

JANUARY 12, 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 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 8:10 P.M.

ROLL CALL: Present: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.
Absent: Messrs. Bremer and Johnson

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

Motioned by Wegman and seconded by Schneeweiss, to excuse the absences was voted unanimously by the Board.

PUBLIC MEETING BEGINS AT 8:01 p.m.:

Reorganization of the Board:

CHAIRMAN:

Chairman Lepre entertained a motion to nominate the Board Chairman.

Motioned by Wegman and seconded by Schneeweiss, nominating Richard Lepre as Chairman of the Board.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman and Schneeweiss.
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

VICE-CHAIRMAN:

Chairman Lepre entertained a motion to nominate the Board Vice-Chairman.

Motioned by Mr. Schneeweiss and seconded by Mr. Wegman, nominating Anthony Smid as Vice-Chairman of the Board.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Wegman, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

SECRETARY:

Chairman Lepre entertained a motion to nominate the Board Secretary.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, nominating Howard Wegman as Secretary of the Board.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

ATTORNEY:

Chairman Lepre entertained a motion to nominate the Board Attorney.

After careful review of the Request for Qualifications for Board Attorney candidates, Mr. Smid recommended that the Board continue to retain Cavaliere & Cavaliere as Board Attorney.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, nominating Cavaliere & Cavaliere as Board Attorney of the Board.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

ENGINEER:

Chairman Lepre entertained a motion to nominate for Board Engineer.

After careful review of the Request for Qualifications for Board Engineer candidates, Mr. Schneeweiss recommended that the Board continue to retain Boswell Engineering.

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, nominating Boswell Engineering as Board Engineer.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

PLANNER:

Chairman Lepre entertained a motion to nominate the Board Planner.

After careful review of the Request for Qualifications for Board Planner candidates, Mr. Chadwick and Mr. Wegman recommended that the Board retain Burgis Associates.

Motioned by Mr. Wegman and seconded by Mr. Chadwick, nominating Burgis Associates as Board Planner.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

ADMINISTRATIVE ASSISTANT

Chairman Lepre entertained a motion to nominate the Board's Administrative Assistant.

Motioned by Mr. Chadwick and seconded by Mr. Wegman, to nominate Kathlyn Gurney as the Board's Administrative Assistant.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

OFFICIAL NEWSPAPER

Chairman Lepre entertained a motion to nominate the Board's official newspaper.

Motioned by Mr. Wegman and seconded by Mr. Chadwick, to nominate The Record as the Board's official newspaper.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

BY-LAWS

Chairman Lepre entertained a motion to adopt the Board of Adjustment By-Laws.

Motioned by Mr. Wegman and seconded by Mr. Chadwick, to adopt the Board of Adjustment By-Laws last revised March 2006.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

2016 MEETING SCHEDULE

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, to adopt the 2016 meeting schedule was voted unanimously by the Board.

1. Guru Nanak Mission, Inc. – 138 Bauer Drive, Block 3603, Lot 2. Public hearing for a use variance with two aspects which include a religious operation and a small parsonage.

All members conducted a site inspection. Mr. Wegman reported that the subject property is located in the IP-Industrial Park zone, Block 3603, Lot 2. Chairman Lepre informed the Board that the application is for a religious use with a residence or parsonage within the industrial zone. He reviewed all comments from the various departments. The Health Department updated their previous comment indicating that the applicant is awaiting approval from the DEP for a Treatment Works Permit. He suggested that all attorneys make their appearance known for the record.

Mr. Ben Cascio on behalf of applicant put his appearance on the record. Mr. Kenneth Porro, Esq. was present on behalf of Michael Mulhern, 148 Bauer Drive, 143 Bauer Drive, Oil Master Grinder and 103 Bauer Drive Alpha Professional Tools. He requested that a procedural matter be addressed for a defect in the Borough's land use process by the Zoning Officer. The Zoning Officer has neglected to supply the applicant and Board with a Letter of Denial which could cause the application to be presented incorrectly. This was pointed in the Board Planner's report that the applicant has not requested a ruling by the Zoning Official. It was suggested to the Board that they request his input and guidance.

Mr. Cavaliere suggested that before a response to Mr. Porro observations, all other attorneys should be acknowledged for the record. Mrs. Susan Rubright, Esq. came forward on behalf of 128 Bauer Drive, Bauer Drive Associates. Mr. Cascio introduced his co-counsel Meryl Gonchar, Esq. with Greenbound, Rose, Smith and Davis. Mr. Cavaliere instructed that Mr. Cascio should have the opportunity to represent his client first.

Mr. Cascio explained that when he first filed the application, he had conversations with Michael Tabback, Zoning Official and Mr. Cavaliere concerning wording in the Borough's ordinance that a house of worship was permitted in all zones. Mr. Porro objected to Mr. Cascio's statement. After consultation with the Board Counsel, Chairman Lepre stated that the objection was noted. Mr. Cascio continued that it was Mr. Tabback's opinion that a house of worship was permitted in all zones including two of the industrial zones. However, he could not definitively say it was permitted in the IP Industrial zone. Mr. Tabback suggested that Mr. Cascio go before the Zoning Board for a use variance.

