

OCTOBER 4, 2016 MINUTES
OAKLAND BOARD OF ADJUSTMENT
OAKLAND COUNCIL CHAMBERS - 8:00 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: Mrs. Steele, Messrs. Ackerly, Bremer, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.
Absent: None

Also in attendance were Mr. Matthew Cavaliere, Board Attorney, Steve Lydon, Burgis Associates and Rebecca Mejia, Boswell Engineering.

PUBLIC MEETING BEGINS AT 8:00 p.m.:

1. Gunset – 14 River Road, Block 1807, Lot 9. Request for extension of time.

Chairman Lepre announced that the above reference applicant has requested a one year extension for a portico over the front steps that encroach upon the front yard setback. He entertained a motion.

Motioned by Mr. Schneeweiss and seconded by Mr. Bremer, to grant a one-year extension of time for a front yard setback.

Roll Call Vote: Ayes: Messrs. Ackerly, Bremer, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: None

2. Talamini – 33 Seminole, Block 4602, Lot 27. Public hearing for a side yard setback to be carried to the November 15, 2016.

Chairman Lepre announced that the applicant will be carried in order to satisfy requests from the Health Department. He entertained a motion to carry the application.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to carry the Talamini application to the November 15, 2016 public hearing in order to satisfy the requests from the Health Department.

Roll Call Vote: Ayes: Messrs. Ackerly, Bremer, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.

Nays: None

Abstain: None

Absent: None

3. Bowitz – West Oakland Avenue, Block 2501, Lots 9, 10, 11, 16 & 30. Public hearing for a zoning permit has requested to carry to the November 15, 2016 meeting.

Chairman Lepre announced that the applicant has requested their application be carried. He entertained a motion.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to carry the Bowitz application to the November 15, 2016 public hearing.

Roll Call Vote: Ayes: Messrs. Ackerly, Bremer, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.

Nays: None

Abstain: None

Absent: None

4. DiDonato – 88 Truman Boulevard, Block 1606, Lot 25. Public hearing for a side yard setback.

Members conducted a site inspection with the exception of Mr. Chadwick. Mr. Wegman reported that the property is located in the RA-3 Residential zone and light in traffic. Chairman Lepre reported comments from the various departments.

Mrs. Steele would vote in place of Mr. Chadwick

The applicant seeks a side yard setback of 9.2-feet where 15-feet is required.

Mr. Robert DiDonato was sworn and testified that he would like to replace and extend a deck no further than the existing house in the rear yard that encroaches upon the existing 9.2-foot side yard setback. He is proposing the deck extension to allow access to the dining room by sliding glass doors.

Chairman Lepre indicated that aligning the deck with the face of the house is not an unreasonable request and informed the Board that the dimensions of the property is 60-feet wide by 340-feet in depth. A discussion ensued concerning the location of the septic being underneath the deck which was approved by the Health Department. He entertained a motion to open the meeting to the public.

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

No comments.

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

Chairman Lepre entertained a motion.

Motioned by Mr. Schneeweiss and seconded by Mr. Wegman, to approve the DiDonato application.

Roll Call Vote: Ayes: Mrs. Steele, Messrs. Bremer, Ackerly, Smid, Wegman, Schneeweiss and Chairman Lepre.

Nays: None

Abstain: None

Absent: None

Not eligible: Mr. Chadwick

5. Guru Nanak Mission, Inc. – 138 Bauer Drive, Block 3603, Lot 2. Continued public hearing for a use variance.

Chairman Lepre announced that at the last meeting closing statements were given by the applicant's attorney, opposing attorney and the Boards professionals wrapping up the application. At this time, this would be the opportunity for Board members to express their opinion and add to the stipulations discussed at the last meeting. Finally, the Board will vote on the application.

Mr. Cavaliere confirmed, for the record, the eligible voters for this application. Chairman Lepre would comment last and requested that the Board begin with their comments.

Mr. Ackerly comments:

He expressed that the application is unique and he is not opposed to what the applicant is proposing. However, he expressed that one thing did not sit well with him which was moving into a community and purchasing building without approvals. He commented that this sends a preconceived message of arrogance.

