

ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
MAY 20, 2019

A **REGULAR MEETING** of the Zoning Board of Adjustment was held on Monday, May 20, 2019, in the Dorothy E. Harrington Municipal Council Chambers, 630 Avenue C, Bayonne, New Jersey.

Chairman Urban called the meeting to order at 6:03 p.m. Secretary Egan called the roll. Present at the meeting were Chairman Urban, Commissioners Adams, Egan, Lombari, Pineiro, Pellitteri, De Ros and DiLullo. Commissioners Klimansky, Dorans 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 Adams made a motion to adopt the minutes of the regular meeting held on April 15, 2019. Commissioner Lombari seconded the motion and a unanimous vote of eligible members followed.

Public Hearing:

Z-19-001 T-MOBILE NORTHEAST, LLC – Site: 662 Avenue A in City Block 165, Lot 42 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to allow the installation of a steel equipment platform and antenna mount on the rooftop of the existing building.]*

Allyson M. Kasetta, Esq., attorney for applicant, gave a brief summary of the applicant and requested variance, offered her exhibits into evidence and called her first witness.

Witness:

David Rivette, a Civil Engineer with Dewberry Engineering, Inc. was sworn to provide expert testimony. Mr. Rivette said that he is an expert in the field of designing telecommunication sites. He described the subject property and surrounding area and discussed the site plan prepared by his firm. Mr. Rivette further testified that this is an unmanned facility that is visited approximately once a month. He described the contents on the steel platform and discussed the proposed concealment screening to shield the antennas. Mr. Rivette addressed the location of the proposed generator and confirmed that the generator would only run during emergencies. He discussed the structural analysis report and concluded that *“the proposed structure has sufficient capacity to support the proposed loading.”*

Board questions:

Chairman Urban and Commissioners Egan, Pineiro, DiLullo and DeRos questioned Mr. Rivette. Consulting City Planner Apte also questioned Mr. Rivette.

Audience questions:

There were no questions from the general public.

Witness:

Frances Boschulte, Electrical Engineer and Radio Frequency Engineer was the next witness to be sworn to provide expert testimony. Ms. Boschulte testified as to the primary purpose for this facility. She described the location of the site and degrade in the surface. She said that this site is needed for the proposed facility because it is strategically located to fill in a

gap. Ms. Boschulte further testified that the site was chosen because it is structurally desirable and offers the necessary coverage in the area.

Board questions:

Commissioners Pineiro and Egan questioned Ms. Boschulte.

Audience questions:

There were no questions from the general public.

Witness:

Adam Piombino, a Radio Frequency Compliance Engineer was sworn to provide expert testimony. Mr. Piombino testified the site would comply with FCC requirements governing safety and radio frequency emissions.

Board questions:

There were no questions from the Board

Audience:

There were no questions from the general public.

Witness:

David Karlebach, PP was sworn to provide expert planning testimony in support of the application. Mr. Karlebach provided testimony in support of the positive criteria for justification of the variances requested. He also discussed the negative criteria as required for a use variance. Mr. Karlebach provided testimony with regard to the suitability of the site. He said that there will be no visual impact issues. He further stated that all of the antennas and rooftop are screened to include the color and texture of the building. In conclusion, Mr. Karlebach said that it is his professional opinion that the positives outweigh the negative impacts.

Board questions:

Commissioner Pineiro and consulting City Planner Apte questioned Mr. Karlebach.

Audience questions:

There were no questions from the general public.

Closing remarks:

Ms. Kasetta said that the applicant relies on the testimony given and proofs that there will be no detrimental impact to the surrounding area and she respectfully requested the Board look favorably upon this application.

Caucus:

Chairman Urban said that based on testimony given by the applicant's experts, the applicant has met its requirements for approval.

Commissioner Adams concurred and added that the variances can be granted.

Commissioners DiLullo, Pineiro, Lombardi, DeRos and Egan concurred.

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

Public Hearing:

Z-19-006 PETER AWAD – Site: 140 West 3rd Street in City Block 363, Lot 28 *[The applicant is seeking bulk variance relief for parking stall size and stacked parking.]*

Paul Weeks, Esq., attorney for applicant offered exhibits into evidence and was about to call his first witness..