Mr. Cascio explained that they are now before the Zoning Board for an Interpretation of that ordinance and if the Board finds that this is a permitted use, they will move forward. If the Board does not find this a permitted use, then they would request approval for a use variance. This is the manner in which he was directed to file his application and believes the application is not defective. Mrs. Rubright objected to the Zoning Officer's statement that the use is permitted in all zones. She believes this statement could be prejudicial and the Board should not consider this unless it is stated from the Zoning Officer himself. Mr. Cascio revised his statement saying that Mr. Tabback was not able to reach decision.

Mrs. Rubright also commented on the Interpretation aspect of the application. She was unclear on the section of the ordinance being interpreted. Mr. Cascio responded that the ordinance was cited under the public notice given. Mr. Porro commented that the Board should not move forward without some input from the Zoning Officer on the interpretation of the ordinance. He referred to Mr. Lydon's report concerning the fact that the Zoning Official, in charge of enforcing the Borough's zoning regulations, did not offer an option to the applicant regarding the Interpretation which can assist the Board. Mr. Cascio responded that it is the Zoning Officer's charge to enforce the ordinances but not to make the interpretation, only the Board can make a

decision on the interpretation. The application is before the Board so they can specifically make a decision with regard to the Interpret the ordinance, 59-49D.

Mr. Cavaliere explained the types of applications that come before the Board referring to bulk variance and use variances application. Two additional types of applications are Appeals from Decisions made by a zoning official and Interpretations. This applicant is seeking several different reliefs such as site plan, use variance and interpretation application. There are municipalities that have procedures that deem it a requirement that any type of application to any board begins with receiving a Letter of Denial by the zoning official and some boards regard that as a conditional procedure. The purpose behind a Denial Letter is to have an administrative official do a pre-preview of the application so that it can go to board and focus on those specifics and findings by the zoning official. Some municipalities deem this a necessary requirement to have a letter of denial from a zoning official but it is not a condition or requirement of a board of adjustment or a planning board in order to have jurisdiction to hear a matter. The only time a Letter of Denial is required is when there is an appeal to a board of adjustment from a decision made by the zoning official. This is not an Appeal application it is a request for an Interpretation of the ordinance so a Letter of Denial is not necessary. He believes Mr. Lydon was suggesting in his report that it might be a good idea so the Board could consider this. There are times when input from a zoning official may be helpful to the board in terms of knowing the past practices of the municipality with regard to Interpretation applications. He informed the Board that he did have conversations with Mr. Cascio and the Zoning Official and it was his recollection that the Zoning Officer did not come to a conclusion on the Interpretation and would leave it up to the Board to determine. He advised the Board that they have jurisdiction to proceed without a Letter of Denial. This does not mean the other attorneys cannot request the Zoning Officer's input and the Board can decide whether to consider that. He believes that it is the applicant's intent to proceed with the application as an Interpretation. The Board can decide on whether or not they require a Letter of Denial now or proceed with the rest of the case. The Board can defer making a decision until hearing from the Zoning Official. Chairman Lepre's opinion was to proceed.

Mr. Cavaliere noted for the record that the application Mr. Cascio is representing began back at November's public hearing with limited testimony. The matter then continued to December and at that time, Mr. Porro and Ms. Rubright were present representing neighboring property owners. The December meeting lead to discussions concerning procedural issues which included a number of variances required and whether there were issues with the public notice served for this application. As a result of that meeting, it was determined the applicant would re-notice and specifically include the two use variances; one for the house of worship and the other for the proposed parsonage or residence.

He stated, for the record, that Mr. Cascio did re-notice and the notice was reviewed and appears to be sufficient giving the Board jurisdiction. He questioned if the Board would like to consider testimony given at the November and December meeting or prefer to start the application as new

with the notice given. Mr. Cascio responded that since they are before the Board with the Interpretation, he suggested that the testimony given back in November be given again without going into depth on the religion as before which was considered a courtesy to the Board. The consensus of the Board was they agreed with Mr. Cascio.

Mr. Porro expressed that he believes that the residence being proposed is a second use variance and the notice given implies that it is an accessory or an incidental use. He believes it is a separate and distinct use. He questioned if his client wanted to put a three-bedroom, two bathroom apartment at their location in the Industrial Park or if his client wanted to put a house of worship within his establishment would that require a use variance. He believes these are two separate variances. Mr. Cavaliere responded that his understanding is that the residence being proposed would only exist if the house of worship exists. Therefore, he believes the language that appears in the notice is appropriate. Mr. Porro informed the Board that in the notice there is reference to a caretaker therefore, the connection of clergy and or caretaker is a distinction. Ms. Rubright preserved the same objection. Mr. Cascio explained as part of the Interpretation, whether or not the house of worship is a permitted use specifically under the ordinance, there will also be testimony that the residence for the clergy/caretaker is a routine accessory to a house of worship. If the Board approves it as a permitted use, it is then subsumed within that permitted use. If the Board determines that it is not a permitted use, then we would request a secondary use variance for the residence of a clergy and or caretaker. The notice sites the application exactly as it is being presented. The applicant is not asking for a residential use, it is asking for a residence in conjunction with and supplemental to the house of worship. Therefore, the notice is correct as it is worded. Mr. Cavaliere announced to the Board that he is satisfied with the notice given.

