

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

May 10, 2012

The meeting was called to order at 7:48 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

ROLL CALL

Present: Robert Fair, Vice Chairperson Brian Tobin, Alt. I
Pat Lagay, Chairperson Jonathan Rabinowitz, Alt. II
Judith Sisko Robert Renaud, Attorney
Byron Sondergard Kathy Elliott, Engineer
Daniel Spiegel Chris S. Cosenza, Zoning Officer

Late: Catherine McCartin (7:50 p.m.)

Absent: Suzanne Andrews
Jim Constantine, Planner

NEW BUSINESS

12-938 Ravi Verma – Applicant is seeking site plan and use variance approval to change the use from automotive repair to a storage facility for wedding goods.

91 Liberty Street Block 44, Lots 55, 56, 57.01 L-I Zoning District

Ms. Lagay stated that there would be a change to the agenda. Mr. Cosenza had received a letter from the Applicant, which requested that the application be carried to the next available meeting date with the exception of June 14, 2012. The letter was signed by the Applicant's Engineer, Chris Kastrud.

Mr. Renaud announced to the public that the Ravi Verma application, at 91 Liberty Street, would heard at 7:45 p.m. on July 12, 2012. There will be no further notice.

Ms. Lagay requested the record to show that Ms. McCartin had arrived. She noted that the Board would hear the two (2) single-family applications first and the Suburban Square application last.

12-945 Robert Narus – Applicant is seeking bulk variance approval to expand the driveway and construct a front walkway.

119 University Avenue Block 51.02, Lots 18 & 19 R-2 Zoning District

Mr. Narus and his wife, Patricia Narus, were sworn in by Mr. Renaud

Mr. Narus stated that he had a driveway that consisted of two (2) concrete tire strips. He would like to take it up and install a full driveway. He also would like to install a walkway to the house from the street and the driveway, without having to walk through the grass. Finally, he would like to install a small concrete pad for their garbage and recycling containers.

Ms. Lagay asked if the entire length of the driveway from the sidewalk to the detached garage would be paved. She asked if it would be macadam.

Mr. Narus stated that the entire length of the driveway would be paved with concrete with the exception of the first four (4) or five (5) feet, which would consist of pavers because of a tree root problem. He explained that there is a Borough tree right next to the entry to the driveway, which is causing damage to the existing concrete strips. He spoke to Fred Hall, Director of Public Works, about how to handle the tree roots. Mr. Narus indicated that Mr. Hall endorsed the concept of using pavers so that if the roots come back, it is much easier to replace or repair.

Ms. Lagay questioned the reason the Applicant is before the Board.

Mr. Narus stated that lot coverage was the problem.

Ms. Lagay requested Mr. Narus to describe the photographs. She noted that there were two (2) sheets.

Ms. Narus described the upper-left photograph showing the concrete strips. It is evident that the tree roots have broken up the first slab of concrete. There has been a run-off problem at the property as well. In another photograph, there is a gap between the driveway and the private front walkway. The photograph at the bottom-right shows an existing sidewalk to the side door and, behind it, the area used for garbage and recycling containers. She would like to put a small concrete pad under those. The second sheet of photographs shows existing conditions in the neighborhood. Most neighbors have a full driveway. Her property is one of the few that still have the concrete strips since the 1920's. One of the photographs show a driveway she would like to have, it is a nine (9) foot concrete driveway in 10 foot sections.

Ms. Lagay asked about the drainage problems.

Mr. Narus stated that front part of the driveway would be graded so as to drain towards the street.

Ms. Elliott noted that she had no concerns regarding the proposed drainage or topography.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions for the Applicant. There being none, Ms. Lagay closed the public portion.

Ms. Lagay asked Board members for comments.

Ms. Elliott stated that she had wanted to clarify that the Applicant was requesting a bulk variance for open space where (a minimum of) 60% is required and 47% is proposed. She also received a letter from the Freehold Soil Conservation District exempting the project from certification from their office. She noted that a design waiver would be required as the existing and proposed driveway has a setback of two (2) feet whereas three (3) feet is required. She also noted the presence of a shed, which also requires a design waiver, but it is an existing condition.

There being no further comments from the Board, Ms. Lagay opened the hearing to the public for comments for the Applicant. There being none, Ms. Lagay closed the public portion.

A motion to approve the application as presented to the Board was made by Ms. Sisko and seconded by Mr. Spiegel. Roll call vote taken. Motion carried unanimously.

Ms. Lagay stated that she appreciated the consideration to install pavers with respect to the Borough tree.

12-940 **Oliver Trevidic** – Applicant is seeking bulk variance approval to construct a rear addition.

84 Rector Street

Block 125.01, Lot 32

R-1 Zoning District

Mr. Trevidic stated that he was the property owner and introduced Ted Kalinka, who he wished to be the contractor to construct the addition.

Ms. Lagay asked if Mr. Kalinka would be testifying.