Chairman Urban interrupted and commented that he saw no substantial change with this application from the one that was previously denied by the Board. He felt that the Board would be setting a precedent if we were to move forward with this application.

Commissioner Adams commented that in his opinion the applicant should be allowed to move forward.

Commissioner Egan stated that he had no problem hearing additional testimony in on this application.

Witness:

Peter Awad, applicant, was called and sworn to provide factual testimony in support of the application. Mr. Awad said that he purchased the property back in June 2017 at a Sheriff's Sale and he described the property at the time of purchase. The building is in much disrepair and has been vacant since it was purchase.

Board questions:

Chairman Urban and Commissioner Pineiro questioned Mr. Awad.

Audience questions:

Resident Luis Polanco questioned Mr. Awad.

Witness:

Alan Feld, PP was called and sworn as the applicant's expert witness. Mr. Feld testified that he prepared the plan for the application and described the first and second floor layouts. He addressed the requested variances and noted that they are a preexisting nonconforming issue. Mr. Feld described the possibility of possible obstruction to the adjacent properties with the proposed stacked parking at the site.

Board questions:

Commissioner Egan, Adams, DiLullo, Pineiro and Russo questioned Mr. Feld. Consulting City Planner Apte also questioned Mr. Feld.

A short break was taken at 7:26 p.m. and the meeting resumed at 7:37 pm. Secretary Egan called the roll.

Mr. Weeks approached the podium and announced that his client, Mr. Awad, wishes to withdraw the application and prepare a new application for filing with the Board.

A vote was taken by the Board to dismiss the application.

Public Hearing:

Z-19-012 LUCIA SEITZINGER – Site: 666 Avenue E in City Block 403, Lot 12 *[The applicant is seeking bulk variance for parking stall size.]*

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

Witness:

Alan Feld, PP, was sworn and recognized as an expert witness to testify in support of this application. Mr. Feld explained the nature of the application and proposed driveway apron and carport which he described as a de minimis variance. He testified that although the proposed driveway is only one- foot short of the requirements for carport depths, the car would not hang over onto the sidewalk. Mr. Feld pointed out several other dwellings along Avenue E with similarly constructed carports.

Board questions:

Commissioner Egan questioned Mr. Feld.

Audience questions:

There were no questions from the general public.

Closing remarks:

Paul Weeks, Esq., requested the Board look favorably upon the application.

Caucus:

Chairman Urban felt that the applicant met her burden of proof needed for approval of this application.

Commissioner Adams concurred with Chairman Urban and he said he sees no negative impact to the neighborhood.

Commissioners DiLullo, Pineiro, Lombari, DeRos and Egan concurred.

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

Public Hearing:

Z-19-007 EMANUELE D'ELIA – Site: 28-30 East 43rd Street; Block 94, Lot 30 *The applicant is seeking minor subdivision approval along with preliminary and final major site plan approval, use and bulk variance relief to construct two attached two-family dwellings on the site.]*

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

Witness:

Alan Feld, PP was sworn to provide expert testimony in support of this application. Mr. Feld described the application dimension and variances providing the positive and negative criteria to support this application.

Board questions:

Commissioners Pineiro, Egan, DiLullo and DeRos questioned Mr. Feld as did consulting City Planner Apte.

Audience questions:

Resident Harvey Santiago questioned Mr. Feld

Witness:

David Karlebach, PP was sworn to provide expert testimony in support of the application. Mr. Karlebach entered an additional exhibit, marked as Exhibit A-15 Tax/Parcels Map showing lots sizes in the area, into evidence. Mr. Karlebach described the surrounding area and setbacks requested for this project. He opined that the proposed attached homes would fit nicely into the neighborhood and would not have a negative effect on the neighborhood or surrounding area.

Board questions:

Commissioners Adams, Egan, DiLullo, Lombardi and DeRos questioned Mr. Karlebach. Consulting City Planner Apte also questioned Mr. Karlebach.

Audience questions:

There were no questions from the general public.

Closing remarks:

Resident Cindy Macon commented in opposition to the application because of the parking situation in the neighborhood.

Mr. Weeks said that he relied on the testimony of his expert witnesses and he feels they have provided sufficient testimony to support the positive and negative criteria. He respectfully requested the Board approve the application.

