

October 13, 2009 MINUTES
OAKLAND BOARD OF ADJUSTMENT
OAKLAND COUNCIL CHAMBERS – 8:00 P.M.
PUBLIC MEETING

Pursuant to Chapter 231, Public Law 1975 (Open Public Meetings Act) adequate notice of this meeting has been provided by:

- Adoption of an annual schedule of meetings
- Posting a copy of same at Borough Hall
- Forwarding a copy of same to the Record
- Mailing a copy to any person requesting same

FLAG SALUTE, MEETING OPENED AT 8:05 P.M.

ROLL CALL: Present: Messrs. Chadwick, Johnson, Smid, Wegman,
Schneeweiss, Jensen and Chairman Lepre.
Absent: Mr. Haas

Also in attendance, Mr. Matthew Cavaliere, Esq. (Board Attorney), Mr. Steve Lydon, Burgis Associates (Board Planner) and Mr. Kevin Tichacek, Boswell Engineering (Board Engineer).

PUBLIC MEETING BEGINS:

Mr. Chadwick sitting in for Mr. Haas.

1. **Sheji** – Roosevelt Boulevard, Block 2418, Lot 11. Continued public hearing for a steep slope, lot area, lot width, front and side yard setback.

Chairman Lepre reminded the Board that due to this month's full agenda a motion was moved to hear the Sheji application at the November 10, 2009 public hearing.

2. **Dance Theatre of NJ** - 103 Bauer Drive, Block 3201, Lot 5. Public hearing for a use variance.

Chairman Lepre announced that the Dance Theatre of New Jersey has withdrawn their application.

3. **Perez** – 20 Park Drive, Block 2001, Lot 15. Public hearing for a side yard setback has requested to be carried to the November 10, 2009 public hearing.

Chairman Lepre announced that due to insufficient notice, the Applicant has requested to be carried to the November 10, 2009 public hearing. He entertained a motion.

Motioned by Mr. Jensen and seconded by Mr. Schneeweiss, to carry the Perez application to the November 10, 2009 public hearing was voted unanimously by the Board.

4. Ritacco – 11 Mount Holyoke Drive, Block 4402, Lot 3. Public hearing for a front and side yard setback.

Members conducted a site inspection for the property. Mr. Wegman reported that the property, located in a RA-3 zone, was light in traffic. Chairman Lepre reviewed the comments from the various Borough departments and zoning issues.

Mr. and Mrs. Ritacco were sworn in and testified that they are proposing to add a level to the existing footprint of their home to increase the living space on the first level. A portion of the second level would cantilever out two-feet encroaching into the front yard setback.

Mr. Cavaliere questioned the location of the air conditioning unit. Mr. Ritacco responded that there is an existing air conditioning unit on the right side of the home and a possibility that another unit would need to be added to service the new addition.

Motioned by Mr. Jensen and seconded by Mr. Schneeweiss, to open the meeting to the public regarding matters concerning the Ritacco application was voted unanimously by the Board.

No comments.

Motioned by Mr. Jensen and seconded by Mr. Wegman, to close the meeting to the public regarding matters concerning the Ritacco application was voted unanimously by the Board.

Chairman Lepre questioned if the Applicant would stipulate, as a condition of approval, that the home would remain three-bedrooms. The Ritaccos agreed to the stipulation. Chairman Lepre entertained a motion.

Motioned by Mr. Jensen and seconded by Mr. Smid, to approve the Ritacco application contingent upon the home remaining a three-bedrooms.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Smid, Wegman,
 Schneeweiss, Jensen and Chairman Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Haas

5. Slepicka – 513 Ramapo Valley Road, Block 4507, Lot 16. Public hearing for a side yard setback.

Members conducted a site inspection for the property. Mr. Wegman reported the property, in a RA-3 zone, medium to heavy in traffic. Chairman Lepre reviewed comments from the various agencies and zoning issues.

