevailing setbacks on this block. The height calculation is de minimis and the applicant made a good case. He feels that the applicant has met its burden of proof.

Commissioners Weicker and Lombardi concurred.

Commissioner Adams made a motion to approve the application subject to the conditions agreed to across the record and Commissioner Lombardi seconded the motion. A unanimous vote followed.

A short break was taken at 9:39 pm and the meeting resumed at 9:45 pm. Secretary Egan called the roll.

**Public Hearing:**

**Z-15-027 HARRY VASWANI – Site: 29 West 33<sup>rd</sup> Street in City Block 139, Lot 7**  
*[The applicant is seeking use and bulk variance relief as well as preliminary and final major site plan approval to allow the conversion of the building from two to three dwelling units]*

Paul Weeks, Esq. attorney for applicant, offered his exhibits into evidence and called his first witness

**Witness:**

Stephen Kawalek, AIA was sworn to provide expert testimony with regard to the architectural plan prepared by him. Mr. Kawalek testified that the building was post war construction and he described the proposal and changes. He described the existing parking, the two-car garage and the proposed elimination of the existing porch and wall to increase the existing parking area. In addition, he described the proposed parking stalls, and stacking of cars as well as the elimination of an interior staircase with the addition of a new rear deck and stairs to provide a second means of egress for the first and second story dwelling units.

**Board questions:**

Commissioners Egan and Adams questioned Mr. Sambade.

**Audience:**

There were no questions from the general public.

**Witness:**

John McDonough, P.P. was sworn to provide expert planning testimony in support of the application. Mr. McDonough addressed the issue of res judicata from the previous application denied in 2011 and the application before the Board at this time. He stated that 33<sup>rd</sup> Street is different from other streets because of its width. Mr. McDonough commented on mass transit being available and said that the application complies with R-2 parking requirements. He pointed

out that the promotion of the general welfare was accepted as a special reason for the satisfaction of positive criteria. In conclusion, Mr. McDonough stated that the application would not have a negative impact on the neighborhood or community as a whole as this site was suitable and not incompatible with the area.

**Board questions:**

Chairman Urban questioned Mr. McDonough.

**Audience questions:**

There no questions from the general public.

**Closing Remarks:**

Paul Weeks, Esq. in closing respectfully requested the Board approve the application.

**Caucus:**

Chairman Urban said that he does not see much of a difference from the prior application that was denied and he is not in favor of this application.

Commissioner Adams said that he finds that there is a difference in this application from the previous denial since the patio and support wall is coming down. He said that the property is particularly suited with many multi families in the surrounding area and it is close to light rail. Commissioner Adams is in favor of application

Commissioner Weicker said that he sees no detriment to the neighborhood and he is also in favor of the application.

Commissioner Lombardi said the applicant does not have adequate parking and he does not favor this application.

Commissioner Lefante concurred with commissioner Lombardi.

Commissioner Egan said that new problems would be created in the neighborhood with this application. The building and parking layout is not suited and he is not in favor of this application.

Commissioner Dorans said that he favors the application.

Commissioner Adams made a motion to approve the application with any and all conditions that were spread across the record. Commissioner LeFante seconded the motion and the following vote followed:

- |                         |            |
|-------------------------|------------|
| • Chairman Urban        | Nay        |
| • Commissioner Adams    | <u>Aye</u> |
| • Commissioner Egan     | Nay        |
| • Commissioner LeFante  | Nay        |
| • Commissioner Weicker  | <u>Aye</u> |
| • Commissioner Lombardi | Nay        |
| • Commissioner Dorans   | <u>Aye</u> |

The application having received only three “aye” votes was **denied**.

**Public Hearing:**

**Z-15-028 PAULETTE PROPERTIES, LLC – Site: 585 Kennedy Boulevard in City Block 201, Lot 33** *[The applicant is seeking preliminary and final major site plan approval along with bulk and F.A.R. variances to allow the conversion of a commercial space into a two-bedroom apartment.]*

Paul Weeks, Esq., attorney for the applicant entered his exhibits into evidence and called his first witness.

**Witness:**

Al Sambade, AIA, PP, was sworn to provide expert testimony in support of the application in his capacity as an architect and professional planner. Mr. Sambade described the architectural plans and proposed interior improvements as well as the façade improvements. He

addressed the comments made by our consulting City Planner and Engineer in their reports on this application.

Mr. Sambade, in his capacity of professional engineer, discussed the proposed variances and provided positive and negative criteria in support of same. In conclusion, Mr. Sambade testified that approval of this application will not have a negative effect on the neighborhood or surround area.

**Board questions:**

There were no questions from the Board.

**Audience questions:**

There were no questions from the general public.

**Caucus:**

Chairman Urban said that the proposed project is a proper fit for the area and he is in favor of the application.

Commissioner Adams said that the project will bring the property into conformance with the R-3 zone and he also is in favor of this application.

Commissioners Weicker, Lombardi, LeFante, Dorans and Egan concurred.

Commissioner Egan made a motion to approve the application subject to the conditions spread across the records and Commissioner Lombardi seconded the motion. A unanimous vote followed.

A motion was made to close the meeting at 10:26 p.m.

Susan Bischoff, Certified Shorthand Reporter, took a transcript of the meeting.

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