

MAY 31, 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, Schneeweiss, Wegman and Chairman Lepre.  
Absent: Messrs. Helfant and Bremer

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

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to excuse the absence of Messrs. Helfant, Bremer, Ackerly and Wegman was voted unanimously by the Board.

SPECIAL MEETING BEGINS AT 8:10 p.m.:

Mrs. Steele sitting in for Mr. Bremer.

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

Chairman Lepre stated for the record that Mr. Ackerly and Mr. Wegman have listen to the recording of the Special Meeting held May 27, 2016.

Ms. Gonchar reminded the Board that Mr. Ochab completed his testimony at the last hearing and is ready for cross-examine and redirect. Chairman Lepre touched on RLUIPA (Religious Land Use Institutionalize Persons Act) a federal statute. Mr. Ochab responded that this refers to economics purposes and boards of adjustment do not get involved in the economics of an application. He explained that this law can put substantial burden on towns that oppose restrictions for the practice of religion. Economics or tax ratable loss should not be a discussion or a reason to deny an application. The master plan addresses issues such as economics.

Mr. Schneeweiss questioned if Mr. Ochab knew of any building with a residential component within the IP-Industrial zone. A discussion ensued concerning manufacturing and a residence at the same site. Mr. Schneeweiss informed Mr. Ochab that there are 26 nonprofit inherently beneficial uses in town. Mr. Ochab responded that if the town sees this as an issue, then they would need to address that in the next master plan review.

Mr. Schneeweiss questioned why the Borough should allow a house of worship in the Industrial Park. Mr. Ochab responded that a house of worship is permitted in the B-1 and B-2 Business, CBD zone and Residential zone and require three acres. Warehouses in industrial zones have become a good location with plenty of parking. Economically it would be a perfect fit in the IP-Industrial zone where empty industrial buildings are sitting.

Mr. Lydon questioned five parking spaces that were not addressed in the site plan. Mr. Ochab responded that the spaces will be incorporated if the Board requires. Mr. Lydon questioned Sica case law and septic requirements. Mr. Cascio responded that their septic engineer is currently in the process of designing the septic improvements which will require Health Department approval. Mr. Lydon questioned the required 118 parking spaces for the 19,500 square foot building and the overflow parking. Mr. Ochab responded that there will be 112 parking spaces and if that requirement changes, the applicant will need to come back to the Board. Mr. Lydon questioned the presence of buses at the site. Mrs. Gonchar responded that people will not be bussed in.

Chairman Lepre referenced the term 'inherently beneficial' and particular uses that fit in this category such as schools hospitals nursing homes. He questioned if there would be any exterior work or setbacks be involved. Mr. Ochab responded that no exterior work would be done on the site.

Mr. Ochab reviewed the impact of traffic, hours of operation and lighting. Sica case law requires boards to go through and identify the impacts to surrounding properties and the final task would be to balance the benefits. Chairman Lepre questioned if a residency within is common practice within inherently beneficial. Mr. Ochab responded that this can be a part of an inherently beneficial use as well as an accessory to the use. RLUIPA protects these institutions as they are proposed.

Ms. Susanne Rubright cross examined Mr. Ochab. She stated for the record that her client does not object to the use, but feels the use is an inappropriate use for the zone.

Ms. Rubright questioned the type of manufacturing that takes place in the IP-Industrial zone. Mr. Ochab responded this use to be a major industrial zone but has changed due to sizes of the buildings. Ms. Rubright questioned the owner/tenant ratio and if there were any other houses of worship, residential uses, retail and office. Mr. Ochab responded he was unaware.

Ms. Rubright questioned the reason residential zones are separated from industrial zones. Mr. Ochab responded perhaps the truck traffic and noise but this is all changing now. Mrs. Rubright

questioned if the presence of odor, truck noise, traffic and lighting are associated with an industrial park. Mr. Ochab responded that it is. Ms. Rubright questioned Mr. Ochab if he thought industrial and residential zones are of an opposite spectrum. Mr. Ochab responded historically yes.

Ms. Rubright questioned if an outdoor play area was being offered for the proposed resident. Mr. Ochab responded he did not believe so. He expressed that apartment buildings do not always offer a play area for their residents and if kids were to be out playing in the industrial area, it would be during off hours. There is no real danger at the proposed site since the child/children have plenty of space to spread out.

Ms. Rubright touched on the overflow parking option and going back to the Board for approval if needed. She questioned if valet services were being proposed in the event they need additional parking. Mr. Ochab responded that no valet parking is being proposed for the additional parking at 112 Bauer Drive and arrangements for the overflow parking have already been discussed with the property owner.

Ms. Rubright questioned a variance within the buffer and if adequate buffer is being provided. Mr. Ochab responded that they are setting lights on the edge of the buffer to shine into the parking lot which will have no effect on the 75 foot buffer.

Ms. Rubright referenced the 1994 and 2000 master plan and questioned if the intent for the subject property was to provide economic viability for the town. Mr. Ochab responded that was the intent of the master plan however, the property now sits with six vacant buildings that cause hardship for the property owner. This topic has not been addressed for the subject site even in the last reexamination. Ms. Rubright questioned if the solution is to continue granting these types of variances. Mr. Ochab responded that zoning and planning are years behind since there has been a decline in the demand for this type of industrial space. This would need to be addressed in the master plan and this specific area has not for the last three reexaminations. The planner should study this area to find appropriate and compatible uses which he feels a house of worship fits that criteria. Ms. Rubright questioned if an industrial use would be more compatible. Mr. Ochab informed Ms. Rubright that people working in the industrial park use these non-permitted uses such as the gym and daycare.