Mr. Slepicka was sworn in and testified that he is proposing to add a five-foot addition to his kitchen located in the rear of the property which would encroach into the side yard setback.

The Board questioned the existing setbacks of the property that were not indicated on the application. The Board amended the application stating the existing setbacks for the record.

Motioned by Mr. Wegman and seconded by Mr. Smid, to open the meeting to the public regarding matters concerning the Slepicka application was voted unanimously by the Board.

No comments.

Motioned by Mr. Smid and seconded by Mr. Johnson, to close the meeting to the public regarding matters concerning the Slepicka application was voted unanimously by the Board.

Chairman Lepre entertained a motion.

Motioned by Mr. Smid and seconded by Mr. Johnson, to approve the Slepicka application.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Smid, Wegman,
 Schneeweiss, Jensen and Chairman Lepre
 Nays: None
 Abstain: None
 Absent: Mr. Haas

6. Behnam – 23 River Dell, Block 804, Lot 11. Public hearing for two side yards and a rear yard setback.

Members conducted a site inspection for the property. Mr. Wegman reported the property, in a RA-1 zone, to be light in traffic. Chairman Lepre reviewed comments from the various agencies and zoning issues.

Mr. Johnson recused himself from the application.

Mr. Mahmood Behnam was sworn in.

Chairman Lepre reviewed Mr. Behnam's application as having an existing 8 X 30 deck which he is proposing to increase the length by five feet making the deck 13 X 30. The rear yard setback is required to be 30-feet, proposing 20-feet. Side yards are required to be 30-feet, proposing 7 and 20 feet.

Mr. Schneeweiss stated that when the community was developed, there were many variances granted by the Planning Board through a court order allowing this project. People buying homes in this planned community were to be informed of the strict zoning regulations. He expressed that if they were to approve the addition to enlarge the deck, that this would open up an opportunity for other applicants to do the same.

Mr. Jensen questioned the construction and location of the barrier joists and footings. Mr. Behnam responded that he was not familiar with the construction detail but whatever is damaged would be replaced.

The Board questioned why Mr. Behnam decided to enlarge his deck. Mr. Behnam responded that he needed more room for his outdoor furniture. He expressed that by enlarging the deck, it would be similar in size with his neighbors decks.

Chairman Lepre expressed that if he were to expand the deck on grade level; it would be considered a patio and would not need Board permission.

Chairman Lepre explained to Mr. Behnam that the Ramapo River Reserve project was a legally mandated and highly contentious application for years. He explained that every lot was scrutinized and analyzed by the Planning Board.

Mr. Behnam explained that all his neighbors have this size deck. Mr. Smid responded that some of the decks were either consistent with the zoning or illegally built. He added that during the second phase of construction for Ramapo River Reserve, residents were requesting decks and the Fire Prevention Bureau informed the Association of safety issues that the decks could cause in the event of a fire. A court order allowed the residents to add decks if desired.

Chairman Lepre consulted Mr. Cavaliere. He explained that the Applicant's neighbors on either side were initially permitted to build their decks into the setback. The Applicant is requesting the same extension, of equal size to his neighbor's decks. Would the Board be setting a precedent by allowing the Applicant to enlarge his deck and would this encouraging the possibility of other applicants wanting to do the same thing. Mr. Cavaliere responded that the Board would not be setting a precedent on the affirmative criteria but would be on the negative criteria. In this event, the negative would not be offending the zoning plan or neighborhood, but the applicant is expressing that he desires what his neighbors have leaving the question what is the hardship.

Mr. Schneeweiss expressed that these neighboring decks could have been put up illegally. There has not been one application made for a deck by any resident from Ramapo River Reserve.

The Board expressed curiosity if any building permits were submitted from the Building Department. Mr. Behnam informed the Board that he did not know the procedures followed by his neighbors but he wanted to make sure that he followed the Borough's procedures.

