



BOROUGH OF OAKLAND, NEW JERSEY

FEBRUARY 9, 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, Bremer, Chadwick, Smid, Wegman, Schneeweiss and Chairman Lepre.
Absent: None

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

PUBLIC MEETING BEGINS AT 8:05 p.m.:

Chairman Lepre announced that Mr. Johnson has resigned from his position on the Board. He recommended to the Mayor that Mr. Ackerly be moved into that position and Gina Steele be moved into the Alternate I position. Chairman Lepre entertained a motion to accept the resignation of Mr. Johnson.

Motioned by Mr. Chadwick and seconded by Mr. Wegman, to accept the resignation of Mr. Emmett Johnson was voted unanimously by the Board.

1. Guru Nanak Mission, Inc. – 138 Bauer Drive, Block 3603, Lot 2. Continued public hearing for an Interpretation of the zoning ordinance 59-49.

Chairman Lepre announced that this is a continued public for an Interpretation of the zoning ordinance 59-49, Residential zones, for Guru Nanak Mission which may or may not be followed by a use variance. He reminded the Board that they left off last month hearing testimony from all

three planners which were then cross-examined by all attorneys. It is suggested that the Board Planner respond to the testimony given and share his opinion with the Board on the Interpretation.

Mr. Steve Lydon was sworn in and testified that he is employed by Burgis Associates and is the Board Planner. He explained that his opinion is that the applicant is discounting the language and ignoring headings of the ordinance 59-49 titled Residential zones. It could be problematic when reading an ordinance if the meaning of words, titles and phrases are ignored. He expressed that it is clear that the subject property is in the Industrial zone and not the Residential zone where a house of worship application would require a D-1 use variance. A house of worship application should be treated similar to the private school uses in the Industrial zones who received prior approval for use variances in the IP-Industrial zone.

In the section 59-49; sub-section D titled Conditional Uses, it applies to Residential zones not the IP-Industrial zone. In section 59-55 IP- Industrial Park zone sub-section E, it lists permitted uses in the Industrial zone and this is where you would go when seeking a location in the Industrial zone.

Mr. Cascio expressed that he respects Mr. Lydon's opinion but reminded the Board that there is a history with the original ordinance. He explained that in the Residential section of the ordinance under conditional uses, it clearly states that a house of worship in the RA-1, RA-2 and RA-3 Residential zones is a conditional use and a permitted use in all other zones. Mr. Lydon responded that Mr. Cascio is taking this request out of context. Mr. Porro objected to Mr. Cascio's statement. Chairman Lepre noted the objection. Mr. Porro noted that the application is before the wrong Board and should be before the Planning Board. Mr. Cavaliere reminded Mr. Porro that this application is being handled as an interpretation and the Board will be advised by the Board Planner.

Mr. Cascio asked if Mr. Lydon could interpret the meaning of the sentence "in all other zones" which is found in the residential use section under conditional uses. Mr. Lydon responded that you would read it from the 59-65 Conditional uses in a residential zones.

Mr. Cascio referred to case law that discusses that "titles" and "sections" of should not control the context of the ordinance. Mr. Porro objected and stated that Mr. Cascio interceded and mischaracterized the case law. Mr. Lydon explained that when looking for uses in the Industrial zone, you would start by referring to sub-section E which lists permitted uses in the Industrial zone. Mr. Cascio responded that Churches and schools are permitted in all other zones. Mr. Lydon informed Mr. Cascio that churches and schools are permitted uses in the CDB-1 and CDB-2. Mr. Cascio added and a conditional use in RA-1, RA-2 and RA-Residential zones and a permitted use in all other zones. Mr. Cascio then referred to 59-45 Regulations applicable to all zone are general specific uses. He expressed that Residential zones tend to be more restrictive when following procedures.

Mr. Lepre reminded Mr. Cascio that the Board's job is to interpret the zone as it is and sometimes the language is not flawless. For instance when the ordinance refers to the B-1 Business zone, it is clear that this zone no longer exists. Mr. Cascio explained that at the time the ordinance was

drafted, there was a B-1 zone and the phrase “permitted in all other zones” meant what it says. Chairman Lepre informed Mr. Cascio that sub-section 6 of D is no longer valid. Mr. Cascio responded that this has no effect on section D and the intent of the ordinance is that a church is a permitted use in all other zones.

Chairman Lepre verified that the Board is interpreting what is before them. Mr. Cascio referred to Mr. Lydon’s report of January 6, 2016 and expressed that since the B-1 Business zone no longer exists, it does not affect the meaning of the ordinance.

A discussion ensued concerning the type of schools currently in the Industrial Park. Mr. Lydon explained that non-profit and private schools are currently in the Industrial Park by way of use variance.

Mr. Porro cross-examined Mr. Lydon. He questioned if the application was first submitted as a use variance and requested that the original application be entered as evidence.

OM-1, Original application submitted by the Guru Nanak Mission.

He questioned Mr. Lydon if a residential use was among the six uses permitted in the IP-Industrial zone. Mr. Lydon responded no. The discussion continued whether the three bedroom, two bathroom apartment would be considered a second principal use. Mr. Cascio reminded counsel and the Board that they are currently seeking an Interpretation. Mrs. Rubright would not be cross-examining the Mr. Lydon but requested an opportunity to give her statement at the conclusion of the meeting.

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, to open the meeting to the public regarding matters concerning the Mr. Lydon’s testimony concerning the Interpretation 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 Mr. Lydon’s testimony concerning the Interpretation was voted unanimously by the Board.

