

ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
DECEMBER 16, 2019

A **REGULAR MEETING** of the Zoning Board of Adjustment was held on Monday, December 16, 2019, in the Dorothy E. Harrington Municipal Council Chambers, 630 Avenue C, Bayonne, New Jersey.

Chairman Urban called the meeting to order at 6:07 p.m. Secretary Egan called the roll. Present at the meeting were Chairman Urban, Commissioners Adams, Egan, Lombari, DiLullo, Iapicca, Veloz and DeRos. Commissioners Klimansky, Calcaterra and Pineiro were absent.

Also present were Richard N. Campisano, Esq., Board Counsel, Malvika Apte, PP, consulting City Planner and Robert Russo, PE, City Engineer's Office.

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 November 18, 2019 regular meeting.

Commissioner Adams made the motion to adopt the minutes and Commissioner Lombari seconded the motion. A unanimous vote followed.

Communications:

None

Board Reorganization

• **Election of officers (nominated and unanimously voted in):**

- Mark Urban, Chairman
- Clifford Adams, Vice-Chairman
- Jan Patrick Egan, Secretary

• **Appointment of Support Personnel**

- Richard N. Campisano, Esq., Board Attorney
- Suzanne Mack, P.P., City Planner
- Robert Russo, P.E. Consulting City Engineer
- Malvika Apte, P.P., Consulting City Planner
- Lillian Glazewski, Land Use Administrator
- Susan Bischoff, Certified Shorthand Reporter

• **Adoption of 2020 Calendar**

The following are the dates for the regular meetings to be held in 2020 were read by Commissioner Egan and unanimously adopted.

January 27, 2020 (Alternate date)
February 24, 2020 (Alternate date)
March 16, 2020
April 20, 2020
May 18, 2020
June 15, 2020
July 20, 2020
August 17, 2020
September 21, 2020
October 19, 2020
November 16, 2020
December 21, 2020

Public Hearing (continuation):

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 stated that the condition did not apply to the present use of the form of entertainment. He stated further that the prohibition was no longer necessary because of changed circumstances.

Resident Bill Politis complained about the noise from the business.

Caucus:

Chairman Urban said that he was inclined to eliminate the restriction from 1974.

Commissioner Adams said the he saw no adverse impact with the live entertainment and he agreed with Chairman Urban to lift the restriction from the 1974 resolution.

Commissioners De Ros, Lombardi, Iapicca, Di Lullo and Egan concurred.

Commissioner Veloz abstained from commenting.

Commissioner Adams made a motion to list the restriction from the 1974 resolution and Commissioner De Ros seconded the motion. A unanimous vote of eligible members followed.

Public Hearing:

Z-19-029 CANTALE TESTAMENTARY TRUST – Site 67 West 30th Street in City Block 157, Lot 14 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to use the existing home as a four-family residential dwelling.]*

Paul Weeks, Esq., attorney for applicant briefly described the background of the residence, offered his exhibits into evidence and called his first witness.

Witness:

Stephen Kawalek, AIA, PE, PP was sworn to provide expert testimony in support of this application. Mr. Kawalek testified that he is familiar with this application and that he was retained by the applicant to prepare the site plan. He continued to describe the lot as being an oversized lot with a legal three-family structure that has another unit in the basement. The basement unit is the subject of this application. Mr. Kawalek stated that the building has parking

for twelve (12) vehicles with room to provide for a handicapped space. He further described the trash storage area and site lighting. Mr. Kawalek also provided testimony to support the positive and negative criteria to support the variances requested.

Board questions:

Chairman Urban, Commissioners Adams, Di Lullo, Egan, De Ros, City Engineer Russo, and City Planner Apte questioned Mr. Kawalek.

Audience questions:

There were no questions from the general public.

Witness:

Anthony Cantale, applicant, was sworn to provide factual testimony in support of this application. Mr. Cantale testified that he is the present owner of the property, which he inherited from his uncle who passed away in 2015. Mr. Cantale talked about the history of the multifamily structure going back to 1997. He said that it has been used as a four-family as far back as he can remember and he testified that the DCA registration was approved in 2016.

Board questions:

Chairman Urban and Commissioner DiLullo questioned Mr. Cantale as did City Planner Apte.

Audience questions:

There were no questions from the general public.

