

JULY 11, 2017 MINUTES
OAKLAND BOARD OF ADJUSTMENT
OAKLAND SENIOR CENTER - 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 8:06 P.M.

ROLL CALL: Present: Messrs. Rose, Arredondo Ackerly, Chadwick, Smid, Wegman, and Chairman Lepre.
Absent: Messrs. Arredondo, Bremer and Schneeweiss.

Motioned by Mr. Smid and seconded by Mr. Chadwick, to excuse the absences of Messrs. Arredondo, Bremer and Schneeweiss was voted unanimously by the Board

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

Mr. Rose sitting in for Mr. Schneeweiss

PUBLIC MEETING:

1. Bowitz – West Oakland Avenue, Block 2501, Lots 9, 10, 11, 16 & 30. Continued requested that their application for a Zoning Permit be carried to the May 9, 2017 public hearing.

Mr. Harold Cook, Esq. informed the Board that his presentation of the application is complete. In addition he drafted a letter for the Board pointing out the existing businesses, their location on the property and the number and size of vehicles for each business.

Chairman Lepre informed Mr. Cook that four of the residents in close proximity to the Bowitz property informed him that they were not formally noticed and just found out about the application. Mr. Cavaliere explained the process involved with public notice to residents living within 200-feet of the property. Mr. Cook and Chairman Lepre reviewed the public notice given for the application and determined that all four residents were noticed by the applicant but were

not home to sign for the certified mail. The Post Office made several attempts and returned the certified letters that could not be delivered back to the applicant. Mr. Cavaliere expressed that the public notice was executed properly and he was satisfied to move forward with the application. He offered a brief explanation of the application to the residents just learning about it.

Mr. Cook went on to discuss the letter he drafted which gives the public more understanding of the businesses and magnitude of what's being conducted. He included facts from Ms. Gregory's planning report confirming that the commercial uses in the building are consistent with those uses permitted back in 1937. The existing businesses are Winks/Krug Landscaping (which includes Poison Ivy Gone and Gro-Organic), Louis Lee Paving, Swim Fish Pond and Pool and Robono Auto Sales.

A discussion ensued concerning the parking requirements. Mr. Cook explained that there is not macadam to provide parking stalls. He informed the Board that the reason for this zoning permit is to secure the non-conforming use as it is today in the event Mr. Bowitz decides to sell the property or will it to his family. If the Board fails to grant Mr. Bowitz the zoning permit, the property will continue to operate as it has for the past 80 years. Chairman Lepre entertained a motion to open the meeting to the public.

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

Ms. Jennette Saporito, 105 Lakeview Terrace, questioned whether the subject property was located in a commercial area. Mr. Cavaliere responded that this is not a commercial area but the Bowitz use of the property pre-dates the zoning schedule. She expressed that there must be some change since coming before the Board. Mr. Cook responded that there is no change being proposed and explained, once again, the reason for the zoning permit.

Mr. Gardner Smet from Pompton Lakes explained that he represents his lake community and questioned if residents from Pompton Lakes, in the 200-foot radius, were noticed. Mr. Cook responded that the residents from Pompton Lakes were not noticed. Mr. Cavaliere informed Mr. Smet that no notice was required for this application, the applicant noticed as a courtesy to the residents.

Ms. Patricia Carrera, 93 Lakeview Terrace, questioned how the Board knew Mr. Bowitz was doing everything legally. Chairman Lepre responded that Mr. Bowitz submitted documents that were entered into evidence providing proof to the Board that he maintains a license to conduct his dealership. Ms. Carrera questioned if the Board could limit the size and number of vehicles accessing the property. Chairman Lepre explained that this is not a site plan application where the Board can require or request certain things. The applicant is before the Board strictly to be allowed to continue the non-conforming uses that originated back in 1937. Mr. Cavaliere explained if the Board decided not to grant the applicant a zoning certificate to continue the non-conforming use, the applicant would walk away but continue his business as is. He assured the

residents that it would be better to grant the zoning certificate to Mr. Bowitz because this would restrict him from ever increasing the non-conforming use. The Borough would have more control.

Ms. Susan Tomsey, 99 Lakeview Terrace, questioned an easement the applicant uses for access behind 128 Lakeview Terrace. Mr. Cook responded that Mr. Bowitz provided a document that shows an agreement between the property owner and himself for the use of the private access. Mr. Bowitz explained his father offered the town a parcel at the end portion of Lakeview Terrace so that snow plows and other Borough vehicles would be able to turn around. Ms. Tomsey questioned if Bowitz has an auto dealership certificate. Mr. Cook responded that Mr. Bowitz's dealership is licensed with the state of New Jersey which comes out to inspect the property every two years. Mr. Cavaliere requested that Ms. Tomsey be sworn in. Ms. Tomsey was sworn in and gave some history concerning the property and informed the Board that the use has expanded which includes more trucks and dump trucks driving down a residential road. She expressed her concerns with the environmental impact on the property and to the neighboring homes. Mr. Cook repeated that if there is no approval from the Board nothing changes on the property.