An opinion was given that the phrase “permitted in all other zones” was to mean permitted in all other residential zones. Mr. Cascio responded that the ordinance was written in the manner it was intended and if the ordinance meant in the residential zone, it would have said that. He continued that the wording is clear that a church is a conditional use in the RA-1, RA-2 and RA-3 residential zones and a permitted use in all other zones.

Meeting recessed at 9:15 p.m.

Meeting resumed at 9:20 p.m.

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

Mr. Porro shared his closing statement with the Board. He did not agree with Mr. Cascio's comment concerning titles and sections should not control the context of the ordinance. He believes that the house of worship with a residential component would require a use variance for the IP-Industrial zone and two use variances for the house of worship use and residential component inside the house of worship.

Mrs. Rubright shared her closing statement with the Board. She referred to section 59-43 of the ordinance titled Purpose; Interpretation. This section talks about the master plan and its intent to regulate the use of land within zoning districts listing a number of things to secure safety and order to a district. She also referred to section 59-55 of the ordinance title Permitted uses in the IP-Industrial zone and does not see house of worship among the six permitted uses listed in that section. It was clear to her that a house of worship is not a permitted use within the IP-Industrial zone and that Mr. Cascio's provision of "all other zones" disregards the spirit of the ordinance.

Mr. Cascio shared his closing statement with the Board. He stated that he believes the intent of the phrase "all other zones" means exactly what it says. When an ordinance is written, the format is then presented to the State Land Use Committee of MLUL. He continued to describe his theory that the RA-1, RA-2 and RA-3 Residential zones are more restrictive and that it has become more common for schools and daycares to move into the Industrial zone. Mr. Cascio read the ordinance. He expressed that it is logical to him what they meant in the ordinance.

A discussion ensued concerning the public notice. Mr. Porro expressed that he still believes that the public notice given continues to be insufficient. Mr. Cavaliere responded that he believes that notice fair to the public and covering all basis. He expressed that there is no perfect notice. Mr. Cascio added that this matter was addressed before the notice was filed and there was no objection.

Mr. Cavaliere suggested that the Board consider, discuss and put their comments on the record concerning the application. He advised the Board what to consider while making a decision on the interpretation and keeping an open mind.

Chairman Lepre explained that he re-read the ordinance, referred to section 59-1; Title; Purpose; Scope; Interpretation, Article VII titled Zoning, Purpose and Interpretations, section 59-55; IP-Industrial Park zone, section 59-56; I-3 Industrial zone and back to 59-46; Residential zones. After all the research pertaining to this Interpretation it is his opinion that the word "residential" was left out of the phrase "all other zones" and therefore, the applicant would need to seek a variance.

Mr. Chadwick shared Chairman Lepre opinion. He explained that he is an engineer and would first refer to the section of the ordinance that pertains to Industrial Park when seeking permitted uses.

He agreed with Mr. Lydon that a house of worship is a permitted use in only two zones, CBD1 and CBD2.

Mr. Wegman explained that for 35 years his business was to interpret contracts. He believes that the B-1 Business zone is the B-2 Business zone currently. He too searched the ordinance book leading him to believe that a house of worship is not a permitted use in the Industrial zone requiring the applicant to seek a variance or two.

Mr. Ackerly agreed with his colleagues and after reading through the ordinance believes if the Interpretation is not clear, the applicant should take the restrictive path by seeking a variance.

Mr. Schneeweiss agreed with the Board members. He believes that the applicant should have researched the possibilities of the property before purchasing it. It is clear to him that the applicant will require a use variance for a church and a use variance for the residential use.

Mr. Smid agreed with the Board members. He expressed that he does not interpret the ordinance that a house of worship is permitted use in all other zones other than the RA-1, RA-2 and RA-3. This application would need to seek a use variance.

Mr. Bremer agrees with the Board that the applicant needs to seek a use variance.

Mrs. Steele questioned the comment made by Mr. Lydon that if the application were a permitted use, it would be before the Planning Board. She believes that this is not a permitted use.

A discussion ensued concerning the legal timeframe where the application would need to be completed by. Mr. Porro questioned if Mr. Cascio would agree and state for the record to an extension of time and Mr. Cascio expressed he would have no problem extending the time.

Chairman Lepre entertained a motion.

Motioned by Mr. Chadwick and seconded by Mr. Wegman, the Interpretation of section 59-49 of the ordinance is that a house of worship is not a permitted use in the IP-Industrial zone.

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

RESOLUTIONS:

1. Authorized Agreement with Board of Adjustment Engineer.

Motioned by Wegman and seconded by Mr. Smid, to adopt a resolution supporting the authorized agreement between the Board of Adjustment and Burgis Associates as Board Planner for 2016 was voted unanimously by the Board.

2. Authorized Agreement with Board of Adjustment Engineer.

Motioned by Wegman and seconded by Mr. Bremer, to adopt a resolution supporting the authorized agreement between the Board of Adjustment and Boswell McClave Engineering as Board Engineer for 2016 was voted unanimously by the Board.

3. Authorized Agreement with Board of Adjustment Attorney.

Motioned by Schneeweiss and seconded by Mr. Chadwick, to adopt a resolution supporting the authorized agreement between the Board of Adjustment and Matthew Cavaliere, Esq. as Board Attorney for 2016 was voted unanimously by the Board.

MEMORIALIZATION OF RESOLUTION:

None

APPROVAL OF MINUTES:

Motioned by Mr. Schneeweiss and seconded by Mr. Smid, to table the January 12, 2016 minutes to the March 8, 2016 hearing was voted unanimously by the Board.

NEW BUSINESS:

None

OLD BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Wegman and seconded by Mr. Schneeweiss, to adjourn the meeting concluding at 10:50 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

*Next meeting is March 8, 2016