

MARCH 5, 2024 MINUTES
OAKLAND BOARD OF ADJUSTMENT
COUNCIL CHAMBERS - 7:00 P.M.
PUBLIC HEARING

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 8:04 P.M.

Roll Call: Present: Mmes. Waneck and Lilienthal Messrs. Dodd, Eilert, Bremer and Chairman Smid.
Absent: Mr. Rose

Also in attendance were Ms. Sophy Sedarat, Board Attorney, David Novak, Burgis Associates, and John Yakimik, Boswell Engineering.

EXCUSE ABSENCES:

Motioned by Mr. Bremer and seconded by Mr. Eilert, to excuse the absences of Mr. Rose was voted unanimously by the Board.

PROFESSIONALS SWORN:

Mr. Yakimik from Boswell Engineering and Mr. Novak from Burgis Associates were sworn in. Mr. Dodd, Mrs. Waneck and Mrs. Lilienthal were welcomed as new members and duly sworn in.

ESCROW REVIEW:

A discussion determined that upcoming escrow listed needs to be updated.

PUBLIC MEETING:

1. Andpadel, LLC – 17 Van Vooren Drive, Block 3203, Lot 2. Public hearing for a use variance.

Mr. Bruce Whitaker, Esq. approached the Board to represent the applicant. He explained that his client is seeking a use variance in the IP-Industrial Park zone to locate in a newly constructed

building, approximately 21,768 square feet. Currently, there are two tenants leasing space, a marketing firm and HVAC company. His client will be occupying 13,021 square feet to offer a Padel court facility that would consist of 3 playing courts. Recreation sport facilities are not a permitted use in the zone. However, similar types of uses in that zone have been approved by this Zoning Board. Mr. Whitaker believes that this could be considered an inherently beneficial use that promotes general welfare of the community because the recreational sport encourages physical fitness as shown in Medici case law. Mr. Whitaker introduced his first witness.

Mr. Uscher Yassin was sworn in and testified that he is the principal owner of Andpadel. He explained he has been a U.S. National Squash coach since 2008 and has headed a squash academy with two branches. Padel tennis is a combination of squash and tennis which is played with a paddle and a tennis ball. The court is surrounded by glass walls which can be used as in racquetball. The sport is less intense and much easier on the joints and has become a social sport like pickleball.

The space at the facility will consist of three courts with four players on a court at a time. There will be no more than 12 players in the facility at a time as well as 4 employees manning the desk the snack area and a coach for instructions. They stagger the court times by using an app.

They hold tournaments one or two times a year by invitation for participants only and it will not be open to any spectators or general public. Hours of operation will be 5am to 11pm seven days a week. The other tenants conduct their business between the hours of 8am to 5pm. Peak hours for court usage will be between 4pm – 10pm having little conflict with the other tenants. There is a total of 36 parking spaces.

Each court will have a bathroom to access and there will be two locker rooms. In addition, there will be a Pro Shop for renting equipment as well as purchasing equipment and accessories pertaining to the sport. This shop will not be open to the public for retail sales. A snack bar will be available to the players for energy bars, energy drinks, etc.

Questions from the Board included trash removal, purpose for benches sporadically placed throughout the facility and length of a lesson/game. Mr. Yassin responded that there is very little garbage generated and they will use the existing dumpster. He responded that benches will be used for players waiting or resting in between lessons/games. Lessons/games will last approximately an hour. No further questions. Chairman Smid entertained a motion to open the meeting to the public.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to open the meeting to the public for matters concerning the testimony of Mr. Yassin was voted unanimously by the Board.

No comments.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to close the meeting to the public for matters concerning the testimony of Mr. Yassin was voted unanimously by the Board.

Mr. Whitaker entered an exhibit. Ms. Sedarat read, for the record, the stipulations in the exhibit that were entered.

Exhibit A-1, Stipulations for the application.

Mr. Whitaker introduced the applicant's planner. Mr. T.J. Ricci from Stonefield Engineering and he was sworn in. He gave his credentials and the Board accepted his qualifications.

Mr. Ricci testified that he reviewed the applicant's plans, the Borough's ordinance, zoning map and master plan. He visited the site which is approximately 2 acres in the IP-Industrial zone. He agrees with Mr. Whitaker that the application does follow standards of Medici case law.

The use is suitable and there could be a need for a facility such as this when it is growing in popularity. He believes that the use falls within special reason (A) under intent and purpose of this act. Since it aligns with a fitness center, it promotes public health and general welfare in that community.

It is acknowledged in the master plan that there has been an increase of vacant buildings and search of tenants for the IP-Industrial zone. Vacancies in the IP-Industrial and lack of industrial types of businesses were addressed in the last master plan reexamination as well as some uses added. However, this use was not added but, there seems to be a pattern of recreational type uses occupying that area.

He believes that the application falls within the inherently beneficial use under purpose (G) providing sufficient space in appropriate locations for recreational uses. The facility is ideally situated within a large building with high ceilings and plenty of parking. From a planning aspect, the use is compatible within the area.

Mr. Ricci reported that there are no negative criteria associated with the application since parking is sufficient, no loud noises and no odors emit from the facility. No further discussion.