Ms. Cindy Godfrey, expressed her concerns with the amount and size of the trucks driving through the neighborhood. Chairman Lepre repeated this is not a site plan application and the Board is not voting on the particulars concerning the use, the vote is to continue the zoning permit nothing else. Mr. Cavaliere expressed that this zoning permit approval is the baseline for keeping the businesses from expanding. If nothing is done, the town will have no way of knowing whether the property is expanding the use. By approving the zoning permit, the applicant would be required to have yearly inspections done by the town.

Mr. Steven Jacobson, 400 West Oakland Avenue, questioned if the baseline could include the number of parking spaces and business. Mr. Cavaliere responded that Mr. Cook has provided a letter he drafted to the Board indicating the number of businesses and the number of vehicles associated with it. Chairman Lepre entertained a motion to close the meeting to the public.

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

Mr. Cook ended his closing statement by explaining that the non-conforming uses are compatible by nature. He believes he presented adequate evidence to back up the request for a zoning permit to continue a non-conforming use. The letter drafted July 11, 2017 would assist while preparing the resolution. The letter does not include the number of parking spaces but does include the number of businesses and the number of vehicles associated with each business. A discussion ensued concerning the size of the trucks that access the site. Mr. Cavaliere suggested that Mr. Cook supply the Board information on the size of trucks accessing the property.

Chairman Lepre expressed that this type of application is rare and it is only to allow a non-conforming use that has evolved through the years to continue as is. Mr. Chadwick explained that the Board has reviewed the testimony and documentation associated with this application and

verified that this is not approval for the businesses or the number of vehicles. This is approval for the continued non-conforming use or a grandfathered use. Mr. Cavaliere added that the resolution would aid the Borough in keeping track of the uses on the property. Chairman Lepre entertained a motion.

Motioned by Mr. Rose and seconded by Mr. Wegman, to approve the zoning permit contingent to Mr. Cook's letter of July 11, 2017 acting as a baseline and subject to truck size information.

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

Meeting recessed at 9:25 p.m.

Meeting resumed at 9:35 p.m.

4. A& E Ventures of Oakland, LLC – 101 Plaza Road, Block 2702, Lots 1.01 and 1.02. Public hearing for a preliminary and final site plan, subdivision, use and bulk variances.

Ms. Gail Price, Esq. with Price, Meese, and Shulman & D'Arminio, Andrew Fede with Archer Attorneys at Law and Mr. Thomas Pugsley with North Star Designer announced their presence on behalf of the applicant and Carl Rizzo with Cole Shotz representing Jayare Associates.

Ms. Price informed the Board that they left off with the completion of the civil engineer's testimony and the opposing attorney's cross-examination. Mr. Rizzo came forward to inform Ms. Price that he was not finished with his cross-examination of the civil engineer. She argued that Mr. Rizzo was stalling the application and that some of his prior questions did not pertain to civil engineering. It would be preferred if questioning that did not pertain to civil engineer be directed to the proper witnesses. Mr. Rizzo requested that he still had questions for the civil engineer.

Mr. Rizzo questioned Mr. Pugsley concerning the ordinance prohibiting outdoor sales and having two principal buildings on one lot. Mr. Pugsley responded that he did not consider the dispensing of gasoline outdoor sales. He explained that the gasoline dispensers are underneath a canopy and is considered part of the whole Wawa operation. They are requesting relief for two principal structures but the use is the same which is part of the Wawa operation. Mr. Rizzo continued to question the outdoor sales and the kiosks being proposed.

Mr. Rizzo questioned Mr. Pugsley if he was aware that a 1,500-foot distance is required between two gas stations in the B-2 Business zone. Ms. Price objected to Mr. Rizzo's question. She responded that this question would be for the planner. Mr. Rizzo argued that most civil engineers are planners too. Mr. Pugsley responded that the distance of less than 1500-feet from another gas station has been identified. Mr. Rizzo questioned the impact this could have. Mr. Pugsley responded that from an engineering perspective, he believes there will be no impact.

Mr. Rizzo questioned a proposed air tower. He inquired whether there would be a charge for air and if there would be a sign on the tower. Mr. Pugsley responded that there would be no fee and no signs displayed on the air tower. Mr. Rizzo questioned if signs would be displayed on the fuel pumps. Mr. Pugsley responded that they are proposing a Wawa logo and fuel prices on the fuel dispenser. Mr. Rizzo recited the 59-44 ordinance concerning sign definition. He questioned the number of signs allowed in the B-2 Business zone. Mr. Pugsley responded that in that zone, the applicant is allowed two wall signs and a free-standing sign. Ms. Price referenced title 56 for required signage according to Division of Taxation.