Another unique part of the application is the proposed residency attached to the temple. He expressed that he did not necessarily have an objection to this but commented that this it is not the traditional household environment for a family. He did not have much of a concern if this residency was for a husband and wife but he did not think the Industrial Park is appropriate for raising a family. There are dangers associated with an industrial area with regard to trucks and buses driving through and no play area for the children. He expressed that there should be no questions about adding more landscaping. The applicant should want more privacy as well as more privacy for the residential area in the rear property. He hopes the applicant agrees to increase the landscaping as well as the other conditions set forth by the professionals. He expressed that he believes that the facility will work for this use and advised the applicant that it is important to enforce the occupancy maximum.

Gina Steele comments:

Mrs. Steele explained that she believes the applicant did follow the correct process when purchasing the property. They entered an agreement on a property, the applicant proceeded to the building department and the zoning officer could not give them a definitive answer so the applicant pursued with a use variance. She believes the choices were limited.

As far as the traffic study, the temple will be operating during off hours and she sees no problem with that. She appreciates that this is in an industrial section but believes that the traffic associated with the temple would have a bigger impact on a residential section. She expressed that it cannot be overlooked that this use with a residency goes against the master plan. However, she believes the traffic associated with the temple would have more of an impact on a residential zone with children.

She expressed that it is known of her business whether or not the priest has a family let alone put limits on that family. However, she questioned what happens to the residency 20 to 30 years down the road if the building is sold. Again, she expressed no concerns with the kitchen but what happens if the applicant sells.

As for safety concerns, she informed the Board that she lives on the river and a business next door where forklifts are operated and was knowledgeable of those risks associated when purchasing her property.

Ken Chadwick comments:

Mr. Chadwick expressed that he is aware that the overall use fits the needs of the applicant. He has no problem with the traffic and knows that the kitchen will need approval from the appropriate agencies. His concern are strictly with the residency and children growing up and possibly unsupervised at times in an industrial park.

He explained that he grew up as a Christian by faith and through his experience, there was never a residency on site for the priest/pastor associated with his church. However, he is open to

some presence on site just not a residency for a family. He expressed that he would listen to the rest of the Board members give their comments and he would make his decision.

Anthony Smid comments:

Mr. Smid expressed that this is a complex application and he has listened to all presentations with an open mind. The Borough has many houses of worship but few Oakland residents would be parishioners of this mission.

He expressed concerns with not updated the septic system before the facility opens because it if DEP requires it be updated, this could disrupt the operation. The same goes for the kitchen, the septic system should be updated prior to occupancy just like a residential home.

Concerning the residency, he believes a compromise could be a caretaker or security guard. He referenced the two dressing/resting rooms and believes that one of those rooms could be removed to discourage people from using those rooms for overnight stays.

The additional landscaping requested should not only be considered but be done with a landscaping plan. He is aware that all houses of worship are tax exempt which places a burden on the taxpayer which Oakland has their fair share of.

He has nothing against their religious faith but feels that purchasing the building prior to any approvals was not a good move. His main concern is about the residency and he would listen to comments from other members on the Board and make his decision.

Howard Wegman comments:

Mr. Wegman thanked the experts representing the applicant, the objectors and the Board. He expressed that there has been many presentations, testimony from experts offering so much information. He explained that his decision will be based on three things.

First, looking at the positive criteria, he does not recall any proof that this house of worship is not an “inherently beneficial” use. Therefore, based on the testimony, he believes that the house of worship satisfies the positive criteria.

Secondly, testimony that associates this residential apartment as an accessory use of the church. He agrees that the residence is an integral part of the temple as long as it is occupied by a priest/caretaker.

Thirdly, the negative criteria has been discussed and sorted to his satisfaction and would be noted in the resolution. Lastly, Mr. Wegman believes that this is a single use variance for both church and residence as an essential accessory to the church and the resolution should include the conditions discussed and agreed upon.