The Board discussed why the modifications were not included in the last master plan reexamination. Ms. Sedarat informed the Board that cannabis facilities and distilleries were added as permitted uses in the industrial zone during the last reexamination. Mr. Novac confirmed that signage will be conforming. No further discussion. Chairman Smid entertained a motion to open the meeting to the public.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to open the meeting to the public concerning testimony given by Mr. Ricci was unanimously voted.

No comments.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to close the meeting to the public concerning testimony given by Mr. Ricci was unanimously voted.

Deliberation:

Mrs. Waneck expressed her favor of the use and that the facility would have a low impact on traffic and the other businesses.

Mr. Eilert expressed his favor of the use and that the use would have a positive impact in that area.

Mr. Bremer expressed that he had no issue with the application since there are similar uses in that zone.

Mrs. Lilienthal had reservations concerning the use and impairing the intent of the Borough's master plan.

Mr. Dodd expressed that he had no issue with the use but parking may be underestimated.

Chairman Smid expressed no concerns with the application.

Mr. Yakimik commented that the use is suitable for the zone and there should be no parking issues. However, he has not received the certificate of compliance from the property owner and suggested that receiving this should be a condition in the resolution.

Ms. Sedarat confirmed the exhibits entered.

Exhibit A-1, A document titled "Stipulations".

Exhibit A-2, A video presented at the hearing.

Ms. Sedarat confirmed the terms and conditions if the application were to be approved.

- Usage of the Padel court facility shall be by appointment only.
- Appoints shall be on a staggered hourly basis
- A maximum of four employees shall be onsite at any given time.
- The facility hours of operation shall be limited to 5 am to 11 pm, 7 days per week.
- The Pro Shop shall not be permitted to the public retail sales.
- The Snack Bar shall not be permitted to prepare food onsite and restricted to prepacked snacks and beverages.
- Tournaments shall be restricted to invitation only and not open to the general public.
- Signage shall strictly follow the Borough Code requirements and obtain proper permits.

No further discussion. Chairman Smid entertained a motion.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to approve the Andpadel application subject to the conditions state above.

Roll Call Vote: Ayes: Mrs. Waneck, Messrs. Dodd, Eilert, Bremer and Chairman Smid.

Nays: Mrs. Lilienthal

Abstain: None

Absent: Mr. Rose

2. Kroog – 19 Ramapo Valley Road, Block 2517, Lot 5. Pursuant to Whispering Woods Bamm Hollow, Inc. v Middletown Planning Board, 200 N.J. Super 161 (law Div. 1987).

Ms. Sedarat announced that this hearing is being conducted in accordance with the requirements of Whispering Woods v. Middletown Township, 220 N.J. Super. 161 (Law Div., 1987) to consider terms of settlement of the action filed by the Applicant in the Superior Court of New Jersey, Patrick Kroog vs. Borough of Oakland Zoning Board with respect to this Board's August 8, 2023 denial of the Applicant's

application for an expansion of a nonconforming use, erection of an accessory structure in the front yard, and for steep slope variances.

This hearing is being conducted in accordance with the Settlement Agreement between Patrick Kroog and the Borough of Oakland Zoning Board fully executed on October 17, 2023. The Settlement Agreement was signed by the Board Chairman, Anthony Smid and by the applicant Patrick Kroog; both signatures were appropriately witnessed and same was attested to.

Section 3 of the Settlement Agreement titled, "Recommencement of Hearing," and the balance of the agreement mandate the sequence for this hearing. We will first enter the Settlement Agreement into evidence as B-1, and it will formally become part of the record.

The terms of the settlement are as follows, wherein the Board agreed to the following:

1. Removal of the existing front platform, concrete walk, shed, and driveway to construct a one-story addition to the front and rear of the dwelling, construction of a three-car detached garage in the front yard and construction of a new concrete walk, front porch, rear deck, covered basement stairs, and driveway expansion, all in accordance with Architectural Plans prepared by Paradigm Architecture Design and Consulting, dated December 14, 2022.
2. The Applicant has stipulated to erecting a visual buffer by way of evergreen plantings to adequately screen the proposed three (3) car garage in the front yard from visualization from the roadway.
3. The Applicant has stipulated to complying with paragraphs 19 through 23 of the report issued by the Board engineer, John G. Yakimik, PE, of Boswell Engineering, dated January 6, 2023, as stipulated in the settlement agreement.
4. The Applicant has stipulated that any tree removal shall be subject to review and approval by the Borough of Oakland Shade Tree Commission.
5. The Applicant has stipulated to paying all outstanding escrow fees, Board professional fees, and related fees required by the Borough of Oakland.

As a result of those terms and revisions, the Applicant submitted on January 22, 2024, in anticipation of this hearing, plans entitled "Kroog Residence 19 Ramapo Valley Rd, Oakland, NJ" prepared by Paradigm Architecture Design & Consulting, dated 12/14/2022, last revision date 1/3/24. These plans accurately reflect the terms of the settlement agreement and the project and design as negotiated and settled between the parties.