Ms. Rubright confirmed that the house of worship would be open Friday evenings and Sunday morning with an occasional special service on Saturday. Mr. Ochab responded that Mr. Sethi testified to that. Ms. Rubright questioned the type of activities that would take place at the site. Mr. Ochab responded that Mr. Sethi testified to this.

Mrs. Rubright referred to previously entered exhibits for other industrial properties in the area. She questioned which houses of worship needed use variances and which were permitted uses. Mr. Ochab responded that he believed that Norwood and Paramus required use variances and Secaucus received special exception with conditions.

Mrs. Rubright questioned if the Planning Board is working on the Borough's Reexamination Report and requested that he explain the procedure. Mr. Ochab responded that the Planning Board has meetings to review land development and offers a proposal and recommendation of their findings to the governing body. She questioned the responsibilities of the Zoning Board of Adjustment. Mr. Ochab responded that Zoning Board prepares an annual report of applications heard.

Ms. Rubright questioned when Mr. Ochab became involved with the application. Mr. Ochab responded he was hired back in September 2015. Ms. Rubright referenced the mitigating and detrimental effects portion in his report concerning traffic flow, onsite parking and streetscape. She confirmed that services would be Friday nights and Sunday mornings with no outdoor activities. Mr. Ochab responded that this is correct.

Ms. Rubright verified that a residence is being proposed for inside the building and not somewhere else on the property.

Ms. Rubright referenced Mr. Ochab's report and questioned the geographical area his client was looking in for their house of worship. Mr. Ochab responded that the search was primarily in Bergen County area, north of Route 80. Ms. Rubright verified that the applicant is proposing a residence inside the building and not another building on the property. Mr. Ochab responded that the residence is being proposed for inside the building. Ms. Rubright verified the hours of operation. Mr. Ochab responded that services would be offered Friday night from 7:00p.m. to 9:00 p.m. and Sunday from 9:00 a.m. to 11:00 a.m. and 11:30 a.m. to 1:00 p.m.

Ms. Rubright questioned how the septic issue would be handled if the occupancy exceeded the maximum of 250 people. Ms. Gonchar responded that the maximum occupancy for the building is 250 people which the septic system is designed to handle and they would not be exceeding that maximum. They are currently looking into an upgrade with the septic due to the commercial kitchen they are proposing but this will require NJDEP approval. Chairman Lepre confirmed that the applicant will need both Health Department and NJDEP approval.

Meeting recessed at 10:00 p.m.

Meeting resumed at 10:10 p.m.

Mr. Kenneth Porro cross examined Mr. Ochab. He questioned whether the use for the residential component was mentioned in the public notice given. Mr. Ochab responded that the residential is included is included in the use variance notice. Mr. Porro questioned demographics of where the temple would draw congregants from. Mr. Ochab responded adjacent towns such as Wayne, Franklin Lakes, Mahwah, Pompton Lakes, Ringwood and Wanaque.

Mr. Porro referenced SICA case law and questioned if a house of worship is considered an inherently beneficial use. Mr. Ochab responded that this is correct. Mr. Porro reviewed the laws of RLUIPA and questioned whether these rules apply to this application allowing an application to impact surrounding properties.

Mr. Porro reviewed the years the master plan reexamination took place and that a house of worship was has never been a permitted use. Mr. Ochab responded that the master plan does not address houses of worship but it may be a good idea for the Borough to reexamine the evolution of the Industrial Park.

Mr. Porro questioned if the residential component in the Industrial Park could set precedence for the owners of the vacant buildings. Mr. Ochab responded that there is no precedence set and this application has no bearing on the rest of the Industrial Park.

Mr. Porro confirmed that there is no play area and outdoor festivals being proposed. He confirmed the hours of operation.

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

No comments.

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

Ms. Gonchar redirected her questioning to Mr. Ochab. She questioned if apartment buildings supply outdoor play areas for children. Mr. Ochab responded that apartment buildings do not usually supply play areas for children. A discussion ensued concerning that usually parents monitor their children while they are outdoors playing.

Ms. Gonchar questioned the zone that abuts the rear of the subject site. Mr. Ochab responded that it is a residential zone in Franklin Lakes. Ms. Gonchar questioned if a house of worship is permitted in the residential zone. Mr. Ochab responded that a conditional use is required for the residential zones and a house of worship is permitted in the B-1 Business zone, CBD-1 and CBD-2 zones. Ms. Gonchar verified that a 75-foot buffer is required to buffer between the Industrial Park and the residential zone. Mr. Ochab responded that there is a 75-foot buffer of vegetation is used to separate the two zones.

A discussion ensued concerning the MLUL, Municipal Land Use Laws and action would need to be taken by Planning Board and the Governing body to change a zone. Mr. Ochab agreed and explained that the IP-Industrial zone has changed in the last 7 years and there has been no intent to change the zone. Ms. Gonchar reviewed other use variances granted in the Industrial Park and questioned Mr. Ochab if he thought granting this use variance with a residential component would set a precedence with other property owners in the Industrial Park. Mr. Ochab responded that each case is individual and did not think that this would set a precedence. He explained that every Sikh temple has a residence and this component is protected by RLUIPA which protects the concepts of religion. Ms. Gonchar questioned if Mr. Ochab characterized this residential

component as an accessory use. Mr. Ochab responded that he did and that this is common practice for religious facilities to incorporate a residence within principle use on a property.

Ms. Gonchar verified that this use is identified as an inherently beneficial use by Sica case law.

MEETING ADJOURNED:

Motioned by Mr. Schneeweiss and seconded by Mr. Smid to adjourn the meeting concluding at 11:05 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

\*Next meeting is June 14, 2016