Fred Schneeweiss comments:

Mr. Schneeweiss commented that this has been one of the longest applications before this Board. There has been testimony from numerous professionals as well as the applicant, objectors and members of the public.

The crux of this application is whether or not the use is suitable for the zone. There has been numerous revisions of the master plan since the inception of the Industrial Park in the late 1960's early 1970's. It has never been deemed necessary, by the governing body, to include a residential component in this zone. This zone could have easily been re-zoned to include the specific uses set forth with the addition of a limited residential component, i.e. affordable housing to meet the Borough's obligation, houses of worship, or some type of mixed residential commercial use. However, the Borough chose not to change the zone.

The applicant sought to purchase a building that he knew was not a permitted use in this zone and no conditions for zoning approvals in his purchase agreement. Perhaps the applicant did not get sound legal advice before committing to purchasing this property. Now the applicant finds himself in a position where he had to come to this Board or seek a zone change in order to facilitate the intended use. Although there are other properties in town where a house of worship could be constructed, the applicant chose to move forward with this property.

Testimony from the applicant was given stating that it would be ideal but not essential for someone to tend to their holy book 24/7. He remarked that knowing this is a core belief in the applicant's religion, why would the applicant purchase the property where residential uses are clearly not allowed. He expressed reservations about a residential use in an Industrial Park setting and feels the two do not mix. Analogies were given by Mrs. Gonchar concerning all the other properties in the Industrial Park that were granted use variances for uses not permitted. He expressed that each application for a use variance stands on its own merits.

Another objection Mr. Schneeweiss expressed was the proposed commercial kitchen without an adequate septic system. The applicant has agreed to use a caterer until they receive approval from the DEP to expand the septic to meet their needs. He believes that all plans should be in place with approvals and submitted to the Board before a change of use is considered. He believes that this is one of those times when Board members to find the courage and say no.

Chairman Lepre comments:

Chairman Lepre thanked all participants in this process for their patience and expertise in the development of this application. Both proponent and opponents of this application have provided a wealth of information for our Board to assess and understand and appreciate the level of detail provided.

The Board now has the task of ascertaining if the application for a house of worship with a pastoral residence as a proposed accessory use is an acceptable use in the IP-Industrial zone.

The facts presented during testimony immediately directed towards case law documented by the New Jersey courts that have determined that houses of worship inherently promote the general welfare and are a use that is inherently beneficial in value to the community.

Chairman Lepre believes that effectively established that, as the 5th largest religion in the world, the Sikh religion is an established religion and the Board is assessing a true house of worship.

He referenced the concept of “inherently beneficial” which directs the Board to criteria as established by *Sica v. Township of Wall*. First is determination of public interest at stake and clearly any house of worship sustains the social need for the freedom to exercise religious worship as essential to the fabric of the community.

Second is identification of any detrimental effect of the use and the reduction of these effects by seeking and developing reasonable conditions. He believes the Board has covered this in great detail and have developed a significant list of conditions appropriate to this project.

When weighing positive and negative criteria, he believes that through these aspects, the Board has established that this house of worship will not cause a substantial detriment to the public good.

In addition, there are several key concerns that bring this Board to review against the Department of Justice land use provisions of the Religious Land Use & Institutional Persons Act (RLUIPA). RLUIPA applies to all state and municipal agents including zoning boards and zoning appeal boards.

When there is a conflict between RLUIPA and the zoning code or how it is applied, RLUIPA, as a federal civil rights law, takes precedence and the zoning law must give way.

Specifically addressed are the consideration of municipal interests in revenue generation (taxes) and economic development as not being considered compelling interests or those of the highest order meaning; they are of the table for consideration.

Another concern of the Board was the inclusion of the priest/caretaker residence as an accessory use on site as part of the project. RLUIPA addresses this subject in noting that Zoning Boards cannot impose “substantial burdens” on religious exercise by denial or creation of restrictions that infringe upon the exercise of their religious process. The Sikh holy book has been presented as the “master” or “holy leader” and cannot leave the property without substantial ceremony and a “caretaker” must be present at all times to serve and protect the book.