Mr. Rizzo informed Mr. Pugsley that shopping centers are permitted in the B-2 Business zone but require loading areas. He questioned if the Wawa is considered a shopping center and require a loading area. Mr. Pugsley responded that the required loading area would not apply to what is being proposed due to the building size. The convenience store will have an area in the rear to receive deliveries. Mr. Rizzo questioned the size and width of the hatched area for the delivery area. Mr. Pugsley responded that the hatched area would extend out approximately 12-feet. Mr. Rizzo questioned the size of the truck to deliver the gasoline. Ms. Price responded a WB-50 which is 53-feet long.

Mr. Rizzo questioned details on the garbage enclosure. He had concerns with seeing the dumpster while traveling down Post Road and requested the enclosure have a top to it. Mr. Pugsley responded that the garbage enclosure will be screened with landscaping such as evergreens and a large shade tree. He explained that it would interfere removing the garbage by putting a top on the enclosure. The dumpster stands approximately 8-feet high and the retaining wall is higher than that at 11-feet. The garbage area will not be noticeable between the height of the retaining wall and the landscaping. A discussion ensued concerning the proposed landscape causing a line of site problem for drivers. Ms. Price responded that the landscaping can be tweaked and it does not cause a line of site problem. The traffic engineer would offer further testimony on that subject.

Mr. Rizzo questioned the need for sidewalks and crosswalks. Mr. Pugsley responded that he did not believe there was a need for crosswalks since the employees would be parking on the outskirts of the property and the customers would park in the spaces closest to the convenience store. Mr. Rizzo questioned if there would be employee parking signs. Mr. Pugsley responded there would not. Mr. Rizzo questioned the parking calculations. Mr. Pugsley responded that the Borough's ordinance requires 32 parking spaces and the applicant is proposing 48 spaces. The applicant is proposing retail space of 4,736 square feet and canopy space of 3,960 bringing the parking calculation total to 48 parking spaces. Chairman Lepre expressed that by accommodating more parking in some cases can be positive but the increase in impervious coverage is a negative. A discussion ensued concerning the operational needs for the parking being proposed.

Chairman Lepre reviewed the drive widths throughout the property. Mr. Pugsley gave reason on this topic. Chairman Lepre explained ways that the applicant could lower the impervious coverage percentages.

Chairman Lepre questioned the stormwater management plan concerning detention and retention systems on the property. Mr. Pugsley responded that it would be collected by an inlet on the property and directed out to a culvert into the river. They will be submitting their plan to the NJDEP for review.

Chairman Lepre suggested scenarios for the ingress and egress that would be favorable for property. He questioned the architectural plans concerning food prep, oil traps and outdoor dining. Mr. Puglsey responded that he was not sure but there would be no outdoor dining.

A discussion ensued concerning the cross-examination by Mr. Rizzo. Mr. Rizzo responded that he is not finished cross-examining the civil engineer. Chairman Lepre expressed that it was getting late and that the Wawa application would be carried to the August 8, 2017 public hearing with no further notice.

MEMORIALIZATION OF RESOLUTION:

Eligible voters: Messrs. Arredondo, Rose, Wegman, Chadwick, Ackerly, Smid and Chairman Lepre.

1. Durkin – 112 Algonquin Trail, Block 5502, Lot 7. Approval for a side yard setback.

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

Roll Call: Ayes: Messrs., Rose, Wegman, Chadwick, Ackerly, Smid and Chairman Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Arredondo

2. Rivera- 19 Cheyenne Court, Block 5601, Lot 12. Approval for a use variance and rear yard setback.

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

Roll Call: Ayes: Messrs., Rose, Wegman, Chadwick, Ackerly, Smid and Chairman Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Arredondo

3. Norcia/O'Connor – 7 Seneca Avenue, Block 5204, Lot 55. Public hearing for front and side yard setbacks.

Motioned by Mr. Chadwick and seconded by Mr. Wegman, to memorialize the above resolution of approval.

Roll Call: Ayes: Messrs., Rose, Wegman, Chadwick, Ackerly, Smid and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Arredondo

4. Memar – 111 Lakeshore Drive, Block 1501, Lot 35. Public hearing for a front yard setback.

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

Roll Call: Ayes: Messrs., Rose, Wegman, Chadwick, Ackerly, Smid and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Arredondo

5. Billings – 37 Cardinal Drive, Block 5002, Lot 54. Public hearing for front and side yard setbacks.

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

Roll Call: Ayes: Messrs., Rose, Wegman, Chadwick, Ackerly, Smid and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Arredondo

PAYMENT OF BILLS:

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

APPROVAL OF MINUTES:

Motioned by Mr. Wegman and seconded by Mr. Chadwick, to approve the June 13, 2017 minutes was voted unanimously by the Board.

Motioned by Mr. Wegman and seconded by Mr. Chadwick, to approve the June 27, 2017 Special Meeting minutes as amended was voted unanimously by the Board.

NEW BUSINESS DISCUSSION:

None

OLD BUSINESS DISCUSSION:

None

MEETING ADJOURNED:

Motioned by Mr. Chadwick and seconded by Mr. Wegman, to adjourn the meeting concluding at 11:25 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney, Board Secretary

*Next meeting is August 8, 2017.