Mr. Cascio explained that they are asking the Board to interpret the wording in section 59-49 D. It refers to RA-1, RA-2 and RA-3 Residential zones being designated as “conditional uses” and as “permitted uses in all other zones” in accordance with the special requirements for conditional uses as stated in 59-65. Then it goes on to say, churches and similar places of worship including accessory buildings. It is his opinion that the intention and wording of the ordinance says that churches are permitted in all other zones. He went on to say that sub-section 6 of the same section refers to exceptions for non-profit, lodges and fraternal organizations in the B-1 Business zone. He suggested to the Board that if it only applied to residential zones then the wording for B-1 zone would not be in there. Chairman Lepre pointed out in the same sentence that in accordance with the special requirements of conditional uses enumerated in 59-65. Mr. Cascio responded that the both sections repeat one and other and goes on to tell the specific requirements.

Mr. Cascio introduced Mr. Kenneth Ochab located at 12-15 Fairlawn Avenue, Fairlawn, New Jersey. Mr. Ochab would be testifying as a licensed planner on behalf of the applicant. He was sworn in and offered his credentials and the Board accepted his qualifications.

Mr. Ochab was retained as a professional planner to help review the ordinance in question. He explained that he reviewed the ordinance entirely by looking into the history of this section of the ordinance. Carefully he read the section of the ordinance which is complicated and not clearly written and went over the wording. The wording in this version of the ordinance was drafted back in 1978 where similar wording is used with no altering.

This particular section of the ordinance a conditional use in residential zones are not accurately portrayed. It is in the residential section of the ordinance but clearly talks about other zones. Typically, the list of uses permitted in an ordinance are mentioned in the beginning of the section. Instead this section of the ordinance lists uses such as municipal buildings, schools, library, museums etc. and colleges, hospitals and churches are not listed. Another thing not found in the beginning of the ordinance is the prohibited use in the zone. However, when you read through the zoning ordinance, you find prohibited uses, particularly in the industrial zone. So basically the list he mentioned would be permitted uses.

While reading this section of the ordinance, those uses mentioned in an RA-1, RA-2 and RA-3 Residential zones are designated conditional uses because they are not residential, they are institutional, quasi-public which are not typically permitted. In this section of the ordinance, these uses are designated permitted in all other zones. When reading the ordinance, these uses listed are permitted uses in all other zones other than the RA-1, RA-2 and RA-3 Residential zones. This is the way this section in the ordinance is interpreted.

It goes on to say; 'in accordance with the requirements for conditional uses enumerated in section 59-65'. However, this section does not list the requirements, instead it says that it should be done in accordance with the special requirements for conditional uses referring to section 59-65. He believes this section is not listing the requirements because it previously said that these uses are not conditional uses, they are permitted uses. He suggested that this part of the ordinance needs to be looked at and digested.

Chairman Lepre questioned the discussion concerning residential zones and the lack of discussion addressing the I-P Industrial zone. He also questioned how the discussion of the residential zone carries over into the Interpretation. Mr. Ochab responded that it states in 59-65 sub-section 6 of A that a non-profit lodge or a fraternal organization is permitted in the B-1 zone only. He questioned the meaning and believes that the ordinance is saying that a non-profit lodge or a fraternal organization is a permitted use in the B-1 zone. He explained that two things are happening with this ordinance, it is continuing to talking about permitted uses but now it is talking about the B-1 zone. He questioned why a residential use section is being discussed in the B-1 zone section. Chairman Lepre expressed that it seems like every other area of the ordinance and every other zone is being addressed. Mr. Cascio offered his legal perspective that the word 'title' should be interpreted literally as meaning what is states. He believes that if the author of the ordinance

wanted it to mean 'other residential zones' he would have said 'other residential zones' instead of 'all other zones'.

There is a difference between other zones, other residential zones and all other zones. In fact, the wording appears within the residential section under the conditional use section which does not mean it only applies to the residential section. He referred to case law where frequent reference was made concerning the word 'title' and 'title' of a section serves to indicate what lies below. This is what is being discussed that the title of an ordinance does not regulate or constrain the interpretation of that ordinance.

Mr. Ochab referenced 59-49 sub-section D7 where it states for RA-4 zone only, the inability to comply with one or more standards contained in schedule A limiting lot yard sizes and bulk principal building use will require application to the Board of Adjustment pursuant to N.J.S.A. 40:55 D-70 D-3 for a conditional use variance. Conditional uses already have the criteria required. These uses in the RA-1, RA-2 and RA-3 zone are conditional uses meaning they do not meet the requirements and would need to go before the Board for a D-3 variance. In addition, the section where it says the RA-4 zone only, the inability to comply with, talks about all of the uses not just the residential portion. You need to read this ordinance carefully and the operative words are 'all other zones'.