Based upon all of the above, Chairman Lepre expressed that he believes the law directs the Board to an approval of this application subject to the following:

Primary Conditions of Approval:

1. The construction of the commercial kitchen facility can only take place upon approval of the NJDEP and Oakland Health Department and satisfaction of any and all criteria or obligations as they may impose with regard to sanitary discharge or kitchen design. Documentation to be submitted to these agencies shall include developed kitchen/sewering plans indicating the form and content of these facilities with appropriate engineering calculations specific to the design presented as well as any other documentation these agencies may require.
2. Site plan and architectural documents shall be updated to reflect all physical conditions of approval and submitted to the Zoning Board and Borough engineer for signoff.
3. The resolution memorializing this action shall be recorded with the Bergen County Clerk's office and shall travel as a deed attachment to the property
4. Subsequent to occupancy, Guru Nanak shall provide free and unrestricted access to any and all representatives of Oakland Zoning, Health, Fire, Building and any other Borough agencies by result of this resolution or by governing law codes and ordinances.
5. Large buses (40 seats plus) shall not be used to transport persons to and from the property.

Operational Conditions of Approval:

1. A maximum of two hundred fifty (250) people may be in the building and on the property in total at any one time. A notice on the two hundred fifty (250) person limit shall be posted in the building's entrance at all times.
2. No events, festivals, parades or any celebration shall be permitted outside on the property or in Bauer Drive.
3. The building or property will not be leased, rented or otherwise made available for non-Guru Nanak related activities or to non-Guru Nanak members or groups.
4. Refuse will be picked up within twenty-four (24) hours of the final meal served on Sunday and within twenty-four (24) hours of any meal not associated with regular weekly services provided nothing contained herein will require refuse to be picked up on Saturday or Sunday.
5. There shall be no parking on Bauer Drive or any other public road in the IP-Industrial zone.
6. Should Guru Nanak engage arrangements for additional offsite parking, shuttle transportation shall be provided to and from the primary site, nothing contained herein relieves the maximum occupancy limitation of two hundred fifty (250) people at the primary site.
7. Guru Nanak shall direct those snow plowing to plow parallel to the east property line and will inspect annually to repair fence damage that may occur each spring.
8. Parking shall be limited to the paved surfaces of the site in the delineated parking spaces.
9. The sole use of the residential unit located within the facility shall be for the housing of the priest/caretaker, multiple priests/caretakers or priest/caretaker and priest/caretakers

family as the case may be. No other occupants shall be permitted overnight or otherwise.

Physical Conditions of Approval to be documented on Site Submission and Architectural Documents:

1. The outside of the building and the property will retain the existing appearance as a light industrial building, except for the vestibule to be added, so to blend in with the Industrial Park character and except for regular maintenance, repairs and upkeep, shall remain cosmetically unchanged as viewed from Bauer Drive.
2. The existing site identification ground/monument sign shall reflect the Guru Nanak occupancy without increase in size or illumination levels. The sign shall be in compliance with Oakland Borough's sign ordinance and shall be the sole occupancy identification sign or symbol representation of occupancy. All other exterior signage on site shall be traffic, directional or safety in nature.
3. The septic system will be monitored on an ongoing basis to assure it is functioning, particularly on days of high usage. The owner shall be responsible for compliance with the obligations of the Oakland Board of Health or otherwise comply with other applicable regulatory obligations. Such compliance shall include but not be limited to compliance with obligations as may be imposed by NJDEP as part of the kitchen approval should such approval be granted.
4. A board on board or other decorative fence and gates be provided to enclose the trash container/dumpster.
5. A fenced and gated enclosure shall be constructed around the existing transformer pad with plantings provided to screen the perimeter.
6. A 10'X10' concrete pad with bench shall be constructed curbside on the left-hand side of the site access driveway leaving the property to function as a school bus stop.
7. A 4-foot high fence shall be constructed on the east property line commencing 40-feet from the Bauer Drive curb line and ending at the southerly zone buffer line.
8. A 4-foot high fence shall be constructed on the west property line commencing 40-feet from the Bauer Drive curb line and ending at the southerly zone buffer line.
9. The existing reception/lobby door located on the Bauer Drive side of the building, shall be reconfigured to act as an emergency exit only door. The existing site sidewalk from the reception/lobby door shall have an 85-foot +/- L/F segment removed commencing at the NE corner of the building to the pad area outside of the newly created emergency exit if and as permissible under Building Codes and ordinances having jurisdiction over the property.
10. All site lighting shall be shielded to mitigate lighting splash and /or glare.
11. The restroom shown on the second floor shall have sink and sanitary facilities only and shall NOT have a shower or bathtub.
12. There shall be no sidewalks along Bauer Drive.
13. There shall be no outdoor play area provided.

14. The existing lawn area in the zone buffer is to be landscaped with shrubs and trees. A plan shall be submitted to the Board Engineer for review and approval. Such approval shall not be unreasonably withheld.
15. Knox box Fire Department key control shall be established with locations coordinated as directed by the Oakland Fire Department.
16. Resolution shall be recorded, for the purpose of making the Resolution known to any subsequent purchaser or other interested party that the recording is not for the purpose of creating any additional rights running to the public at large.

Chairman Lepre requested that the Board break before taking a vote.

Meeting recessed at 9:24 p.m.

Meeting resumed at 9:35 p.m.

Mr. Cavaliere suggested that the motion be to approve the application so there would be no confusion with a yes and no vote. He verified the eligible voters. Ms. Gurney confirmed that everyone but Mr. Bremer were eligible to vote.

Motioned by Mr. Schneeweiss and seconded by Mrs. Steele, to approve the Nanak Guru application for a use variance for the house of worship with an accessory use for the residency.

Roll Call Vote: Ayes: Mrs. Steele, Messrs. Ackerly, Wegman and Chairman Lepre.
 Nays: Messrs. Chadwick, Smid and Schneeweiss.
 Abstain: None
 Absent: None

Mr. Cavaliere informed the applicant that you need five votes in the affirmative in order for the application to be approved. A discussion ensued concerning the consensus of the Board and some of the skepticism with regards to a residents inside the Industrial Park. Options for the applicant were discussed. Mr. Cavaliere explained that the Board could bifurcate the application by voting on the use and then voting on the residency. A discussion ensued concerning the options, both Board and applicant agreed to bifurcate the application and vote on both the use and residency. Mr. Cavaliere question Mr. Porro if he had a problem with this. Mr. Porro confirmed that the restriction for the residency would be one bedroom, no more than 700 square feet of living space for a caretaker/priest.

Chairman Lepre entertained a motion to approve the use of the Industrial Park.

Motioned by Mr. Chadwick and seconded by Mr. Ackerly, to approve the use, Guru Nanak Mission, in the Industrial Park.

Roll Call Vote: Ayes: Mrs. Steele, Messrs. Chadwick, Ackerly, Smid, Wegman,
 Schneeweiss, and Chairman Lepre.

Nays: None
Abstain: None
Absent: None

Chairman Lepre entertained a motion to approve the residency in the Industrial Park.

Motioned by Mr. Ackerly and seconded by Mr. Chadwick, to approve the accessory use to the Guru Nanak Mission for a residency contingent to the living area is not to exceed 700 square feet, no more than one bedroom and no more than two occupants.

Roll Call Vote: Ayes: Mrs. Steele, Messrs. Chadwick, Ackerly, Wegman and Chairman Lepre.
Nays: Messrs. Smid and Schneeweiss.
Absent: None

MEMORIALIZATION OF RESOLUTION:

1. Russell- 73 Franklin Avenue, Block 4401, Lot 13. Approval for the denial of a 6-foot fence in the front yard.

Motioned by Mr. Wegman and seconded by Mr. Schneeweiss, to memorialize the above resolution of denial.

Eligible voters: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.

Roll Call Vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: None

PAYMENT OF BILLS:

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

APPROVAL OF MINUTES:

None

NEW BUSINESS:

None

OLD BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, to adjourn the meeting concluding at 10:15 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

*Next meeting is November 15, 2016.