Mr. Trevidic stated yes.

Mr. Trevidic and Mr. Kalinka were both sworn in by Mr. Renaud.

Mr. Trevidic stated that he had bought the house one (1) year ago. He has two (2) young children. There is one (1) bathroom upstairs. He would like to have a small addition on the back part of the house to add in a half-bathroom and a storage room. There is currently a deck and on top of the deck, there is a shed where the addition will go. The addition will be a one-story addition and will be adding approximately 94 square feet.

Mr. Kalinka noted that the addition is essentially replacing the area presently occupied by the existing deck. There is no increase in the building coverage or open space.

Mr. Trevidic added that the deck will be reduced in size where the addition is provided.

Ms. Lagay noted that the addition will “square off” the back of the house. She asked if the materials of the addition will match the existing house.

Mr. Kalinka stated yes, it will consist of cedar shake siding.

Ms. Elliott stated that there appeared to be three (3) bulk variances required for the proposed addition, side yard setback, combined side yard setback and rear yard setback. The current rear yard setback is currently 9.4 feet. The addition squares off the rear of the house so the addition exacerbates the existing non-conformity. She noted that the house is not parallel with the side lot lines. She asked if the deck would continue below the addition, after the shed and portion of the deck are removed.

Mr. Trevidic stated that deck would remain. The addition would drop on top of the deck.

Ms. Elliott questioned the location of the stairs.

Mr. Trevidic stated that the steps to the deck would be removed.

Ms. Elliott noted that the driveway required a design waiver as it appeared to be not conforming.

Mr. Trevidic stated that he had submitted a permit for the driveway last year.

Ms. Lagay asked if it was newly paved.

Mr. Kalinka stated yes and it was overseen by the construction and zoning office.

Ms. Lagay questioned the stairs again; she noted the steps leading to the deck and asked if they were being moved.

Mr. Kalinka stated that the steps would be moved forward to the addition. He stated that the addition would not really be visible from the street as shown in the photographs. He indicated that he would review Ms. Elliott's review letter with the Board. Mr. Kalinka stated that the addition is merely squaring off the house. As Ms. Elliott noted, the house does not sit parallel with the side lot lines. The addition will encroach seven (7) inches further into the setback area just because of the angle of the house. The Applicant is just continuing the right side of the house. The rear setback of 9.4 feet is being continued. He opined the addition will not be very visible. The addition is buried in the corner of the property and is shielded by the neighbor's detached garage and landscaping. The addition is merely replacing a portion of the deck. The envelope of the house does not really change. There is no plan to change any of the landscaping. It's already nicely landscaped.

Ms. Lagay questioned the drainage.

Mr. Kalinka stated that existing gutter will be extended and will be brought to the front of the house. He does not anticipate dropping another downspout at the rear of the property.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions for the Applicant. There being none, Ms. Lagay closed the public portion.

There being no comments from the Board, Ms. Lagay opened the hearing to the public for comments for the Applicant. There being none, Ms. Lagay closed the public portion.

Ms. Lagay requested Board members to discuss the application.

Mr. Cosenza indicated that the Applicant had submitted a permit for the driveway and that it had been issued. As part of the conditions of approval, the driveway had to comply with the Ordinance and, as noted in Ms. Elliott's review letter, it appears to not have been constructed correctly at this time. Since this application is before the Board, he recommended that the Board could either approve a design waiver to allow it to remain or to have the driveway corrected so as to comply with the Ordinance.

Mr. Kalinka questioned if the problem was the side yard setback.

Mr. Cosenza stated yes, driveways require a setback of three (3) feet as per section 110-151 of the Ordinance. At this point, the survey presented to the Board was marked by hand and not updated by a licensed surveyor.

Mr. Spiegel noted that it seems that, when something like this occurs, it is the homeowner that is correcting the problem, not the contractor. He questioned why the problem was not corrected.

Mr. Cosenza stated that the permit had been approved, but he had not been contacted when the work was complete so that an inspection could be made. He recommended deferring to the final survey when the addition is complete to verify that the driveway had or had not been constructed correctly.

Mr. Spiegel stated that he understood, but when that same contractor comes in to do another job and had not constructed to specifications before, he asked what happens.

Mr. Tobin asked if there was a contractor rating system.

Mr. Cosenza stated that there was not.

Ms. McCartin asked who was responsible for correcting a problem like this.

Mr. Cosenza stated that, ultimately, it is the homeowner's responsibility.

Ms. Lagay stated that application regarding the driveway was not specifically before the Board. She asked if the Applicant had to rip up the macadam.

Mr. Cosenza stated that he would need a survey to verify, which he would be getting after the addition was completed. He was suggesting to the Board that should it be determined that a design waiver was required, the Board could grant that. He reiterated that the permit is still open.

Ms. Lagay deferred to Mr. Renaud for the Board's options.