Chairman Lepre explained to Mr. Behnam that the Board is here to weigh out positive and negative criteria in an application which is not always easy to do. In this case, there are alternatives to the situation making it difficult to see the hardship.

Mr. Wegman expressed that perhaps the hardship is that the Applicant is unable to fit outdoor furniture on his existing deck. Chairman Lepre expressed that the rules were already set in motion.

Mr. Behnam explained that he came from a small two-bedroom apartment in the city while doing his residency. He and his wife selected to move to Oakland to be close to

family and because of the beauty of the town. He expressed that he would appreciate any consideration that the Board may have in this situation. Chairman expressed that he appreciates the Applicant's request and that this is not an easy decision.

Mr. Wegman requested that perhaps the application could be carried to the following meeting in order to compile information from the Building Department on existing permits issued for this development. Chairman Lepre indicated that he did not think it would change the decision of the Board if it was discovered that some decks were added illegally. Chairman Lepre entertained a motion.

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, to deny the Behnam application.

Roll Call Vote: Ayes: Messrs. Chadwick, Smid, Schneeweiss and Chairman Lepre.
 Nays: Mr. Wegman
 Abstain: Mr. Jensen
 Absent: Mr. Haas.

7. Tartaro – 43 Lakeshore Drive, Block 1501, Lot 59. Public hearing for two side yard setbacks.

Members conducted a site inspection for the property. Mr. Wegman reported the property, in a RA-3 zone, medium to heavy in traffic. Chairman Lepre reviewed comments from the various agencies and zoning issues.

Chairman Lepre informed the Applicant that the Board has received a letter from the Building Department alerting the Applicant that there are still open permits from previous work done on the premise. Mr. Tartaro responded that he needs the deck to complete the project.

Mr. Tartaro was sworn in. Mr. Cavaliere questioned whether the correct address was either 41 or 43 Lakeshore Drive. Mr. Tartaro responded that there has been some confusion between the town and the post office and he was not certain himself what the correct address was.

A discussion ensued concerning members unable to make a site inspection due to the confusion with the address. Chairman Lepre informed the Board that the survey displays the address as being 41 Lakeshore Drive.

Chairman Lepre questioned Mr. Cavaliere if there would be a quorum since three of the members were unable to make a site inspection. Mr. Jensen informed the Board that he did not believe that it is required to do a site inspection. Mr. Cavaliere responded that the By-laws state that a site inspection is required as part of your membership. However, Municipal Land Use Laws (MLUL) does not require that a site inspection be conducted. Mr. Cavaliere expressed that all members made an attempt to see the home and exhibits would be entered into evidence showing the portion of the property in question. It would be the Board's decision whether this evidence constitutes as enough proof to make a decision.

Exhibit A-1, 8.5 X 11 photo of rear portion of the house dated October 13, 2009.

Exhibit A-2, 6 X 4 photo rear portion of the house dated October 13, 2009.

Exhibits were passed along to all Board members for review.

Motioned by Mr. Smid and seconded by Mr. Johnson, to carry the Tartaro application to the November 10, 2009 public hearing. Mr. Cavaliere suggested that before the motion to carry the application, the Board should open the meeting to the public.

Motioned by Mr. Jensen and seconded by Mr. Smid, to open the meeting to the public regarding matters concerning the Tartaro application was voted unanimously by the Board.

Mr. Ben Cascio, 45 Lakeshore Drive, testified that he is Mr. Tartaro's neighbor and supports this application and would like to give background on the subject property.

He explained that these homes were once summer bungalows with similar size properties. When the zoning setback were revised and adopted back in the 70's, most of the properties became non-conforming requiring homeowners to come before the Board of Adjustment for any improvements.

Mr. Cascio explained that he believes that the ordinance reads that unless you are not exacerbating the non-conformity, then the homeowner should not be required to go before the Board. He explained that Mr. Tartaro is not going any further into his side yard setback.

Mr. Cascio informed the Board that he has no objection to Mr. Tartaro's being 9-feet from his property. He explained that most of the neighboring homes spend a lot of time in their rear yards to enjoy the lake.

Mr. Cascio indicated that he did not feel it was necessary that a site inspection be conducted because it is a simple application.

Motioned by Mr. Wegman and seconded by Mr. Jensen, to close the meeting to the public regarding matters concerning the Tartaro application was voted unanimously by the Board.

Chairman Lepre agreed with Mr. Cascio that this is a simple application and that the Applicant is only replacing the deck. He would have no objection to hearing the rest of the application and vote. Mr. Smid reminded Chairman Lepre that there was already a motion to carry the application. Mr. Cavaliere suggested that the Board then vote on carrying the application.

Motion continues to carry the application to the November 10, 2009 public hearing.

Roll Call Vote: Ayes: Messrs. Johnson, Smid and Schneeweiss.
 Nays: Messrs. Chadwick, Wegman, Jensen and Chairman Lepre.
 Abstain: None
 Absent: Mr. Haas.

The decision to carry the application was denied. The Applicant would continue with testimony.

Chairman Lepre questioned the Applicant if there was any further testimony he would like to add to this application. Mr. Tartaro responded that he is proposing to replace the old, unsafe deck with a new deck and connect to an upper deck to accommodate a sliding glass door. He needs the deck to finalize the outstanding permits with the Building Department.

Mr. Tartaro explained that the contractor he was using neglected to add the upper deck, which the sliding doors lead to, to the permit. He explained that the original contractor went bankrupt leaving him with the job unfinished.

The Board questioned how long the construction project has been going on. Mr. Tartaro responded almost five years. Mr. Schneeweiss expressed that since the project has continued on that long and he was unable to conduct the site inspection he explained that he would not be able to vote for the application.

Mr. Cavaliere suggested the Applicant could carry the application so the other members would be able to conduct their site inspection to insure more voters. Mr. Tartaro conferred with Mr. Cascio and responded that he would like to continue with the application.

Mr. Jensen commented that the Applicant is replacing an unsafe deck with a sturdy deck and connecting it with an upper deck to give access to sliding doors that were already installed which could be a hazard. He added that the improvements would not encroach any further into the side yard.

Motioned by Mr. Jensen and seconded by Mr. Wegman, to approve the Tartaro application.

Roll Call Vote: Ayes: Messrs. Chadwick, Wegman, Jensen and Chairman Lepre
 Nays: Messrs. Johnson, Smid and Schneeweiss.
 Abstain: None
 Absent: Mr. Haas

Meeting recessed at 9:20 p.m.
Meeting resumed at 9:35 p.m.

8. Zohra, LLC – 78 Ramapo Valley Road, Block 2601, Lot 6. Public hearing for a conditional use variance.

Chairman Lepre stated for the record that there were no other people present in the room but the Applicant and his professionals.

Chairman Lepre reminded the Board that they last left off last month with the testimony of the Applicant's Engineer.

Revised plans from the Applicant have been submitted to the Board. Reports and comments from Board Professionals and the various agencies have also been received.

Health Department commented that no soil logs or septic plans have yet to be received. Zoning Officer has indicated that the property is on a county road and partially in the

Highlands Area which would require waivers from the Highlands as well as County and New Jersey Department of Traffic (NJDOT) approval.

Chairman Lepre informed the Board that a document issued from Bergen County stating that the application could not be processed until additional information has been provided with their application. In addition, a letter from Dr. Gordon, owner of the Oakland Animal Hospital, has also been received listing the Doctor's concerns. Mr. Cascio responded that he and his client have met with Dr. Gordon and the revised plans depict that all the issues have been resolved of his concerns.

Mr. Cascio received and has submitted to the Board a letter from the Highlands Council. The letter indicates that the proposed property would fall under the exemption that allows improvements that do not exceed more than 125 percent new impervious coverage. Mr. Cascio explained that they are eligible for the exemption and have to apply to the Highlands for this waiver.

It was also noted by Mr. Cascio that the Zoning Officer referred to this property as a B-3 Zone, grocery stores not permitted. Mr. Cascio informed the Board that this is a B-2 Zone and the use is permitted.

Chairman Lepre suggested that Mr. Shortino go through the revisions made, for the record, and allow the Board to question him on prior testimony.

Mr. Shortino explained that the necessary changes were made due to the Board's concerns and also requests from the Board Engineer and Planner.

The Lighting Intensity Plan has been addressed by request of the Planner and revisions to the Truck Path Plan, requested by the Board, were also addressed.

Mr. Shortino entered exhibits.

Exhibit, A-3 Proposed Landscape Plan colorized rendering dated October 13, 2009
Exhibit, A-4 Highlands Council letter informing that proposed property may qualify for exemption.

Mr. Shortino explained the most significant change was the curbing that was added to the front of the site to delineate the driveways. The driveway openings would be 34-feet on the westerly end and 40-feet on the eastern end with a landscaped island separating the two driveways. This exceeds the requirement called for by the zoning ordinance for a conditional use of a service station and would require a variance.

The Truck Path Plan revisions show that all vehicles can safely access the site including garbage trucks and fuel delivery trucks as well as adequate room for a fire truck.

A modification was made to add additional landscaping to the westerly and eastern portions of the property.

Due to concerns of the Board, two additional parallel parking spaces were added on the westerly side of the building for employee parking.

A switch in location for an existing 4 X 8 freestanding sign, on the eastern side, would be moved to the westerly portion of the property. The existing 3 x 5 light pole sign, on westerly side, would be moved to the eastern portion of the property for better visibility. This revision eliminates a pre-existing variance.

The Board Engineer requested that a drywell be put in to collect runoff from the canopy. The location of the drywell would be located in the landscaped area.

Two new light poles are being proposed. An existing flood light on a utility pole would be removed and a light pole near the eastern and westerly portion of the driveways would be proposed. The 3 x 5 sign would be placed on the light pole at the eastern portion of the property. Price details would be included on the 3 X 5 and 4 X 8 sign.

A discussion ensued concerning the approach and entrance of tractor-trailer trucks in the westerly driveway. Mr. Shortino responded that the tractor-trailer drivers would be conscious on entering easily and safely.

Mr. Tichacek expressed that most of the Engineering concerns have been addressed. He explained that existing conditions did not include stormwater management devices and with the increase of impervious coverage the Applicant has agreed to add a seepage pit. The Applicant has complied and included the curbing for the entrance as requested by the Board.

Mr. Tichacek explained that he and Mr. Cascio did not agree with the definition of signage. However, whether a canopy sign is considered a roof sign or not, the Applicant would still require a variance for the number of signs.

Mr. Schneeweiss reminded the Board that when the Exxon station put up their canopy, this Board took issue with the Zoning Officer giving them permission for this which he admitted to the error.

Chairman Lepre questioned Mr. Tichacek about the amount of lighting spillage. Mr. Tichacek responded that the amount of spillage is not in excess and was considered adequate for the area.

Mr. Lydon informed the Board that the Applicant did comply with most of the recommendations but indicated that there was room for additional improvement in the landscaping plan. Low plantings, vertical arborvitaes and shade trees were recommended. Mr. Cascio responded that recommended planting at service stations are different. For safety issues, it is not recommended that shade trees be planted along the property line. Mr. Lydon responded that he was recommending ornamental trees on the east and west side of the property.

Mr. Shortino explained that one of the concerns of the Animal Hospital was signage and parking could block their patients' visibility when leaving the site. He explained that he pulled the parking back and hesitates to add too much planting impairing the visibility for the Animal Hospital. Mr. Lydon responded that based on the constraints with neighbors, he believed that the landscaping plan could be worked out. Mr. Smid made some suggestions such as no high plantings on the island which could hamper visibility.

