

ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
APRIL 15, 2019

A **REGULAR MEETING** of the Zoning Board of Adjustment was held on Monday, April 15, 2019, in the Dorothy E. Harrington Municipal Council Chambers, 630 Avenue C, Bayonne, New Jersey.

Chairman Urban called the meeting to order at 6:11 p.m. Secretary Egan called the roll. Present at the meeting were Chairman Urban, Commissioners, Egan, Dorans, Lombari, Pineiro, Pellitteri, De Ros, DiLullo and Klimansky. Commissioners Adams and Simmons were absent.

Also present was Richard N. Campisano, Esq., Board Counsel, Robert Russo, PE, City Engineer's Office, Malvika Apt, PP, consulting City Planner and Lillian Glazewski, Board 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:

Commissioner Lombari made a motion to adopt the minutes of the regular meeting held on March 18, 2019. Commissioner Pineiro seconded the motion and a unanimous vote of eligible members followed.

Communications:

No communications were received.

Public Hearing:

Z-19-014 SIN KAN, LLC d/b/a THAI O'BRIEN – Site: 478 Avenue E in City Block 406, Lot 8 *[The applicant is requesting the Board remove a restriction from a resolution adopted on September 23, 1974 prohibiting live music or entertainment at the subject property.]*

William J. Finnerty, Esq., attorney for applicant in his opening statement explained that the restriction placed on the resolution was placed there in 1974 and has remained to present. He pointed out that the Mayor sought music in other areas like downtown Broadway and at the Vic's on Hobart Street and this request is not much of a difference, therefore, the applicant is requesting the Board eliminate the existing restriction.

Resident and neighbor Blaine Papaccio said that he is the person who has spoken out over the years with regard to the noise and crowd issues because of this business. He also said that he has had difficulty dealing with the owner who has been unreceptive to him.

Mr. Papaccio was not opposed to allowing a trial period in which the applicant could have live entertainment at the site provided that the issue would be reviewed by the Board at the end of this trial period.

Mr. Finnerty agreed to this proposal of a six-month trial period on behalf of his client.

Megan Zakresky, a neighbor, said that she resides above the facility and she has had no problems with noise.

Resident Paul Steward spoke in favor of the business and said that he has not had a bad experience. He spoke highly of the business and owner.

Residents Stephanie Galore-Wilson and Thomas Sanchez said that they also reside in the neighborhood and have had no complaints with regard to karaoke or loud noises from the business.

The Planning Board attorney Richard Campisano advised the Board as to the action the Board could take with regard to this interpretation:

1. Grant an approval to remove the restriction completely; or
2. Deny the granting of the removal of the restriction; or
3. Grant a temporary variance for a six-month trial period permitting the karaoke and live entertainment.

Chairman Urban said that he is in favor of allowing the business to continue with a six-(6) month temporary period. Commissioners Pineiro, Egan and Lombari concurred.

Commissioners DiLullo and Klimansky commented that they were not in favor of granting a temporary trial period.

Commissioner Egan made a motion to grant a six-month temporary trial period to allow karaoke and live music at the site. Commissioner Lombari seconded the motion. All eligible members except Commissioner DiLullo voted in favor of the motion. The motion was carried.

Public Hearing:

Z-19-008 – 636 AVENUE C, LLC – Site: 636 Avenue C in City Block 167, Lot 45
[The applicant is seeking preliminary and final major site plan approval along with use and bulk variance to allow a commercial use (real estate agency) on the first floor of the existing multifamily building.]

Christopher Vitale, Esq., attorney for applicant stated that the applicant is seeking a use variance for certain categories of businesses at the site. Mr. Vitale moved his exhibits into evidence and called his first witness:

Witness:

Hershy Weiss, principal owner of the property was sworn to provide factual testimony in support of the application. Mr. Weiss testified that the commercial space in question has always been used for commercial purposes even before the property was purchased. He said that a nail

salon was the last commercial use in that part of the building. When the nail salon terminated their lease, a new lease was drawn with a real estate agency. As a real estate agency is not the same preexisting, nonconforming use as a nail salon, a variance is required. Mr. Weiss said that he is asking the Board to consider allowing an expansive definition of the types of commercial uses that could be permitted at this location. Mr. Weiss also said that if the application is approved, he will repair the signage and add landscaping to make the area look better.

Board questions:

Chairman Urban, Commissioners Egan and DiLullo and consulting City Planner Apte questioned Mr. Weiss regarding the proposed uses, parking and signage variances required for the use of a real estate agency.

Witness:

Natalie Miniard a real estate agent testified as to how she proposed to operate her real estate agency at this location. She said that she presently has another location in Jersey City and that this would be a second office. She talked about the intensity of the use mentioning the number of employees and expected visitors to the site. She opined that she does not anticipate much traffic to be generated for the real estate office use.