Mr. Renaud stated that there were two (2) choices. First, the permit, like any other permit that is open, is not approved until it is done correctly. That aspect can be handled administratively. Alternatively, if the Board feels that the driveway is okay as it is, the Board can grant a waiver to the existing driveway.

Board members discussed the issue of the contractor performing the driveway construction. In the end, Mr. Spiegel opined that the driveway should not be a part of this application and there should be some mechanism when the contractor does not perform.

Mr. Renaud stated that there is a mechanism. When a permit is issued, whether it is a zoning or a building permit, the applicant said that there were going to do something. Nobody stands over somebody's shoulder saying, for example, "hey, you're going a little far there with the driveway." After it is done, it is supposed to be inspected. Regarding the contract between the homeowner-contractor, theoretically, the homeowner is not supposed to pay the contractor until the work has been approved.

Mr. Fair stated that when a permit is filed with a survey, Mr. Cosenza would go out and make a visual inspection. However, without a new survey, there is no way of knowing if it was done right.

Mr. Spiegel and Ms. Lagay both asked how it was found it was non-compliant.

Mr. Cosenza stated that is part of the problem. The permit and survey presented to him stated that it would comply. The survey presented to the Board, a year later, for the addition, is marked as if it does not comply. He will not be able to confirm until a final survey has been provided. As of right now, perhaps it does conform, but if it does not, he cannot administratively grant a waiver for the driveway.

Ms. Elliott stated that she had not been aware that the driveway permit was still open. In the application, it asks for information about previous Board applications, not previous permits. When she saw it on the survey, she was not aware of the age of the driveway. Seeing it marked, it prompted her to note the non-conformity, as drawn. As Mr. Cosenza stated, it is subject to a survey. She recognized Mr. Cosenza's request, either the Board could grant the design waiver, if necessary, or could request the Applicant to correct the driveway so as to comply with the Ordinance.

Mr. Kalinka stated that, perhaps as Mr. Cosenza mentioned, defer to the final survey. It was nice enough that he held off on requiring a new survey until the second part of Mr. Trevidic's plans are complete. Certainly, upon receipt of the survey, the Board could require the driveway be corrected. It was difficult to tell if driveway was conforming or not. Perhaps he drew it wrong.

Board members summarized the application. It was noted that the applicant was requesting three (3) variances and it was the unusual placement of the house on the lot that was presenting a hardship to the Applicant.

A motion to approve the application as presented to the Board was made by Mr. Spiegel and seconded by Ms. Sisko. Roll call vote taken. Motion carried unanimously.

Mr. Spiegel raised his general concerns regarding contractors who fail to perform. He was surprised that there was no rating system for contractors.

Mr. Sondergard agreed.

Ms. Lagay stated that it would be have to be discussed later because she was not certain how that could be done.

09-8691 **Suburban Square, LLC & Wine Chateau, LLC** – Applicants are seeking to amend site plan, use variance and bulk variance approval to increase office space, decrease warehouse space in the Wine Chateau building, provision for an awning and phasing of site plan to postpone construction with said portion of the site plan from the present performance bond.

85 Central Avenue
B-4 Zoning District

Block 82, Lots 1.01, 2.01, 8, 16.01
Block 83, Lots 1-8, 9.01, 9.02, 28, 29

John Wiley Jr., Esq., the Applicant's Attorney, introduced himself to the Zoning Board of Adjustment (Board). He indicated that the Applicant was withdrawing its request to permit construction of the awning from the application at this time. He stated that there were two (2) aspects of the application:

(continued) 1) The rear part of the (Wine Chateau) building originally designated as warehouse with small office space is now being designated primarily office space, as actually constructed. As a result, parking demand is higher because office is more intense than warehouse space. The area currently designated as loading area (behind the building) would be changed to a tandem parking area for employees containing 14 tandem parking spaces. The garbage would still be collected during the early morning hours. In addition to that, the tenants have been successful the first few months in operation and, as a result, they have implemented a valet parking system on Friday and Saturday nights. The Wine Chateau conducts wine tastings and Lola's Restaurant also operates on Friday and Saturday night. Apparently, what was happening was that cars were parking in the undeveloped portion of the property. To forestall that, they instituted a valet parking system and would incorporate that as part of this application.

(continued) 2) The Applicant requests to phase the application into two (2) phases, (1) the portion which has already been constructed and (2) the 33-unit apartment building portion, which has not been constructed. The Applicant is requesting release from the performance guarantee as it relates to the improvements already constructed on that portion of the tract.

(continued) Mr. Wiley requested William Lane, Applicant's engineer, to testify.

Mr. Lane was sworn in by Mr. Renaud.

Mr. Wiley noted that Mr. Lane had testified in the original application.

Mr. Lane agreed.

Mr. Wiley presented exhibit P-1, the site plan, and asked Mr. Lane to describe the proposed changes.