Mr. Ochab informed the Board that he researched the history of ordinance 78-Code-739 adopted in 1978. Mr. Cavaliere verified that they were still referring to section 59-49 D. Mr. Ochab responded yes and continued to talk about the intent of the ordinance. He read a portion of the ordinance; whereas it is necessary to protect and preserve the integrity of an established character of residential neighborhoods of the Borough of Oakland of desirable areas where residents can live and raise families and whereas the intensity or of the use in certain places of public assembly has changed in recent years to make them incompatible with quiet residential neighborhoods in terms of adverse impact created by large buildings, increased traffic volumes, frequent use of employees or visitors and regular daily and evening activity requirements for substantial off-street parking areas and frequent special events catering to the general public and whereas the conditions disrupted the character and tranquility of residential neighborhoods then that the Mayor and Council deems that all residential areas of the Borough of Oakland are best served if places of public assembly; hospitals, sanatoriums, nursing homes, churches, private and public colleges, universities and private schools, libraries are established as conditional uses in residential zones within the Borough of Oakland.

Mr. Ochab read ordinance 59-49D adopted in 1978 which states that the uses listed would be treated as conditional uses within the residential zones of Oakland. He pointed out that it never mentions the non-residential zones which leads him to believe that the focus mentioned in 59-49 section D was to insure that residential neighborhoods would not be impacted. In 1979 the ordinance was revised and outlined that in RA-1, RA-2, RA-3, RA-4, RA-5 and RA-6 Residential zones

churches, houses of worship and other institutions are permitted as conditional uses in all residential zones and as permitted uses in all other zones. He believes the intent of this section of the ordinance was to make these institutions conditional uses protecting the residential areas from the impact of these uses. There is no wording in the ordinance that these institutions would have an impact on non-residential zones and he believes that the phrase 'in all other zones' was to discourage these institutions from impacting the residential areas. Mr. Cavaliere suggested that the ordinances be marked into evidence.

Exhibit A-1, dated January 12, 2016 the 1978 ordinance 78-Code-739.

Exhibit A-2, dated January 12, 2016 portion 59-49, page 129, of the 1979 ordinance.

Chairman Lepre questioned the status of 59-55 IP-Industrial zone. Mr. Cascio responded that the IP-Industrial permitted uses are exactly the same as today. He offered an explanation to the B-1 zone mentioned in the 78 ordinance. The B-1 zone was originally adopted to permit commercial properties such as clubhouses in the RA-6 Residential zone. Both these zones no longer exist and this is the reason they are before the Board with an Interpretation application.

Mr. Ochab stated that in section 59-65 of the ordinance it gives conditional use requirements in the RA-1, 2, 3, 4, 5, and 6 zones, which states again, the following are designated conditional uses and as principal uses in all other zones. This phrase shows up in two places of the ordinances. A discussion ensued concerning which Board a conditional use would go before.

Since 1978 a revision to subsection 3 of that section authorizing colleges and universities and section 5 authorizing hospitals, sanatoriums and nursing homes have been removed as permitted uses. He believes Mayor and Council looked at this section and had an opportunity to make changes but never made changes to the language indicating that churches are permitted uses in all other zones. Mr. Ochab observed that out of the 7 churches he researched, 6 of them are located in an industrial or commercial zone.

Chairman Lepre verified that Mr. Ochab is saying that in section of 59-49 D a house of worship is not permitted in a residential zone but a permitted uses in all other zones and this Interpretation carries over to the IP-Industrial zone where the language is silent on the subject. He expressed that he feels that the Industrial ordinance was specifically crafted and he is having trouble with finding answers from another section of the ordinance.

Mr. Porro cross-examined Mr. Ochab. He verified Mr. Ochab's comment that the ordinance is complicated and confusing. Mr. Ochab responded this is correct. Mr. Porro questioned Mr. Ochab that if the language is not clear in a section of an ordinance and considered silent, it should be prohibited. Mr. Ochab responded not necessarily. Mr. Cascio asked for clarification. Mr. Porro re-phrased his question. He questioned Mr. Ochab's if legislation did not specifically state what the use intended, that the assumption would be that the use is prohibited. Mr. Ochab responded not in that context. Mr. Porro questioned Mr. Ochab's testimony concerning RA-1 through 3 Residential zones and where a house of worship would be utilized as a conditional use. Mr. Ochab responded in the residential zone. Mr. Porro verified that a house of worship is not permitted in

the residential zone but is allowed as a conditional use. Mr. Ochab responded that it would be considered a conditional use in the RA-1, 2 and 3 zones. Mr. Porro verified that a permitted use is better than a conditional use. Mr. Ochab did not agree, a conditional use is a permitted use with specific requirements associated with it. Mr. Porro verified that in the Oakland ordinance when seeking a conditional use that application would go before the Planning Board. Mr. Ochab responded this is correct. Mr. Porro verified that they were before the Board of Adjustment. Mr. Ochab responded this is correct. Mr. Porro questioned Mr. Ochab on the residence or parsonage. Mr. Ochab explained that a church is inclusive of several accessory uses or ancillary uses one of which is a residence and there are others such as daycare, church hall all associated with the house of worship. His view on this is that the residence is not a separate entity and is a part of the church use as an accessory use to that use.