Caucus:

Chairman Urban said he felt the applicant is trying to squeeze too much into that space and the Lots proposed are less than what the ordinance calls for.

Commissioner Adams said that he is not convinced that replacing the number of bedrooms is insignificant. He said that it affects neighborhood in a negative fashion.

Commissioners DiLullo, Pineiro, Lombardi and DeRos concurred.

Commissioner Egan said that there is a reason attached houses are not permitted in the zone. He concurred with his fellow commissioners.

Commissioner Adams made a motion to approve the application and Commissioner Pineiro seconded the motion. The application was **DENIED** unanimously.

A short break was taken at 8:29 p.m. and the meeting resumed at 8:36 p.m. The roll was called.

Public Hearing:

Z-19-011 M.L. REALTY CORP. OF N.J. – Site: 626-628 Avenue E in City Block 405, Lot 31 *[The applicant is seeking preliminary and final major site plan approval, height and bulk variance relief to allow the construction of a six-story residential building containing 20 residential units.]*

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

Witness:

Al Sambade, PP was sworn to provide expert testimony in support of the application. Mr. Sambade described the application, location of property and surround area. He explained that the proposed structure is permitted in this zone and the only reason this application is before the Zoning Board of Adjustment is because it doesn't meet the height requirements. Mr.

Sambade addressed each of the variances being sought by the applicant and provided justification for same. He addressed the reports submitted by the City Planner and City Engineer. Mr. Sambade offered a rendering of the parking garage into evidence which was marked at exhibit A-24.

Board questions:

Chairman Urban and Commissioners Egan, Adams, DiLullo and Lombardi questioned Mr. Sambade. Consulting City Planner Apte also questioned Mr. Sambade.

Audience questions:

Residents Janice Madasz, Denise Law, Maria Sarria and Monez Eskandar questioned Mr. Sambade.

Closing remarks:

Residents Janice Madasz and Monez Eskander spoke in opposition to this application.

Paul Weeks, Esq., attorney for the applicant, said he relied on the testimony given by his experts and he respectfully requested the Board approve the application.

Caucus:

Chairman Urban said that our City is changing and we must adapt to the changes. The subject area along Avenue E is a Transit Development District and it is intended for this type of construction. As mentioned by Mr. Sambade, this is a permitted building in this zone and the applicant is trying to be a good neighbor. The applicant has met the burden of proof for an approval.

Commissioner Adams concurred that the TDD District permits this type of structure. He commented that the rooftop amenities are a positive.

Commissioner DiLullo also concurred with his fellow commissioners.

Commissioner Pineiro thanked the residents for coming out to express their concerns.

Commissioner Lombardi said that he is not in favor of additional height and he will not vote in favor of the application.

Commissioner DeRos was concerned about the parking problems in the area and he agreed with Commissioner Lombardi to vote against the application.

Commissioner Egan said that the building fits in neighborhood and approval should be granted

Commissioner Egan made a motion to approve the application subject to any and all conditions agreed to across the record. Commissioner Adams seconded the motion. The application received five “AYE” votes with Commissioners Lombardi and DeRos voting against the application.

The application have received five “aye” votes was approved.

Adoption of Resolutions:

- **Z-19-008 – 636 AVENUE C, LLC – Site: 636 Avenue C in City Block 167, Lot 45**
 - Commissioner Egan made a motion to adopt the resolution and Commissioner Pineiro seconded the motion. A unanimous vote followed.
- **Z-19-009 - 244 AVENUE B, LLC – Site: 244 Avenue B in City Block 52, Lot 44.02**
 - Commissioner Lombardi made a motion to adopt the resolution and Commissioner Egan seconded the motion. A unanimous vote followed.
- **Z-19-010 – 246 AVENUE B, LLC – Site: 246 Avenue B in City Block 52, Lot 44.01**
 - Commissioner Lombardi made a motion to adopt the resolution and Commissioner Egan seconded the motion. A unanimous vote followed.

- **Z-19-014 – SIN KAN, LLC d/b/a THAI O'BRIEN – Site: 478 Avenue E in City Block 406, Lot 8**
 - Commissioner Lombardi made a motion to adopt the resolution and Commissioner Pineiro seconded the motion. A unanimous vote followed.

A motion was made to close the meeting at 10:20 p.m.

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

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