Mr. Lane described the area at the rear of the Wine Chateau which is currently designated as a loading zone. The Applicant proposes to stripe out the area in order to add 14 tandem parking spaces, two rows of seven spaces each. Additional parking is required because of the change of use from warehouse to office space.

Mr. Spiegel questioned if the office space was part of the Wine Chateau or freestanding. He did not understand the request and if there were going to be additional entrances.

Mr. Wiley stated that the question could be answered by the operator of the business. The main changes (to the site plan) are at the rear of the parking lot.

Ms. Elliott requested Mr. Lane to discuss the changes to the parking along the main corridor, comparing what was originally proposed and what was ultimately constructed.

Mr. Lane stated that two (2) parallel parking spaces on the original site plan were not constructed as a result of review and request by the Fire Department. The spaces were striped as yellow. As a result, there are a total of 71 parking spaces as opposed to the originally proposed 73.

Ms. Lagay stated that, as a result, the net change was negative two (-2) and with the additional 14 tandem spaces, the Applicant is now proposing 85 parking spaces.

Mr. Wiley confirmed.

Mr. Renaud asked who would testify to the parking demand.

Mr. Wiley stated that it would comply with the Ordinance. He noted that the prior approval granted a 20% mixed-use credit, which was how they arrived to the requirement of 118 spaces. A waiver was granted to supply 112 spaces.

Ms. Elliott stated that the 20% reduction, which does not exist in the Ordinance, was granted based on the mixed-use nature of the original application.

There was a discussion regarding the mixed-use credit and parking spaces that will ultimately be constructed. The original approval provided 73 spaces, this application will provide for 85 spaces.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions for Mr. Lane. There being none, Ms. Lagay closed the public portion.

Mr. Wiley requested Sallianne Zabawa, 85 Central Avenue, Metuchen, NJ, to testify.

Ms. Zabawa was sworn in by Mr. Renaud.

Mr. Wiley requested Ms. Zabawa to describe her position and relationship with the application.

Ms. Zabawa stated that she is a project manager for Wine Chateau. She assists the business owner and acts on projects, such as the present application. She is also trying to open a new warehouse. She presently works inside the building.

Mr. Wiley requested Ms. Zabawa to describe the construction inside.

Ms. Zabawa stated that the portion in front of the building facing Central Avenue is all retail. The building is mostly retail. There is space for offices in the rear of the building.

Mr. Spiegel noted that it appeared that the Applicant was not requesting permission to construct; it has already been construction so this is an application to permit continuance.

Mr. Wiley confirmed and that other than restriping of the loading area, there will be no other changes to the site. Apparently, the revised plans were submitted during the course of construction, which were different than what the Board originally saw. They were approved for warehouse and they had changed their mind. The Applicant received a stop-work order and could not occupy the office space.

Ms. McCartin asked if there would be any outside tenants.

Ms. Zabawa stated absolutely not. In response to a question, she stated that the Wine Chateau does a lot of online selling. She was not employed with Wine Chateau during the previous application; she came in while the project was being constructed. The Wine Chateau has a warehouse on Jersey Avenue which it is utilizing instead of the proposed warehouse space. They are considering warehouse space on Liberty Street.

Ms. McCartin questioned the online selling aspect of the business.

Ms. Zabawa stated that they do handle phone calls for the online business. There is a call-center that takes orders 24 hours a day, but that is not located at this location. Orders are taken for the online business and they ship the products directly from the Jersey Avenue warehouse.

Mr. Wiley requested Ms. Zabawa to describe the staffing of Wine Chateau.

Ms. Zabawa testified that there are currently six (6) office employees who work generally from 9:00 a.m. to 6:00 p.m. and there are three (3) retail employees who work generally from 9:00 a.m. to 10:00 p.m. In response to a question, Ms. Zabawa stated that she had performed a parking analysis comparing the warehouse requirements to the office space requirements and found that the parking was adequate.

Mr. Wiley noted that it had appeared that, while during testimony of the original application, the tenant had indicated they would be utilizing office space. However, the plans that were submitted indicated that it would be warehouse space.

Mr. Spiegel indicated that he believed the office space were small administrative offices, like what you find at the back of a supermarket. In reference to the entire application, he recalled previous testimony in which the zone plan called for residential, the building would be preserved and there would be a certain mix of uses and quantity of residential units.

Mr. Wiley stated that the residential portion has not yet been built.

Mr. Spiegel stated that he had concerns.

Ms. Lagay questioned the kitchen area.

Ms. Zabawa indicated that the employee area includes a kitchen. There is a sink and provisions for washing glasses for the wine tastings. There is an employee food area, in which there is a microwave, refrigerator, coffee maker and wine cooler.

Mr. Spiegel asked about the function of wine tastings as it relates to this site.

Ms. Zabawa stated that, at wine tastings, there are tables set up and people taste from a few bottles at a time, usually using plastic glasses. Tastings can be requested any time during the day. There are also special events, which are usually held on weekends during the evening.