Closing remarks:

Paul Weeks, Esq., stated that this is a straight forward application and the applicant is agreeing to put trees in front of the building. He respectfully requested the Board approve the application.

Caucus:

Chairman Urban said that he feels the applicant has met the criteria for approval and he is in favor of the application subject to the conditions agreed to during the course of the meeting.

Commissioner Adams felt that the surrounding area would not be negatively affected by the approval of this application. He concurred with Chairman Urban regarding the conditions related to lighting, trees and fencing in rear.

Commissioners De Ros, Veloz, Lombardi, Iapicca, DiLullo and Egan concurred.

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

Public Hearing:

Z-19-030 DOMENICO GERACE – Site: 401 Kennedy Boulevard in City Block 250, Lot 10 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to convert the existing home into three residential units.]*

Paul Weeks, Esq., attorney for applicant, stated in his opening statement that the third unit has existed for a long time. He said that the applicant is seeking to legalize the home as a three-family. Mr. Weeks moved his exhibits into evidence and called his first witness.

Witness:

Stephen Kawalek, AIA, PP, PE was sworn to provide expert testimony in support of the application. He stated that the home was previously a four-family that was converted to a three-family at one point in time. He described the units and their sizes. Mr. Kawalek addressed the parking and said that there is on-street parking as well as public transportation in the area. He continued to address the comments offered in City Planner Apte's report.

Board questions:

Chairman Urban and Commissioners Egan and DiLullo questioned Mr. Kawalek. City Planner Apte also questioned Mr. Kawalek.

Closing remarks:

Paul Weeks, Esq., in closing said that he relied on the testimony given by his expert witness and respectfully requested the Board approve the application.

Caucus:

Chairman Urban said that if the applicant agrees to the conditions spread across the record, he is in favor of this application.

Commissioner Adams said that based upon the evidence the application can be approved.

Commissioners De Ros, Veloz, Lombardi, Iapicca 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 Egan seconded the motion and a unanimous vote followed.

A short break was taken at 7:30 p.m. and the meeting resumed at 7:40 p.m. The roll was called.

Public Hearing:

Z-19-028 – 38-40 EAST GRAND STREET, LLC – Site: 38-40 East Grand Street in City Block 71, Lot 17.01 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to be allowed to use the existing building as a warehouse for the storage of non-hazardous housewares and furniture.]*

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

Witness:

Stephen Kawalek, AIA, PE PP, was sworn to provide expert testimony in support of the application. Mr. Kawalek testified that he prepared the site plan and he proceeded to describe the subject property and its location. He said that although the property is located in an R-2 Zone, the building was built about 80 years ago and has always been used as a warehouse. Mr. Kawalek also addressed the City Planner and City Engineer's comments as mentioned in the reports they submitted. He said that the applicant intends to construct a small office within the building. He also described how the trash storage would be dealt with inside of the building. Mr. Kawalek also provided testimony as to both the positive and negative criteria and discussed prevailing setbacks.

Board questions:

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

Audience questions:

Residents Chris Mavros and Frank Pasceri questioned Mr. Kawalek

Witness:

Eddie Kavaridi, who is a managing member of the LLC and owner of the property was sworn to provide factual testimony. Mr. Kavaridi said that he has personal knowledge of the operation of the warehouse from 2018. He testified that the warehouse stores nonhazardous items such as housewares and small furniture appliances. These items are then delivered to retailers throughout the Tri-State region. Mr. Kavaridi said that there will be no overnight parking of the trucks used for deliveries. He described the type and size of the trucks used for deliveries and how they will access the warehouse. He said that the operating hours would be 8:30 a.m. to 5:30 p.m. and there will be two employees present on the site; one in the office and the other in the warehouse. He also said that if any complaints come in from residents regarding the business, they will be addressed expeditiously and to the best of their ability.

Board questions:

Chairman Urban and Commissioners Egan, De Ros, Adams and Veloz questioned Mr. Kavaridi as did City Engineer Russo.

Audience questions:

There were no questions from the general public.

Closing remarks:

Residents Chris Mavros and Frank Pasceri expressed concerned about the proposed use.

Paul Weeks, Esq. in closing, said that the use is not very intense as supported through the testimony given by the applicant's experts.