Mr. Porro questioned if Mr. Ochab read Mr. Lydon's report. Mr. Ochab responded that he did. Mr. Porro referenced Mr. Lydon's report and questioned if it is common practice for the zoning official to provide the Board his opinion of what the interpretation should be. Mr. Ochab responded that this is not always the case. He explained that typically when a zoning officer is unsure, he sends it to the Board of Adjustment. Mr. Porro verified that there is no documentation from the zoning officer. Mr. Ochab responded that this is correct. Mr. Porro informed Mr. Ochab that in Mr. Lydon's report it points out the six (6) specific uses permitted in the Industrial zone. Mr. Ochab responded that Mr. Lydon is referring to a section of the ordinance where these six (6) uses are considered permitted uses in the zone but it is not exclusive to these uses. He continued that Mr. Lydon is not suggesting that there may be other uses elsewhere in the zoning ordinance which would also permit it. Mr. Porro questioned where that is mentioned. Mr. Porro went to the ordinance and questioned if the six (6) specific uses in the Industrial zone portion of the ordinance are the same six (6) uses Mr. Lydon mentioned in his report. Mr. Ochab responded yes they are. Mr. Porro questioned are the words 'house of worship' among the six (6) permitted uses mentioned in Mr. Lydon's report and or in the ordinance. Mr. Ochab responded not in Mr. Lydon's report but in the same section of the ordinance being discussed this evening. Mr. Porro requested Mr. Ochab to read where it says a house of worship is a permitted use in the industrial zone. Mr. Ochab responded that it does not have to say it in the six (6) uses. Mr. Porro questioned if it would be fair to say that the words 'house of worship' is not within the six (6) permitted uses. Mr. Ochab responded that it is not required to be in the list of six (6) permitted uses. Mr. Porro verified that Mr. Ochab is trying relaying that a house of worship is a permitted use in the Industrial zone. Mr. Ochab responded that is correct. Mr. Porro expressed that Mr. Lydon's report sets forth exactly what the ordinance says, the six (6) permitted uses and questioned in those 6 uses, does house of worship appear anywhere within those six (6) uses. Mr. Ochab refrained from answering that question and pointed out Mr. Lydon's last statement that says he has not had the benefit of yet hearing applicant's testimony concerning the Interpretation application. He continued that Mr. Lydon has not spent the time that the applicant has researching this matter and included in his report what would typically be listed and will leave his mind open as a professional does when receiving testimony on an application.

Mr. Porro questioned if the Board should interpret the industrial zones permitted uses based upon Mr. Ochab's research and testimony rather than follow the specific language put forth within the

ordinance for the Industrial zone. Mr. Ochab responded that what he is saying is the ordinance as subscribed in sub-section D, allows churches as a permitted use within the industrial zone. Mr. Porro expressed that this was pointed out within the 6 permitted uses listed in the ordinance. He questioned if it would be fair to say that you are looking to another reference to come up with your interpretation. Mr. Ochab responded that he looked through other sections to come up with that references which is typical in zoning ordinances. Mr. Porro reviewed the ordinance that was read into the record. He questioned if Mr. Ochab is relying on the information set forth on page 129 of exhibit A-2 page. Mr. Ochab responded that this is correct. Mr. Porro verified the section as conditional uses in RA zones. Mr. Ochab responded this is correct and furthermore is permitted in all other zones. Mr. Porro asked Mr. Ochab to show him where it says that in the Industrial zone. Mr. Ochab responded that it does not have to. Mr. Porro questioned if Mr. Ochab is saying that exhibit A-1 is saying a house of worship is permitted in industrial zone. Mr. Ochab responded that he used the ordinance to show the impact in the residential zones but permitted the uses in all other zones. Mr. Porro verified that Mr. Ochab feels it is a conditional use in the Residential zone and a permitted use in the Industrial zone. Mr. Ochab responded the nature of the uses listed could clearly have an impact on the Residential zone rather than Industrial or Business zone.

Mr. Porro expressed to the Chairman that he submits to the Board that this is contrary to everything he has learned in land use and if it is not stated in an ordinance, then it is prohibited. In addition, a conditional use is not as secure as a permitted use.

Meeting recessed at 9:40 p.m.

Meeting resumed at 9:55 p.m.

Ms. Rubright cross-examined Mr. Ochab. She questioned Mr. Ochab if he reviews the entire zoning ordinance when preparing for his client. Mr. Ochab responded he does. Ms. Rubright questioned where he looked first when searching for permitted uses in a zone. Mr. Ochab responded he looks at the actual zone first (in this case the IP-Industrial zone section) but you would not stop there. Ms. Rubright questioned the title of section 59-49. Mr. Ochab responded section 59-49 Sub-Residential zone. Ms. Rubright verified that this is the section you would look at to find permitted uses in a residential zone. Mr. Ochab responded yes it would. Ms. Rubright confirmed that 59-49 sub-section D talks about conditional uses. Mr. Ochab responded yes it does. Ms. Rubright asked Mr. Ochab to read the section. Mr. Ochab read section D which lists conditional uses in residential zones and permitted in all other zones. Ms. Rubright confirmed that at the end of the section Mr. Ochab read, it refers to 59-65 and asked him to read that section as well. Mr. Ochab read the section of conditional uses in residential zones.