Mr. Spiegel stated that previous testimony did not refer to any type or size of these events. Given this new information, he understands the need for valet parking because it appears that the parking area is overused on event nights, when Lola's Restaurant and the Wine Chateau are in full swing.

Ms. McCartin asked if there were any corporate policies controlling the number of guests.

Ms. Zabawa stated that she did not know but was aware that the Fire Marshall tells them how many people could be in the building.

Mr. Wiley stated that it was one of the few times he had seen parking demand exceed constructed parking.

Board members raised their concerns and had a long discussion regarding parking.

Ms. Zabawa indicated that, after speaking to the owner of the business, they have no desire or plan of utilizing cubicles.

Ms. Lagay asked about the overhead door at the rear and noted that the Applicant had requested to keep it.

Mr. Wiley indicated that there would still be a need to receive and store some products.

Ms. Zabawa added that they do not use the overhead door; they just want to restripe the loading area in order to provide more parking and meet the requirement.

Mr. Wiley briefly summarized why the Applicant was before the Board as the Zoning Official will not sign off. The Applicant is requesting to permit the office space in lieu of warehouse space, add more parking and stipulate that there will be valet parking as necessary to recognize a parking demand on Friday and Saturday nights. Valet parking has been ongoing for over a month.

Ms. Zabawa stated that since valet parking has been instituted, she believed that there have been no issues with parking.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions for Ms. Zabawa.

Edith Ford, 99 Van Buren Avenue, stated that she had went to an event at the Wine Chateau and found it to be nice.

There being no further questions, Ms. Lagay closed the public portion.

Mr. Wiley requested Juan Zaldibar, 87 Central Avenue, Metuchen, NJ, to testify.

Mr. Zaldibar was sworn in by Mr. Renaud.

Mr. Wiley requested Mr. Zaldibar to describe his position and relationship with the application.

Mr. Zaldibar indicated that he is the owner and general manager of Lola's Restaurant. He has been there for about eight (8) months. He indicated he had made a change to the parking policy: there is valet parking on Friday and Saturday nights and for special events. The vehicles are parked in tandem style at the rear of the property. They started this about three (3) months ago, which has appeared to solve the parking problems.

Ms. Lagay asked what had happened prior to valet parking, specifically asking about the complaints.

Mr. Zaldibar stated that complaints had come from the residential tenants above the restaurant, where they have dedicated parking spaces. He did not recall any complaints coming from neighboring properties.

Mr. Wiley noted that there had been parking on the undeveloped portion of the site. The Zoning Officer had indicated that it was a violation to utilize that space.

Mr. Tobin asked if there had been any complaints since valet parking had been instituted.

Mr. Cosenza stated that there have been no complaints about the parking since valet parking was instituted.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions for Mr. Zaldibar. There being none, Ms. Lagay closed the public portion.

Mr. Wiley stated he believed he did not need any more witness testimony,

Mr. Spiegel recalled that, earlier in the meeting, there would be testimony regarding the residential portion of the site. He requested such testimony.

Mr. Wiley stated he would have Jeff Josell, 5 Norris Avenue, Metuchen, NJ, testify.

Mr. Josell was sworn in by Mr. Renaud.

Mr. Josell stated that he is the owner of Suburban Square, LLC. He has not gone forward with the apartment building because it is not economically feasible to build the apartments, so he is not building it at this point in time. He sought to have a bond release for that side of the tract. When he comes back, he will repost the bond.

Ms. Lagay stated that she saw a sign on the property that says "For Sale."

Mr. Josell corrected Ms. Lagay and stated that it is actually "Available."

Ms. Lagay asked what that meant.

Mr. Josell stated that it was for marketing purposes for his broker. He indicated that he had spoken to the Planner about not being able to make any money. If he could come back in with a better use that is compatible for what is here and works for Metuchen, he would be happy to discuss that. There is nothing on the drawing board at this time. PNC Bank had considered the site. He wanted a better return on his investment. He believed that the approvals for the apartment building were still in place.

There was a long discussion regarding the bond release and phasing, during which Ms. Elliott stated that she was under the impression that the request was to allow the substitution of a maintenance bond for the performance bond on the completed portion, not a complete release of the performance bond for the entire site.

Mr. Wiley stated that would be the consequence of phasing the project. The vacant site would remain dormant without a bond until the Applicant applied for a building permit, at which case they would have to bond again. There is also the matter of extensions and the Permit Extension Act.

Ms. Elliott stated she would defer to Mr. Renaud regarding the legal mechanism and purposes of bonds.

Mr. Renaud stated that you have to assume, at this point, that the apartment building is going to be constructed because the Applicant is seeking to be released from any obligation to construct the apartment building. He is saying he might construct but he is seeking to be released from any obligation to construct it.

Ms. Elliott stated that the original approval was hinged upon the mixed-use nature and the building of the entire parking lot. She raised her concerns over not doing the building and its associated parking area when the entire site was considered as a whole.