Reports from Board professionals include 2 reports by the Board planner, Mr. Lydon of Burgess Associates, dated 12/6/2023 and 1/26/24; and 2 reports from our Board engineer, Mr. Yakimik, dated 12/4/23 and 2/1/24.

The purpose of this hearing is for the applicant to place forth the terms of the settlement, which have already been agreed to by the Board evidenced by Mr. Smid's affirmation on behalf of the Board as previously indicated. The Board can hear from the public, can hear from the Board professionals, and can impose additional conditions to the agreed upon proposal pursuant to the Settlement Agreement.

Since the Board members have since changed, members who were not present during the original application verified that they have listened to the recording and signed certification confirming such.

Jennifer Berardo, Esq. with Wells, Jaworski & Liebman LLP approached the Board to review the conditions agreed upon pursuant to the Settlement Agreement. She confirmed that notice was given.

Ms. Berardo confirmed submissions from the applicant, exhibits that were entered and reports from the Board professionals. She explained that the applicant owns and has maintained a single-family residential home in the B-2 Business zone. The applicant filed an application to expand the nonconforming use requiring a use variance, add a detached 3-car garage which is considered an accessory structure in the front yard and encroachment into some steep slopes. The application was denied and the applicant then filed a law suit. Subsequently, negotiations began, and a settlement agreement was drafted and signed with terms and revisions to the plan.

Pursuant to the settlement agreement, the applicant is seeking to expand the non-conforming use in a B-2 zone by adding a detached 3-car garage in the front setback which is a D-2 variance and a variance for disturbing some grades of steep slope. Ms. Berardo offered the testimony of Mr. Anthony Addesso with Paradigm Architecture in Paramus. Mr. Addesso testified in all prior hearings.

Mr. Addesso entered an exhibit.

Exhibit A-1, Revised Submission January 2024.

Mr. Addesso reviewed the improvements. The applicant proposes an expansion to the front and rear yard, add a detached garage 3-car garage in the front yard which will be nestled into the side of an uphill grade and reconfiguring the driveway to a circular ingress and egress. In addition, there will be a new concrete walk, front porch, rear deck, covered basement stairs as well as the interior improvements being done. A large tree at the corner of the garage will be removed and evergreens will be planted in front of the garage to provide a buffer.

The applicant agrees to comply with the stipulations in Boswell's report and comply with the Shade Tree permitting process. Stormwater runoff will enter the gutters follow through the leaders and captured by a catch basin. This is a low intense use for a zone allowing office buildings.

Mr. Addesso confirmed for the Board that there will be no air conditioning or plumbing being proposed for the garage. The maximum height at the peak of the attic will be 15-feet to a minimum of 4-feet. There will be no business operation being proposed for the property. No further questions. Chairman Smid entertained a motion to open the meeting to the public.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to open the meeting to the public concerning the Whispering Woods hearing.

No comments.

Motioned by Mr. Bremer and seconded by Mr. Eilert, to close the meeting to the public concerning the Whispering Woods hearing.

Ms. Berardo informed the Board that this concludes the Whispering Woods hearing and addressing all of the concerns of the Board. Ms. Sedarat also reminded the Board that the settlement agreement has been signed by the applicant and Chairman. Chairman Smid entertained a motion.

Motioned by Mrs. Lilienthal and seconded by Mr. Bremer, to accept the agreement and improvements as revised.

Roll Call Vote: Ayes: Mmes. Waneck and Lilienthal, Messrs. Dodd, Eilert, Bremer and
 Chairman Smid.
 Nays: None
 Abstain: None
 Absent: Mr. Rose

MEMORIALIZATION OF RESOLUTIONS:

Eligible voters: Mmes. Waneck and Lilienthal, Messrs. Zingone, Eilert and Chairman Smid.

1. Criscenzo – 126 Dogwood Drive, Block 3601, Lot 23. Approval for a rear yard setback.

Motioned by Mrs. Lilienthal and seconded by Mr. Eilert, to memorialize the above resolution of approval.

Roll Call Vote: Ayes: Mmes. Waneck and Lilienthal, Messrs. Eilert, and Chairman Smid
 Nays: None
 Abstain: None
 Absent: Mr. Rose

PAYMENT OF BILLS:

Motioned by Mr. Bremer and seconded by Mrs. Lilienthal, to approve the payment of bills subject to availability of funds was voted unanimously by the Board.

APPROVAL OF MINUTES:

Motioned by Mrs. Lilienthal and seconded by Mr. Eilert, to approve the February 6, 2024 Minutes was voted unanimously by the Board.

NEW BUSINESS DISCUSSION:

None

OLD BUSINESS DISCUSSION:

Ms. Waneck suggested that verbiage also be taken out of the By-Laws pertaining to site inspection reporting. Chairman Smid still had trepidations with removing the site inspection requirement. He entertained a motion to accept the By-Laws as written.

Motioned by Mrs. Lilienthal and seconded by Mr. Eilert, to accept the By-Laws as written was voted unanimously by the Board.

MEETING ADJOURNED:

Motioned by Mr. Rose and seconded by Mr. Eilert, to adjourn the meeting at 8:05 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

*Next meeting is April 2, 2024.