Mr. Lydon also commented that he had visited Mr. Mustamand's gas station located in Washington Township noticing a variety of signs and banners. He questioned if they would have those types of signs in Oakland. Mr. Mustamand responded that it was for a grand opening at that gas station and would not have the same signage here in Oakland.

Mr. Lydon questioned the location for unloading deliveries to the convenience store and the number of trucks to make those deliveries. Mr. Shortino responded a common supplier would be responsible for all items to be delivered and would pull up along the side of the building to unload. Mr. Lydon suggested that a sign showing the loading zone and cross-hatching could be added specifically for the delivery truck. Mr. Shortino responded that they would add a sign and cross-hatching for deliveries on the side of the convenience store.

Chairman Lepre questioned if the west and east access could be designated as either entrance or exit for the premises. Mr. Lydon responded that people do not always pay attention to an entrance and exit for service stations.

Chairman Lepre expressed his dissatisfaction with the number of signs and illumination for this service station. He explained that this is a residential area located on Ramapo Valley Road. It is not a highway like 287 or 208, where 6 illuminated signs may be better suited.

Chairman Lepre requested that all three of the canopy signs be eliminated and instead, eliminate the 3 X 5 sign and duplicate the 4 X 8 sign on both sides. Mr. Mustamand expressed the importance for signage on the canopy. He offered the canopy signs minus the illumination. Cascio explained it is the gas stations logo they want on the canopy sign. An agreement between the Applicant and the Board was made that one logo sign would appear on the canopy facing Doty Road with no illumination.

Mr. Tichacek reviewed the number of variances that the Board would be voting on.

- a. One setback variance for one of the Gasoline Dispensing units.
- b. Two variances for Maximum Aggregate Width for Entrances and Exits.
- c. One variance for Parking Space Area size.
- d. One variance for the number of Free-Standing Signs
- e. One variance for Free-Standing Sign Area (square footage).
- f. One variance for Façade (Canopy) Sign.
- g. One variance for two additional parallel parking spaces on the westerly portion of the property.

Mr. Cavaliere questioned if the Applicant would object to prohibiting the use of flashing or animated lights as a condition of approval. Mr. Cascio responded that new service station now use digital signs for pricing only.

A discussion ensued concerning outdoor storage. Mr. Mustamand responded that the only thing that he would store outdoors would be a few cases of oil.

Mr. Smid questioned if revisions requested by the county were made. Mr. Shortino responded that they are working on those revisions.

Absent: Mr. Haas

MEMORIALIZATIONS:

1. **Simcox** – 27 Monhegan Avenue, Block 5102, Lot 29. Approval for a front and side yard setback.

Motioned by Mr. Jensen and seconded by Mr. Schneeweiss, to approve the above referenced resolution of approval.

Roll Call Vote: Ayes: Messrs. Chadwick, Smid, Wegman, Schneeweiss, Jensen and Chairman Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Haas

- 2 **Ficarra** – 4 Cardinal Drive, Block 4303, Lot 1. Approval for two front yard setbacks.

Motioned by Mr. Jensen and seconded by Mr. Smid, to approve the above referenced resolution of approval.

Roll Call Vote: Ayes: Messrs. Chadwick, Smid, Wegman, Schneeweiss, Jensen and Chairman Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Haas

PAYMENT OF BILLS:

Motioned by Mr. Jensen and seconded by Mr. Smid, to pay bills subject to the availability of funds, was voted unanimously by the Board.

APPROVAL OF MINUTES:

Motioned by Mr. Jensen and seconded by Mr. Smid to approve the September 8, 2009 Minutes was voted unanimously by the Board.

OLD BUSINESS:

None

NEW BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Jensen and seconded by Mr. Johnson, to adjourn the public meeting at 11:00 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney/Board Administrative Assistant