Mr. Spiegel agreed. He stated that he did not understand why there was not a discussion about constructing the parking now.

Mr. Renaud discussed the parking numbers. The Geometry Plan, the parking calculations indicate the retail space requiring 45 spaces, the office space requiring 17 spaces, the restaurant requiring 29 spaces and the three (3) one-bedroom apartments, which are on the site already, requiring 1.8 spaces per apartment, which comes out to 6 spaces. He noted that the total parking requirement is 97 spaces. He questioned if that was correct.

Ms. Lagay asked if 20% had been taken off.

Mr. Renaud stated that he did not because the 20% reduction was based on the entire site as a whole, the mixed-use concept. Because the Applicant is seeking to be relieved of the obligation to construct the apartments, he believed you have to disregard the 20% reduction.

Ms. Sisko asked if some parking could be constructed on the apartment side of the tract.

Mr. Josell offered a general history of what has happened and why they were before the Board and explained that the existing approval is for 33 (one-bedroom) apartments. Regulations for COAH stipulate that there have to be three-bedroom and two-bedroom apartments. The goal is not to have a parking problem at all. Once he had been contacted by Mr. Cosenza about the parking issues, he had started the valet parking. Both Wine Chateau and Lola's Restaurant want the site to work. After the first big night, on opening night, it was decided not to have big events for both businesses at the same time, only one or the other. The goal is to have successful viable businesses. He recalled that, with 12 land-banked spaces at the rear of the apartment building, there are about 1.5 parking spaces per unit just on that side of the property. He believed it would not be viable to construct the parking lot at the rear of the apartment building, only to rip it out five (5) years later. It would be too far away and with valet parking, it is not necessary.

(continued) Mr. Josell noted that, in reference to Mr. Spiegel's comments regarding the office space, he, as the developer, took the Dodge building and gave [Wine Chateau] what is called a "vanilla box" by sheetrocking the walls and allowing the tenant to do its own tenant fit-out with its own plans and architect. So the Wine Chateau built the inside themselves. All plans were required to have Zoning, Planning and Construction approval. He believed that somewhere along the way, the owners (of Wine Chateau) decided to have office instead of warehouse since the rent is higher here (at Central Avenue) than at Jersey Avenue. They submitted their plans and believed there was an oversight. The problem arose when the final plans indicated office, whereas warehouse was shown on the original plans. He did not believe Wine Chateau was trying to "pull a fast one." Parking has calmed down since the initial opening of both businesses. He had discussions regarding overflow parking with Mr. Cosenza who had indicated that perhaps the Pearl Street lot could be utilized. Mr. Josell stated that Lola's Restaurant still has its old location on Durham Avenue. Mr. Epstein, Ace Hardware, had offered his site for parking as well. They are a number of sites that could have been used.

Ms. Lagay stated that the Board appreciates the explanation. She indicated that the Board wants businesses to be successful and understands that, on some nights, it gets crowded.

Similar to churches becoming crowded on certain holidays, the Board has to expect certain things and is aware complaints come in. However, it is critical to understand what is needed with respect to parking. She understood that the Planner had noted that there was too much parking provided when the Applicant had first come to the Board and the Board was all in agreement to reduce the parking. However, the apartment building was a part of that plan.

Mr. Spiegel agreed and emphasized that the Board agreed to reduce the parking because tenants were going to park in the rear. The use of Wine Chateau was not really what it was originally testified to.

Mr. Sondergard and Mr. Spiegel recalled previous testimony that the Wine Chateau had specific clientele, by invitation only, only for a couple dozen people at a time. They did not recall anything about 50-100 people.

There was a long discussion regarding the uses of the site and how it relates to the Zone Plan, which considers residential. The Board considered the commercial use because the Dodge building had been commercial, there is a transitional building consisting of apartments over a restaurant and finally, a residential use (leading to Central Square).

Mr. Spiegel indicated that the Board could not consider economic hardship and the Zone Plan called for residential.

Mr. Josell indicated that he was not requesting to change the approval; they want the office space to be permitted and the bond to be released, only because if it takes several years to construct the residential building, he did not desire being charged by the bonding company while it sits vacant.

Mr. Spiegel raised his concern about releasing the Applicant from its obligation to construct the apartment building. He noted that it had appeared that the (vacant) lot was being shopped.

Mr. Josell stated that he will not sell the property. The previous plan was a bank with 12 units behind it, as he had discussed with the Planner, but the bank withdrew and the plan has done away. He understands Mr. Spiegel's concern but all he wanted to do was not have to pay the bonding company annually until they are ready to do (the apartment building).

Mr. Wiley stated that the request was to amend the site plan to permit office space in lieu of warehouse space and phasing. It is not unusual to phase projects. If the Board wants the Applicant to keep paying for the bond on a portion of the site not ready for construction, that's a decision that Board has to make.

