

MAY 11, 2010 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 8:02 P.M.

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

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

PUBLIC MEETING BEGINS:

1. Rinaldi – 41 Mohawk Avenue, Block 1502, Lot 4. Public hearing for a front yard setback.

Chairman Lepre announced that the Applicant has requested to be carried to the June 8, 2010 public hearing due to insufficient notice.

2. Morgante – 47 Hunters Run, Block 802, Lot 64. Public hearing for exceeding impervious coverage requirements.

Chairman Lepre announced that the Applicant has requested to be carried to the June 8, 2010 public hearing due to insufficient notice.

3. Angermuller – 27 Grandview Avenue, Block 2515, Lot 2. Public hearing for a rear yard setback.

A discussion ensued concerning the Applicants confusion concerning the insufficient notice. Mr. Cavaliere explained that the rules concerning noticing are not made by the Board but by the state. By continuing to hear an application and granting approval with insufficient notice, the application could end up being challenged and over-turned. It is in the Applicant's best interest that the noticing is done correctly. Because this is

mandated by the state, the Board needs to be particular with all notice. Mr. Cavaliere explained to the Applicant that they would not be required to do the full notice but the notice that was missed.

Chairman Lepre announced that the Applicant has requested to be carried to the June 8, 2010 public hearing due to insufficient notice.

4. Klinedinsrt – 23 Fordham Road, Block 4909, Lot 16. 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 departments and reviewed zoning issues.

Mr. Thomas Segrich, contractor and Mr. Peter Klinedinsrt, homeowner, were sworn in. Mr. Klinedinsrt co-owns his home with his wife Christine.

Mr. Klinedinsrt testified that he is proposing to add a family room off the kitchen and a storage area off the garage on the left side of the house

Chairman Lepre reviewed impervious coverage percentages with the Applicant. He explained that the Applicant is over by 3 percent impervious coverage of a building.

He questioned the proposed location for the air conditioning condensers currently located behind the garage. Mr. Klinedisrt responded that the air conditioning condensers would be located in the rear of the addition.

The Board questioned the proposed location of a dryer vent and water water spickett located in the rear of the garage. Mr. Klinedisrt responded that the dryer vent and water picket would also be moved to the rear of the proposed addition.

The Board question if the mudroom would remain and Mr. Klinedisrt responded that it would remain.

The Board questioned whether the Applicant would agree to stipulate upon approval that the home would remain three-bedrooms. Mr. Klinedinsrt agreed to the stipulation.

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

No comments.

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

Chairman Lepre entertained a motion.

Motioned by Mr. Jensen and seconded by Mr. Haas, to approve the Klinedinsrt application contingent upon the home remaining three-bedrooms and relocating the air conditioning condensers in the rear of the addition.

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

5. Manieri – 32 Mohawk Avenue, Block 1503, Lot 17. Public hearing for a side yard setback.

Members conducted a site inspection of 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 departments and reviewed zoning issues.

Chairman Lepre reviewed Health Department comments indicating that caution be taken of sewer lines when digging

Mr. David Manieri is soul owner and was sworn in. Mr. Manieri testified that he is proposing to construct and deck which will connect to his porch in the rear yard. The Board suggested that the footings be dug 42 inches deep versus the proposed 36 inches to insure that the deck is stabilized.

The Board questioned another set of steps located by the right rear corner of the house. Mr. Manieri responded that these steps are the existing steps that lead to the porch. The Board questioned an existing window and Mr. Manieri responded that he might change the window over to a door.

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

No comments.

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

The Board questioned the Applicant whether the deck would remain open. Mr. Manieri responded that it would. Chairman Lepre entertained a motion.

Motioned by Mr. Jensen and seconded by Smid, to approve the Manieri application subject to the deck remaining open.

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

6. Ultimate Sports America, LLC – 12 Wright Way, Block 3301, Lot 7. Public hearing for an amended site plan.

Mr. Cavaliere explained that the Applicant had recently been granted a use variance by the Board, however, issues with parking resurfaced due to the difference in uses and no specific formula for parking calculations pertaining to this use.

During an inspection by the Building Department, it was discovered that out of the 50 parking spaces furnished by the adjacent property owner, only 38 parking spaces were striped leaving the Applicant short of parking as well as a conflicting resolution. The Building Department was not comfortable giving the Applicant a Certificate of Occupancy with the conflicting parking space numbers.

The Applicant went back to their professionals as well as the Board's professionals to put together a formula that would work for their operation. The Board professionals agreed with the Applicant's new formula which consist of 5 handicapped spaces and 115 non-handicapped spaces onsite at Ultimate Sports America, LLC and the 38 parking spaces from the adjoining property. The new calculations, 158 parking spaces, would keep the Applicant within the required amount of 152 parking spaces. In addition the Applicant would only require the additional parking at the adjacent property for evening hours and would not conflict with the adjacent properties hours of operations during the day.

Mr. Kevin Tichacek verified the calculations. An amendment of the parking calculations would also be amended in the resolution.

Mr. Mark McGuire, CEO of Ultimate Sports America, LLC and Mr. Michael Strengone, Esq. with Winne, Banta, Hetherington, Basralian & Kahn located in Hackensack were before the Board.

Motioned by Mr. Jensen and seconded by Mr. Schneeweiss, to open the meeting to the public regarding matters concerning Ultimate Sports America, LLC was voted unanimously by the Board.

No comments.

Motioned by Mr. Wegman and seconded by Mr. Jensen, to close the meeting to the public regarding matters concerning Ultimate Sports America, LLC was voted unanimously by the Board.

Mr. Strengone reviewed the owners for the adjacent property. A discussion ensued concerning the lease for the additional parking and whether it could be discontinued. Mr. Cavaliere responded that if the lease were to ever be discontinued, it would become an enforcement issue.

Exhibit A-1, Site plan of parking dated May 11, 2010.

Chairman Lepre entertained a motion.

Motioned by Mr. Haas and seconded by Mr. Chadwick, to approve the amendment to the parking calculations for Ultimate Sports America, LLC.

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

7. West Bergen Mental Healthcare, Inc. – 24 West Oakland Avenue, Block 1706, Lot 4.01, B-2 Zone. Public hearing for an amended preliminary and final site and use variance.

Members conducted a site inspection of the property. Mr. Wegman reported that the property, located in the B-2 Business zone, moderate in traffic. Chairman Lepre reviewed the comments from the various departments and reviewed zoning issues.

Mr. James Delia with Wells, Jaworski & Liebman located in Paramus, New Jersey was before the Board to represent the above referenced Applicant.

Mr. Delia explained that the subject property was granted Planning Board approval a few years back for a Starbucks, Walgreens and bank. West Bergen Mental Health bought the property approximately a year ago and has made modifications to the site plan which include a height “D” variance and the elimination of a parking variance. He introduced Mr. Barry Poskanzer a licensed architect with Poskanzer and Skott located in Ridgewood, New Jersey, as a witness.

Mr. Barry Poskanzer was sworn in and reviewed his credentials and the Board accepted his qualifications.

Mr. Poskanzer testified that this is a minor amendment, except for the height variance, of approval for a class “A” office building for the prior owner of Eden Oakland, LLC. West Bergen Mental Health purchased the separate lot and intend to locate their headquarters and center for clients there.

Exhibit A-1, Site plan of originally approved subdivision dated February 18, 2010.

Mr. Poskanzer explained the history of the property and reviewed the modifications. The basement of the lower level parking has been reconfigured to include 6 additional parking spaces and eliminating the need for a parking variance. In addition, they have relocated the driveway leading to the underground parking area.

He expressed to the Board that West Bergen Mental Health has requested that the building be constructed to the LEED certification standards (Leadership, Energy & Environmental Design) which means sustainable architecture respectful of the environment using materials that can be recycled. There are items that an Applicant needs to meet to become certified. Mr. Poskanzer expressed that his understanding was that the town of Oakland is looking for “green” projects such as this to take place within the Borough.

Mr. Poskanzer informed the Board that they meet all original, zoning criteria except for the height. Mr. Lydon questioned if the building setbacks changed. Mr. Poskanzer responded that they have reconfigured the shape and moved the building slightly

creating a 7 or 8-foot setback which is still within the minimum setbacks but has not generated a variance.

Exhibit A-2, Site plan of four floor plans of each level dated February 18, 2010.

In the basement level, they were able to move some columns allowing for the extra parking spaces eliminating the parking variance.

First floor, ground level, a new gallery entrance will lead directly to the back of the building where additional parking will be. There has been no change to the original parking design. In addition, the west side of the building, approximately 4,500 square feet, would be designated as open tenant space and future growth for West Bergen Mental Health but remains undeclared at this point.

Second floor would be allocated for the use of West Bergen Mental Health professionals and consist of treatment and therapy rooms for patients and clients.

As part of the LEEDs certification program and since there was no adequate outdoor space, the Applicant proposes to utilize the rooftop for programs involving their younger patients. An elevator will lead directly up to the rooftop space, which would consist of a garden to for viewing and to help capture rainwater, a playground for patients no older than 10 or 11 years and the remainder of roof would be dedicated to solar panels. For safety purposes a parapet would surround and protect the solar panels. Mr. Poskanzer explained that they are currently working with a company analyzing the structure of the rooftop and whether the entire roof could handle solar panels.

In addition, for safety reasons, LEEDs requires a closed in mechanical room for the elevator and the Applicant was not sure whether between the two staircases, elevator and mechanical room that this would constitute as "penthouses" or require a height variance.

Chairman Lepre questioned the height of the parapet. Mr. Poskanzer responded that parapet would stand 42 inches high. Chairman Lepre questioned if the proposed facility would be the main facility to treat patients. Mr. Poskanzer responded that the proposed facility would be the main headquarters and the other facilities would remain open.

Chairman Lepre questioned if the therapy would involve daycare. Mr. Poskanzer responded the Applicant is not providing daycare at the facility there was a mistake in the application. Therapy sessions would consist of small groups or individuals.

The Board affirmed that West Bergen Mental Health was a non-profit organization and questioned how the building could remain tax-exempt if they are earning income from a tenant who was not affiliated with their organization. Mr. Poskanzer responded that they may have a problem but may consider a pilot program.

The Board questioned what type of playground equipment would be upon the rooftop. Mr. Poskanzer responded no equipment just small toys like soft balls with an 8-foot fence surrounding the rooftop.

Exhibit A-3, Different Elevation Aspects.

Exhibit A-4, View from the rear of Walgreens of parking lot and proposed building.

Exhibit A-5, View from same elevation from Route 208.

Exhibit A-6, Arial view of roof showing proposed solar panels, garden and playground.

Exhibit A-7, Opposite side view from Tony Brothers and West Oakland Avenue.

Exhibit A-8, Evening shot of front entrance showing the illumination of the proposed building.

Chairman Lepre expressed that the Applicant's proposed plans are an improvement of the original design. He expressed if it was possible for them to break up the brick facing of the staircase on the south elevation of the building. Mr. Poskanzer agreed to come up with a change for brick facing of the south elevation of the building.

Exhibit A-9, Site plan of original approval dated February 18, 2010.

Exhibit A-10, Overlay showing the height difference.

Mr. Poskanzer stated for the record that the originally approved height at 0 grade level was 32.7 in height and the Applicant is proposing 33.10. The originally approved mansard was approved at 38.5 in height and the Applicant proposes 49.9. In question are the two peaks or parapet walls that were unclear in the Borough's ordinance. They could have eliminated the peaks, however, the Applicant preferred to adhere to the characteristics consistent with the downtown plan.

Exhibit A-11, Site plan by Greenland Landscaping of rooftop landscaping.

In the process of becoming LEEDS certified, an intergraded system was designed on the rooftop to collect rainwater and then use it to irrigate the rooftop garden. Mr. Poskanzer hopes that their application would urge other business or incoming business to follow the same "green" trend as their locations.

Mr. Poskanzer expressed that his testimony was finished and he would like to address some of the questions that the professionals had.

Fire Prevention Bureau questioned the playground area and potential hazards of objects being propelled off the roof into the parking area, walkway or solar panels. Mr. Poskanzer expressed that there are no issues of concern because children are supervised and there will be nothing but soft toys on the playground. Mr. Poskanzer explained there was also question of a change in the access and he expressed that there will be no changes in egress and ingress.

Building Department requested that 10 percent of the parking should be designated as handicapped which is required by ordinance for a medical building. Mr. Poskanzer expressed that this is not a medical building but they would provide the required van accessible handicapped parking spaces.

Parking for employees would be located under the building leaving the rear parking, adjacent to Route 208 for temporary of part-time employees. The front parking spaces would be designated for the patrons visiting the facility.

Mr. Poskanzer informed that the Boswell report went through what was originally approved and what was being proposed, the 45-foot height of the building along with the height of the 54-foot parapet enclosing the rooftop.

He explained that signage would all be conforming and any new signage would be addressed at a later date before the Board if necessary.

Mr. Poskanzer expressed that he believed he reviewed all comments made by Burgis Associates such as LEEDs certification, rooftop activities and the positive criteria weighing out the negative criteria by improving the appearance of the building previously approved and not impacting the Borough or the Borough's Master Plan.

Mr. Delia questioned Mr. Poskanzer if the site would be able to accommodate a building of this proposed height. Mr. Poskanzer responded that the site could accommodate the height of the building. Surrounded by Route 208 and West Oakland Avenue as well as the surrounding business would not impact to any residential homes.

Mr. Tichacek informed the Board that the building is not higher than what was previously approved except for the parapet wall.

The Board questioned whether the water runoff would be collected and used to irrigate the entire landscaping plan being proposed. Mr. Poskanzer responded yes and water would be collected and stored in a water tank on ground level where 10-feet of available space was left.

The Board questioned if the Applicant would fully follow through with the LEEDs certification even if it becomes too expensive. Mr. Poskanzer responded that his client has patience and has waited this long. The Applicant has a LEEDs consultant and has filed and registered for certification.

A discussion ensued concerning a right hand exit from the parking lot behind the building and whether this approved exit could possibly be used as an entrance. Mr. Poskanzer responded that there have been no changes to the egress and ingress of the property.

Chairman Lepre confirmed with Mr. Lydon that all aspects of the application were consistent with the prior approval with exception of the height. Mr. Lydon responded that everything is consistent except for the height.

Mr. Tichacek questioned whether all utilities were installed underground. Mr. Poskanzer responded that the utilities were installed underground as well as the septic system. The Applicant is trying to achieve a 0 carbon status by going all electric and no gasoline lines if possible.

The Board questioned the hours of operation and if the Applicant predicts anytime of day there could be congestion in the lot. Mr. Poskanzer responded that hours of operation would be between the hours of 9:00 a.m. and 9:00 p.m. and congested times could be after school and evening hours.

The Board questioned an agreement with the first approval for the use of parking at the site for Tony Brothers Restaurant overflow parking. Mr. Poskanzer responded that he believes that there is a cross easement for parking for the entire subdivision.

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

No comments.

Motioned by Mr. Smid and seconded by Mr. Jensen, to close the meeting to the public regarding matters concerning the West Bergen Mental Health application was voted unanimously by the Board.

Mr. Delia informed the Board that this concluded his testimony. He added that the Applicant is seeking a "D6" variance for the height. He explained that the law indicates that the Board can grant approval for this application provided the site can accommodate the height.

He expressed that the proposed building is behind the other business and would not have any impact on the surrounding area. In addition, the Applicant has provided a "green friendly" environment that follows the Borough's Central Business District Plan.

The Board was in agreement that the architecture was especially interesting and that the application would be a positive addition to the town of Oakland.

Chairman Lepre entertained a motion.

Motioned by Mr. Jensen and seconded by Mr. Smid, to approve the West Bergen Mental Health application.

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

MEMORIALIZATIONS:

1. **Ryan** – 12 Arrowhead Road, Block 5606, Lot 10. Approval for a side and rear yard setback.

Motioned by Mr. Smid and seconded by Mr. Jensen, to memorialize the above-mentioned resolution of approval.

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

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. Wegman, to approve the April 13, 2010 minutes as amended was voted unanimously by the Board.

OLD BUSINESS:

The Board discussed upcoming applications that are going to be before the Planning Board.

Chairman Lepre informed the Board that an application has been submitted on a previously rezoned piece of property from Industrial to Residential zone. This application would be before the Planning Board for a major subdivision to build five homes. The developer, Bill Smith, currently has a property off of Ramapo Valley Road that by court order was approved for steep slope variances. Currently, he is in the process of getting the retaining walls certified by a licensed engineer.

A discussion ensued concerning the referenced project maintaining enough work at the site so not to be considered inactive.

The Board discussed that another application for a bank along side the Burger King was submitted. It was questioned if two principal uses were permitted on a piece of property. A discussion ensued that in place of this application, the Applicant may be submitting a subdivision application for the subject property.

It was also discussed, that the Bartholome application would be coming before the Planning Board as an agreement through a court order.

NEW BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Smid and seconded by Mr. Jensen, to adjourn the public meeting at 10:00 p.m. was voted unanimously by the Board.
Respectfully submitted by,

Kathlyn Gurney/Board Administrative Assistant