Ms. Rubright questioned what the residential zone districts are in Oakland. Mr. Ochab responded that there are several single-family zones and multi-family zones. Ms. Rubright informed Mr. Ochab that she researched and shared that along with the RA-1, 2 and 3 zones being discussed in this section, there are several other residential zones in Oakland such as RA-MD, RA-MD1, RA-C, RC, RA-1A, AH and RA2. Mr. Ochab responded that these are multi-family with exception to RA-2. Ms. Rubright confirmed that a multi-family is considered residential. Mr. Ochab responded this is correct. Ms. Rubright questioned that knowing there are other residential areas besides the RA-1,

2 and 3 would it be fair to say that the following are considered conditional uses and as permitted uses in all other 'residential' zones in accordance with the special requirements for conditional uses enumerated in section 59-65. She repeats her question that it would be reasonable to say when referring to all other zones that it could mean all other residential zones. Mr. Ochab responded that was not reasonable to him. Ms. Rubright questioned if a principal use means the same as permitted use. Mr. Ochab responded not always. Ms. Rubright questioned Mr. Ochab to read 59-65 conditional uses in residential zones. Mr. Ochab responded that within the RA-1, 2 and 3 Residential zones, the following is designated as conditional uses and as principal uses in all other zones. Ms. Rubright confirmed that that principal use is not necessarily permitted. Mr. Ochab responded that in this case it is a permitted use. Ms. Rubright requested the right to call her planner to testify this evening.

Mr. Cascio requested to re-direct the last question during the cross examination. He believes the question was that the ordinance meant in all other residential zones and Mr. Ochab responded it would not be reasonable. Mr. Ochab responded that it would not be reasonable because 1978 it has been the same language referring to these uses as permitted uses and also in subsection 6 it refers to uses in the B-1 zone so if this section was just talking about residential uses, why is it talking about a use in the B-1 zone. His conclusion is that the phrase 'all other zones' whether it be residential, multi-family, business, commercial and industrial zone goes beyond the residential use category when the ordinance refers a business use. Mr. Cascio expressed that from a planning perspective, the ordinance needs to be read exactly how it is written. Much time has passed since the ordinance was written and the language could have been changed. Ms. Rubright rebutted questioning where the B-1 zone was in the ordinance. Mr. Ochab responded that there is no longer a B-1 zone. Ms. Rubright questioned why this to was never amended in the ordinance. Mr. Ochab responded that he could not answer that. Ms. Rubright suggested that this would be an incorrect reference. Mr. Ochab explained that the B-1 zone is now the B-2 zone. Mr. Chadwick questioned if it is legal for any municipality to exclude houses of worship. Mr. Cascio responded no as stated under the Religious Land Use and Institutionalized Persons Act (RLUIPA). Mr. Porro expressed that houses of worship are and always have been permitted in Oakland. Mr. Chadwick expressed that he is hearing that if it is explicitly permitted, it is excluded. He explained that he went through every zone and he does not see it specifically permitted nor does he see it specifically prohibited in any zone. Chairman Lepre entertained a motion.

Motioned by Mr. Schneeweiss and seconded Mr. Smid, to open the meeting to the public to matters concerning the testimony of Mr. Ochab was voted unanimously by the Board.

No comments.

Motioned by Mr. Schneeweiss and seconded Mr. Smid, to close the meeting to the public to matters concerning the testimony of Mr. Ochab was voted unanimously by the Board.

Mr. Porro offered the testimony of Ms. Bridget Bogart as a professional planner to offer testimony. Ms. Bogart offered the Board her credentials and the Board accepted her qualifications.

Mr. Cascio addressed Mr. Bogart's qualifications. He stated for the record that she was hired as planner for an application to place a school in this zone a few doors down from the subject location. Ms. Bogart responded yes. Mr. Cascio had more questions but Mr. Cavaliere suggested that the questions be reserved for cross examination.

Mr. Porro verified that Ms. Bogart was engaged by the neighboring property owners to testify her opinion of an interpretation regarding 59-49 d of the Oakland zoning ordinance as it relates to churches as permitted uses in all zones. He questioned if she had an opportunity to review this ordinance and what were her findings.

Ms. Bogart explained that from a planning perspective, when researching an ordinance, she takes the general regulations that apply to the entire Borough then break down to each individual zone district, which is what this zone ordinance does. It has the general regulations for all districts. These regulations are applicable to all districts and goes into further detail of regulations applicable to residential districts as well as regulations applicable to industrial districts. As an overall concept all ordinance do that.

The applicant's planner testified the same thing by taking the general regulations and break it down further into the more specifics of the zones. Again, Oakland's ordinance does that. An objection by Ms. Gonchar that Ms. Bogart is characterizing the witness's testimony. Mr. Porro objected saying this is not permitted since there is one attorney handling the matter for the applicant. Chairman Lepre informed Mr. Porro that Mr. Cascio stated that he would be using a co-counselor. Mr. Cavaliere informed Mr. Cascio that only one counselor would be permitted to cross-examine. He asked what her objection was. Ms. Gonchar responded that Ms. Bogart is characterizing the witness's testimony which is not accurate but the record should allow to speak for itself rather than Ms. Bogart relying on Mr. Ochab's testimony. Mr. Cavaliere responded that the record notes the objection and requested Ms. Bogart continue with her testimony. Ms. Bogart continued that the Oakland ordinance does as she suggested by going to regular regulations starting with section 59-45 H, Regulations applicable to all Districts, which identifies regulation applicable to all zone districts and specifically in section H it says 'general use restrictions' any use not specifically designated as a principal use, accessory use or conditional use is specifically prohibited in any zoning district of the Borough of Oakland.

Section 46 goes into established districts and talks about the zoning map, lot and building regulations for the entire municipality, conformance to use regulations then you go down to the first section which is 59-49 which deals with residential zones which is the section the applicant is seeking an interpretation from where the title reads Residential zones. From a planning perspective, you would look at regulations for that section pertaining to residential zones. It also talks about conditional uses in residential zone districts.

The applicant's planner presented exhibit A-1 which was the creation of that ordinance 59-49 D. She did not get a chance to read it but noticed the first page, where it talks about residential districts and talks about buffering from larger uses. It is titled conditional uses for residential zones within the Borough. She touched on the Chairman's comments concerning it taking a long time to

craft the IP-Industrial ordinance which was done specifically and carefully. You have general regulations for each zoning district for the entire Borough. She touched on the IP-Industrial zone regulations where it talks about buffers specific to the uses. She referred to 59-59 E concerning permitted uses in the IP-Industrial zone subject to the requirements contained herein only the following uses shall be on any lot of required size in the IP-Industrial zone and those only uses are permitted. These are the six (6) permitted uses listed in your Planner's report.

General regulations in the Borough's ordinance then goes through specifics for the Borough's IP zone district. She finds it hard to say that all these other uses can be permitted when it states specifically that 'only the following uses shall be permitted. In addition, she believes the IP zone district was adopted after your ordinance for conditional uses in a residential districts was adopted. The ordinance identified as exhibit A-1 adopted in 1978 for conditional uses and the IP zone was introduced she believes a year later which specifically lists the six (6) uses permitted in that zone. It goes a step further in section 59D requiring buffer strips to be no less than 75-feet from the residential district. She concluded that, from a planning perspective, she does not understand why a municipality would go through the work and the process of planning for a district that requires distinct buffers for the surrounding residential areas and believes it is contrary to permit residential uses in that same district. In her opinion residential and industrial uses are the extreme opposite uses. These are the types of uses you would not put together. When reading 59-49-D Conditional Uses in Residential Zone District, I believe that wording is talking about all other residential districts where houses of worship are permitted as conditional uses.

Ms. Gonchar cross-examined Ms. Bogart. When citing 59-45 H, any use not specifically designated as a principal permitted use, an accessory use or conditional use is prohibited, Ms. Gonchar questioned if this means it all has to be listed in the same paragraph. Ms. Bogart responded it does not. Ms. Gonchar verified that permitted uses listed in two different sections, as being suggesting, are not contrary to that language. Ms. Bogart responded no it is not contrary. Ms. Gonchar questioned if Ms. Bogart misunderstood their application thinking they were proposing a single-family development. Ms. Bogart responded no she was suggesting that in the ordinance it appears that they try to buffer the IP-Industrial zone from the Residential zones and finds it hard to believe that they would allow a residential use inside the IP-Industrial zone. Ms. Gonchar expressed that the discussion concerns a church with an accessory use to that zone.

Ms. Gonchar questioned the conditions of a conditional and if they are exclusive of other bulk requirements related to the zone where the conditional use is permitted. Ms. Bogart responded no they are not. Ms. Gonchar questioned if there are conditions to a conditional use and general conditions of the zone would they not be mutually exclusive to the zone. Bogart responded no because you would not have to apply to the same use. If you were in a commercial zone and the zone had minimal lot size, buffer requirements, parking requirements and you had a conditional use that was allowed in that zone, there would be specific conditions relating to the conditional use and there may be bulk requirements for the zone.

Ms. Gonchar questioned if Ms. Bogart cited section 65 because the language and standards are applicable to bulk standards. Ms. Bogart identified section 65 because in 59-49 D the language permitted in all zones in accordance with special requirements for conditional uses enumerated in section 65. Ms. Gonchar questioned if those standards still apply if use was permitted. Ms. Bogart responded yes they do. Ms. Gonchar questioned if those bulk standards such as a lot size relative to a church, could be equally applicable to a church if it might be a permitted use as opposed to a conditional use. Ms. Bogart responded that if you have a conditional use it has to have the specifics standards. Special requirements for a conditional use does not identify if it is a conditional use standard or a typical regulation. Ms. Gonchar questioned if the uses that are listed are permitted uses in all other zones, could the bulk standard in the conditional use section 65 be applicable to those uses even if they were permitted. Ms. Bogart responded only if you read the five words you keep reading 'permitted use in all other zones' she explained that Ms. Gonchar needs to continue the sentence that says 'in accordance with the special regulations put forth for conditional uses. Ms. Gonchar expressed that it could be a reference to the bulk requirements. Ms. Bogart responded it does not say that it says specific requirements for conditional uses. Ms. Gonchar expressed that the same bulk standards could apply as a permitted uses. Ms. Bogart responded if it says that.

Ms. Gonchar questioned if Ms. Bogart had a license to practice law. Ms. Bogart that she does not. Ms. Gonchar questioned that as part of her planning practice, does she read cases that interpret the land use law or ordinances. Ms. Bogart responded she does. Ms. Gonchar questioned if Ms. Bogart is aware that there is case law which indicates that the title of an ordinance is not controlling of the content nor does it restrict it. Ms. Bogart responded no she did not. Ms. Gonchar had no further questions.

Mr. Cavaliere suggested that the next planner testify. Mr. Robert Larsen with CPL Partnership, LLC located at 100 Matawan Road, Matawan, New Jersey was sworn in. He is the Planner for Ms. Rubright's client. Mr. Larsen offered his credentials and the Board accepted his qualifications. Ms. Gonchar questioned if Mr. Larsen had a degree in planning. Mr. Larsen responded that he does not, his degree is in architecture but his firm has focused in the areas of land planning and he has sit on numerous occasions for his professional planners. Chairman Lepre verified that he is a licensed planner in the state of New Jersey. Mr. Larsen responded that he is.

Mr. Larsen gave his opinion of the interpretation. He agrees with points made by Ms. Bogart. He explained that he works with ordinance every day and focuses generally on the ordinance then he goes to the specific section. He finds mistakes in ordinance which he thinks is the case here. He looks for wording regulations to all zones then go to specific zones and look for regulations specific to those zones he then goes to definitions and appendixes that might apply or override. In this case, his opinion is heading conditional uses in residential zones. If were the consumer of this ordinance, he would be looking for regulations for the Industrial zone and would not go looking under each and every sub-heading of a residential zone. In this case where the history of an ordinance is not clear, he would look at what is enforceable. This ordinance is unclear because it gives you a regulation supposed to be applicable to all zones under the sub-heading of conditional uses of residential zones and then the word principal rather than permitted. These two words are

used differently within this ordinance and he believes the IP-Industrial zone has a list of permitted uses not principal uses. Furthermore, the B-1 zone referenced does not exist so obviously there are errors within the ordinance. He believes the intention of the ordinance was to apply that RA-1, RA-2, RA-3 Residential are low density zones and RA-C, AH-1, RA-MD are more intense and therefore in a low density area a house of worship would be a conditional use and a permitted use in the more intense residential zones. He would have no reason to read this section if he were seeking development in an industrial zone.

Ms. Gonchar cross-examined Mr. Larsen. She questioned if he reads the entire ordinance when prepping for an application. Mr. Larsen he first reads the section applicable and then goes section to section if necessary. Ms. Gonchar questioned if it says in section 59-49 D 'all other residential zones'. Mr. Larsen responded it does not. Ms. Gonchar suggested that Mr. Larsen was adding language to the ordinance and then characterizing what is written as an error. Mr. Larsen responded that this is not a clear interpretation and an error to zone that no longer exists. Ms. Gonchar questioned if Mr. Larsen if knew that the zone that no longer in exists was not in existence at the time the ordinance was written. Mr. Larsen responded that he did not. Ms. Gonchar suggested that he does not know that it was an error and that it has not been modified. Mr. Larsen responded that he can only look at what is in front of him and he sees an error. Ms. Gonchar expressed that Mr. Larsen has not read the entire ordinance he is basing his decision of what is in front of him. Ms. Gonchar questioned Mr. Larsen if he was retained to give his opinion on the meaning of the ordinance. Ms. Rubright responded that Mr. Larsen was retained to represent her client at the hearing. Ms. Gonchar questioned if Mr. Larsen did an investigation of ordinance filing OPRA requests, getting copies of ordinances and information from the Borough how the ordinance has been applied in the past. Mr. Larsen responded that he did not. Ms. Gonchar had no further questions.

Motioned by Mr. Smid and seconded by Mr. Wegman, to open the meeting to the public regarding matters concerning the testimony of Ms. Bridgette Bogart was voted unanimously by the Board.

No comments.

Motioned by Mr. Schneeweiss and seconded by Mr. Wegman to close the meeting to the public regarding matters concerning the testimony of Ms. Bridgette Bogart was voted unanimously by the Board.

Mr. Lydon advised the Board that in MLUL there are two provisions which require all development regulations to be reviewed by the Planning Board before a second reading and adoption to see if there is consistency with the master plan. We have only heard the term master plan once at the very end. He suggests that each planner look at the master plan and continue this hearing in February 9, 2016.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to carry the Guru Nanak Mission to the February 9, 2016 public hearing with no further notice.

Roll call vote: Ayes: Mrs. Steele, Messrs. Ackerly, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: Messrs. Bremer and Johnson.

MEMORIALIZATION OF RESOLUTION:

1. L & L Builders – 7 Garrison Place, Block 3701, Lot 30. Approval for a front and rear yard setback.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to memorialize the above resolution of approval.

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

APPROVAL OF MINUTES:

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, to approve the November 10, 2015 minutes and were voted unanimously by the Board.

Motioned by Mr. Chadwick and seconded by Mrs. Steele, to approve the December 8, 2016 minutes and were voted unanimously by the Board.

NEW BUSINESS:

None

OLD BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Wegman and seconded by Mr. Johnson, to adjourn the meeting concluding at 10:55 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

*Next meeting is February 9, 2016