Ms. Lagay stated that she understood and noted that there are properties where projects have started but never finished. She questioned if there could be a time limit, if the Applicant was granted phasing.

Mr. Wiley stated that phasing could lapse, but the Permit Extension Act has pushed things back multiple times, but it will not be forever.

Mr. Renaud recalled the current end date is July 1, 2013 but there are bills in the Legislature to extend that further.

Mr. Wiley indicated that there is two-year time limit and they could request three one-year extensions.

Mr. Renaud noted that the Applicant was correct, the Board can not make the Applicant construct a building. That is the purpose of the performance bond, if it is a requirement. He is not suggesting any action one way or the other, but once you release the performance bond, you have to assume that what you see is what you are going to get. The Applicant may come back to the Board for something different.

Mr. Fair stated that he understood, but the initial decision to grant the approval was based on a total mixed-use project.

Mr. Renaud asked if there is a Developer's Agreement.

Ms. Elliott indicated that there is a Developer's Agreement between the Borough and the Applicant which references the performance bond and some other obligations including the cross-connector (street). The resolution for site plan approval intended for the main corridor to become a connector road (to the west). One of the conditions was that the Applicant represented that it would agree to an easement connecting this property with the adjacent block 83.01, lots 34 and 35 if and when that property is developed. There are a lot of things tied into the project. The roadway was constructed to be a road and not just a driveway aisle with the future intention of being an official road. These are technical and legal issues.

Mr. Wiley indicated that it would be easier to release the performance bond for the constructed portion of the project, convert it to maintenance and leave the performance bond for the balance of the project.

Ms. Elliott stated that she had no objection to permitting the completed portion of the project to be released from the performance bond, with a maintenance bond to be substituted.

Mr. Renaud stated that, given that there is a Developer's Agreement, he believed that the Board could only offer a recommendation to Borough Council. Any release would have to be approved by Mayor and Council anyway.

Ms. Lagay asked if the bond could be split.

Mr. Renaud stated that Ms. Elliott's suggestion was reasonable: to allow the Applicant to reduce the performance bond to cover the improvements that already have been constructed. But that is generally a recommendation to the governing body, not to the Planning Board.

Ms. Elliott stated she could work with partial releases of performance or maintenance, but was not certain about complete bifurcations.

Mr. Wiley indicated that the Applicant is withdrawing its initial request to phase the project.

Ms. Lagay stated that the Board could now focus on parking and the office space.

Mr. Spiegel asked if the office space could be converted to a separate tenancy. He wanted to make it clear that the office space supports the retail space.

Mr. Renaud stated that the office space being proposed was accessory to the retail space. So it is not approved as a separate office space. Legally, the Applicant would have to come back. He believed that the Applicant would not have a problem making that a condition of approval, that the office space was being deemed accessory to the retail use and not a separate use.

Ms. Lagay recalled that since valet parking has been instituted, there have been less complaints and noted that the two businesses now have their big events on different nights, that also has helped the parking issues. She raised her concern about exactly how many spaces were being provided.

Mr. Wiley stated that there are 85 spaces being provided.

Ms. Sisko asked what the parking requirements were.

Mr. Josell indicated he believed that it was 97 spaces, with no mixed-use reduction.

Ms. Lagay asked what the 126 spaces referred to.

Mr. Cosenza stated that was assuming the entire site was constructed.

Ms. Lagay stated that the site was short 12 spaces and asked how the resolution would address the parking given the Applicant was willing to do valet parking and stagger events.

Mr. Renaud stated that he was not exactly sure how the Board could require that or enforce it.

Mr. Wiley stated that the Applicant would agree to do valet parking on Friday and Saturday nights and during special events.

Mr. Sondergard stated that the Board had to quantify something, in reference to events.

There was a long discussion regarding parking, during which Ms. Lagay suggested that building the 12 land-banked spaces would get the 85 spaces up to the required 97 spaces. It was indicated by Mr. Wiley that those spaces were all the way in the rear of the lot. Parking demand was high when the businesses opened, which was during the holiday season, and has since calmed down. In response to a question, Mr. Zaldibar indicated that Lola Restaurant has seating for about 90.

Ms. Elliott requested Mr. Josell to discuss garbage collection given that the dumpster area is in front of the proposed tandem spaces.

Mr. Josell stated that garbage is picked up at 7:00 a.m. on Monday, Wednesday and Friday, before employees show up.

Ms. Lagay asked how the parking could be resolved. Board members opined that since there is space on the site to provide additional parking, it should be provided. Mr. Spiegel noted that, typically, an applicant comes before the Board for a variance because (of hardship) it cannot comply; however, here, there is space for parking.

Ms. Lagay asked if there was any way to construct 12 parking spaces.

Mr. Wiley mentioned the testimony he presented indicating that the parking is sufficient.

Ms. Elliott suggested that gravel parking could be utilized.