Caucus:

Chairman Urban said that he was in favor of this application as long as the applicant agrees to the conditions that were spread across the record.

Commissioner Adams concurred that there should be limitations and conditions placed on the approval of this application.

Board counsel Campisano said that all conditions will be memorialized with the resolution and will include a deed restriction.

Commissioners De Ros, Veloz, Iapicca, DiLullo and Egan concurred with Chairman Urban and Commissioner Adams.

Commissioner Lombardi was not in favor of the application.

Commissioner Adams made a motion to approve the application subject to any and all conditions spread across the record. Commissioner Egan seconded the motion.

Chairman Urban and Commissioners Adams, De Ros, Iapicca, DiLullo and Egan voted in favor of the application. Commissioner Lombardi voted against the application.

A short break was taken at 8:43 p.m. and the meeting resumed at 9:00 p.m. The roll called.

Public Hearing:

P-19-021 MAG REALTY GROUP, LLC – Site: 360 Broadway in City Block 241, Lot 21 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to construct an addition to the existing mixed-use building for a total of one commercial space and seven residential units.]*

Christopher Vitale, Esq., attorney for the application gave a brief overview of the application, offered his exhibits into evidence and called his first witness.

Witness:

Rami Bitar, Architect was sworn to provide expert testimony in support of the application. Mr. Bitar described the façade of the building as well as the materials and color to be used. He addressed the comments made by the City Planner and City Engineer incorporated

in their reports and marked as Exhibit A-13 and Exhibit A-14. Mr. Bitar further testified that the rooftop terrace would have 1,400 square feet of open space. He also provided further testimony to support the use and parking variances requested in this application.

Board questions:

Commissioners Egan, Adams, De Ros and Veloz questioned Mr. Bitar as did City Planner Apte and City Engineer Russo.

Audience questions:

There were no questions from the general public.

Witness:

Michael Pessolano, PP was sworn to provide expert testimony in support of the application. He testified that the applicant's proposal satisfied the requirements of the special reasons test and the application advanced several fundamental purposes of zoning. Mr. Pessolano stated further that the granting of these variances will not cause any detriment to the public health, safety and welfare of the neighborhood, nor would the proposed use create a negative social, economic, physical or environmental impact to the neighborhood. He also said that the variances will not impair the Zone Plan and Zoning Ordinance and the proposed use is appropriate. He concluded that the negative criteria has been satisfied and that granting the use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

Board questions:

Commissioner Egan questioned Mr. Pessolano.

Audience question:

There were no questions from the general public.

Closing remarks:

In closing, Christopher Vitale, Esq. said that he relies on the testimony of his experts and he respectfully requested the Board approve this application.

Caucus:

Chairman Urban said the he believes the applicant has met the criteria for approval.

Commissioner Adams commented that the two significant variances requested would not cause an undue burden on the neighborhood and he is in favor of this application.

Commissioner De Ros said that he likes the plan and he feels it fits in with the neighborhood. His only concern was with the height of the parapet wall.

Commissioners Veloz, Egan, Iapicca and Lombardi agreed and also were in favor of the application.

Commissioner DiLullo did not feel that the parking variance should be granted and he was not in favor of the application.

Commissioner Adams made a motion to approve the application subject to any and all conditions agreed to and spread across the record.

Chairman Urban and Commissioners Adams, De Ros, Veloz, Iapicca, Lombardi and Egan voted in favor of the application.

Commissioner DiLullo did not vote in favor of the application.

Z-19-020 MAG REALTY GROUP, LLC – Site: 354 Broadway in City Block 241, Lot 21 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to construct an addition to the existing mixed-use building for a total of one commercial space and eight residential units.]*

Christopher Vitale, Esq., attorney for applicant requested an adjournment on this application.

Commissioner Egan made a motion to adjourn the application without the requirement of further notice by the applicant to January 27, 2020. Commissioner Lombardi seconded the motion and a unanimous vote followed.

Adoption of Resolutions:

- **Z-19-027 PETER AWAD – Site: 140 West 3rd Street in City Block 363, Lot 28**
 - Commissioner Adams made a motion to adopt the resolution dismissing this approval and Commissioner DeRos seconded the motion. A unanimous vote of eligible members followed.

A motion was made to close the meeting at 10:00 p.m.

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

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