Board questions:

Commissioner Pineiro questioned Ms. Miniard.

Caucus:

Chairman Urban commented that he is okay with a use variance for the real estate agency ONLY. He does not agree with granting a broad approval for other potential uses.

Commissioner Pineiro commented that he is familiar with real estate agency and he at times has seen a lot of movement. Commissioner Pineiro agreed with Chairman Urban to allowing a use variance only for a real estate agency.

Commissioners De Ros, DiLullo, Egan and Klimansky also concurred that if a variance is granted, it should only be for the real estate agency.

Commissioner Lombari disagreed and was not in favor of granting the variance.

Commissioner Lombari made a motion in the affirmative to grant the variance for the real estate agency and Commissioner De Ros seconded the motion.

Commissioners Pineiro and Lombari voted against the application. Commissioners De Ros and Klimansky were ineligible to vote. Commissioners Urban, Egan, Dorans, Pellitteri and DiLullo voted in favor of granting the variance. The application was approved.

A short break was taken at 7:28 p.m. and the meeting resumed 7:35 p.m. the roll was called.

Public Hearing:

Z-19-009 244 AVENUE B, LLC – Site: 244 Avenue B in City Block 52, Lot 44.02 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to convert the existing home into a three-family residence.]*

Christopher Vitale, Esq., attorney for applicant, offered his exhibits into evidence and called his first witness.

Witness:

Pietro Barberi owner/member and managing partner of the applicant, 244 Avenue B, LLC was sworn to provide factual testimony in support of the application. Mr. Barberi testified that the LLC took title of the property in 2016. He described the ground floor apartment which

at one time was occupied but is currently vacant. He described the existing parking and prospective tenants. He testified that the property would be DCA compliant and the reason for this application was due to the property being a financial burden.

Board questions:

Chairman Urban, Commissioners Lombardi, De Ros, Pineiro and Egan questioned Mr. Barberi. Consulting City Planner Apte also questioned Mr. Barberi.

Audience questions:

There were no questions from the general public.

Witness:

Stephen Kawalek AIA, PP was sworn and accepted as an expert witness to testify in support of the application. Mr. Kawalek described the basement use as a mother/daughter setup. He talked about other multifamily uses in the surrounding area and said this site is suitable to the proposed use. He pointed out that the applicant meets the parking requirements. Mr. Kawalek addressed the positive and negative criteria in support of the use variance. It was his professional opinion that a use variance could be granted without any detrimental effect to the surrounding area.

Board questions:

Chairman Urban, Commissioners De Ros, DiLullo and Egan questioned Mr. Kawalek. Consulting City Planner Apte also questioned Mr. Kawalek.

Audience questions:

There were no questions from the general public.

Closing remarks:

Chris Vitale, Esq., reminded the Board that the applicant took title of the property in 2016 as it presently exists. He relied on the expert testimony given in support of the application and asked the Board to look favorably upon the application.

There were no comments from the general public.

Caucus:

Chairman Urban commented that it appears that the original owner had every intention from the beginning to construct a home that could easily be converted into a three-family home. Chairman Urban did not feel that the applicant met the criteria for approval and in addition, no traffic testimony was given. He is not in favor of the application.

Commissioner Pineiro expressed concerns regarding this application. He agreed with Chairman Urban and was not in favor of stacked parking. Commissioner Pineiro felt that this project would negatively impact the community. He also was not in favor of the application.

Commissioner De Ros expressed concerns with the lack of electrical / utility meters. He said he would vote against the application.

Commissioner Lombardi concurred with his fellow commissioners.

Commissioner DiLullo opined that an approval would set a bad precedence since this was originally approved as a two-family home.

Commissioner Egan expressed concern that no testimony was given with regard to parking / traffic in the area.

Commissioner Klimansky concurred.

Commissioner Egan made a motion to approve the application and Commissioner Pineiro seconded the motion. All commissioners presented voted against the application and the application was denied.

Public Hearing:

Z-19-010 – 246 AVENUE B, LLC – Site: 246 Avenue B in City Block 52, Lot 44.01
[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to be allowed to convert the existing two-family home into a three-family residence.]

Christopher Vitale, Esq., attorney for applicant withdrew the application on the record and the Board voted to Dismiss.

Adoption of Resolutions:

- **Z-19-004 – 22ND STREET PARTNERS, LLC – Site: 25-39 East 22nd Street in City Block 206, Lot 1**
 - Commissioner Pineiro made a motion to adopt the resolution and Commissioner De Ros seconded the motion. A unanimous vote followed.
- **Z-19-005 WALTER SHOSTAK – Site: 27-29 West 12th Street in City Block 264, Lot 8.01**
 - Commissioner Egan made a motion to adopt the resolution and Commissioner Lombardi seconded the motion. A unanimous vote followed.

Resolution for extension

A motion was made to close the meeting at 8:30 p.m.

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

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