Mr. Josell stated that there is currently gravel on the lot where the residential building was proposed and that he had parked some cars there.

Ms. Lagay requested clarification.

Mr. Josell stated that he had put gravel down for an auxiliary lot prior to instituting the valet parking. There may have been 20-25 cars between 7:30 p.m. and 9:30 p.m.

Ms. Lagay asked if there was any reason why that could not be used.

Mr. Wiley stated that they were told they could not.

Mr. Cosenza stated that they could not use that portion of the lot (where the apartment building was proposed) because it was not approved as a parking lot. Only the rear portion of the parking lot was approved for a parking lot and even that had not been constructed. He suggested that the existing gravel area could be used as a parking lot, even temporarily, but that it had to be specifically approved by the Board.

There was a discussion regarding the gravel parking area. Mr. Josell indicated that he could park cars on that lot until such time as the lot is developed. It would only be temporary and with valet parking, it may not even be necessary.

Ms. Elliott asked Mr. Cosenza if he had any concerns.

Mr. Cosenza questioned if limiting the spaces to 12 (as a condition of approval) was too limited (for the Applicant's benefit) and that the parking area should not be up front on Central Avenue. It should be set back away from view.

Board members discussed some requirements, indicating that 12 cars could park on the lot, which would bring the Applicant to the required number of parking spaces. Vehicles would be allowed to park no closer than 100 feet from Central Avenue (right of way). Signage, curb stops and other improvements would be required.

Mr. Josell stated that he was willing to provide the parking as discussed.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions for Mr. Josell. There being none, Ms. Lagay closed the public portion.

There was a discussion regarding conditions that would be imposed as discussed during the course of the hearing. The Board agreed to no parking between 2:00 a.m. and 6:00 a.m., which is standard for no overnight parking.

There was a discussion regarding the increase of parking required as presented will also change the parking required for the original approval for the entire site. Ultimately, it was agreed that the land-banked spaces in the original approval would be abandoned and improved when that portion of the tract was developed. The land-banked spaces may be gravel instead of paved. The configuration would not change.

There being no further comments from the Board, Ms. Lagay opened the hearing to the public for comments regarding the application. There being none, Ms. Lagay closed the public portion.

Mr. Cosenza indicated that the Applicant had originally come to him regarding a new awning and additional landscaping and structures around the outdoor dining area.

Mr. Josell agreed but preferred that it would be reviewed by the Planning office at a later time.

Board members determined that, provided that the awning and trellis meet the requirements of the Land Development Ordinance, the Zoning Officer would be authorized to review and approve or deny the application for such improvements.

A motion to approve the as presented to the Board with conditions, including but not limited to the modification of the site plan to permit the office space in lieu of warehouse space within the Wine Chateau, such office space to be accessory to the retail space, restriping the loading area to add 14 tandem parking spaces at the rear of the Wine Chateau and permitting parking on the gravel lot subject to the approval of the Borough Engineer, was made by Ms. Sisko and seconded by Mr. Fair. Roll call vote taken. Motion passed unanimously.

Ms. Lagay observed Ms. Ford still at the hearing and asked if she had any questions or comments for the Board to consider.

Ms. Ford indicated that she had received a notice regarding major site plan approval at 91 Liberty Street.

Ms. Lagay stated that a statement had been made earlier in the evening that it was not going to be heard tonight.

Ms. Ford asked when that had occurred.

Ms. Lagay stated it was at the very beginning.

Ms. Ford indicated that she must have missed it. She had asked if they were operational and what their hours of operation.

Ms. Lagay stated that she believed they were already in operation and Mr. Cosenza required that they come before the Board for approval. It was also the subject of violations before Municipal Court.

Ms. Ford asked why there was a delay.

Ms. Lagay indicated that the Applicant required an attorney and the attorney was not available this evening. There will be no further notice.

Ms. Ford began to make comments regarding the application.

Ms. Lagay stated that the Board had other matters to attend to and could not take comments regarding the application.

RESOLUTIONS

12-943 **Jennifer Savarese** – (Single family dwelling with 2nd kitchen – approved 4/12/2012)

53 East Walnut Street Block 211, Lots 66.06, 71 R-2 Zoning District

A motion to approve the resolution as written was made by Ms. Sisko and seconded by Mr. Tobin. Roll call vote taken. Motion passed unanimously.

12-942 **Bikash Shrestha** – (Use variance and bulk variance to construct a rear addition on a duplex in the R-1 Zone – approved 4/12/2012)

24 Robins Place Block 123, Lot 14.01 R-1 Zoning District

A motion to approve the resolution as written was made by Mr. Sondergard and seconded by Mr. Rabinowitz. Roll call vote taken. Motion passed unanimously.

CORRESPONDENCE

Minutes from August 11, 2011

A motion to approve the minutes as written was made by Ms. Sisko and seconded by Mr. Sondergard. Voice vote taken. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 10:37 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary