

ZONING BOARD OF REVIEW MINUTES
Tuesday February 25, 2014 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Joseph Russolino (Chair), Jennifer Fairbank (Vice-Chair), Renu Englehart, Richard Land, Jody Sceery and Ashley Cullion (Alternate).

Absent: Stephen Zubiago (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; Wayne Pimental, Building Official; and Peter Clarkin, Town Solicitor.

Mr. Russolino, Chair of the Board, called the meeting to order at 7:00 PM and introduced the members and staff present and welcomed new board member Ms. Cullion. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept and new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's

Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Appeal Hearings – 7:00 PM

1. **Richard Ollari** for property located at 31 Liberty Street; Map 75 A.P. 1 Lot 310 (Zoned Residential, R-10). The Applicant seeks a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone and Section 8(f) of the same chapter pertaining to the siting of accessory structures. The Applicant seeks to construct a detached garage within the side setback.

Mr. Richard Ollari of 31 Liberty Street represented the application; he explained that he is requesting to replace the existing small garage with a larger more efficient garage that will resemble the house in terms of materials and design elements. He asserted the HDC has granted approval to remove the existing structure and has approved the new 20'Dx16'Wx14'-6"H new design.

Mr. Ollari submitted a letter from his next door neighbor, Timothy Pavilonis of 21 Liberty Street, indicating that he was in support of the application and did not have any issues with the construction of a new and larger sized garage.

Mr. Ollari clarified to the Board that his property is a legal nonconforming undersized lot, being just over 6,000 s.f. in an R-10 zoning district giving him the ability to reduce his setback requirements for the placement of the garage to 9.14' for the side setback and 3.05' for the rear setback. He confirmed the new garage will not encroach upon the rear setback but it will encroach into the side setback.

When asked by the Board if there was any other location on the property for the garage Mr. Ollari replied that the lot was small which limited him to this one location and it is also where the existing garage has always been since the 1950s.

With no further questions Mr. Russolino asked for a motion.

Motion by Ms. Fairbank to approve the application as submitted. Second by Ms. Sceery.

Mr. Russolino commented that he believes that applicant has met all the relevant standards; furthermore the abutting neighbor supports the application and due to the unique characteristics of the parcel he will be voting in favor of the application.

VOTE: 5 – 0.

2. **William J. Ross** for property located on a land-locked vacant parcel adjacent to New London Turnpike; being Map 67 A.P. 13 Lot 34 (Zoned Farming, F-2). The Applicant seeks a Use Variance from Table 1 of Chapter 260 of the Town Code; Zoning Ordinance, Permitted Uses by Zone. Additionally, a Dimensional Variance is also being sought from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone. The Applicant is requesting to construct a 6,000 s.f. corporate headquarters for an excavation and property maintenance company as well as a 4,000 s.f. animal shelter on the property which is not a permitted use and currently does not comply with the minimum frontage requirement.

Mr. Russolino explained Staff forwarded correspondence from the Applicant's legal counsel earlier today requesting to continue the hearing. He asked for a motion to continue.

Motion by Ms. Fairbank to continue the application. Second by Ms. Englehart.

VOTE: 5 – 0.

3. **Denis Marchand** for property located at 240-242 Main Street; being Map 85 A.P. 1 Lot 165 (Zoned Commercial Downtown, CD-1). The Applicant seeks Dimensional Variances under Table 2 of Chapter 260

of the Town Code, Zoning Ordinance, Dimensional Regulations by Zone; Article V, Section 260-14(B) Nonconforming by Dimension; and Section 260-20 Required off-street parking spaces. The Dimensional Variances are required because the Applicant seeks to add an addition to the rear of the existing structure which constitutes as an intensification to the legal nonconforming property and the number of required off street parking spaces cannot be met.

Mr. David Spaziano, spoke on behalf of Mr. Denis Marchand, the owner of the property. He explained that he is looking to construct a 10'x20' addition on to the back of the property which will eliminate one existing parking space. He added that he is also seeking relief for the remaining needed on-site parking spaces. He noted that in order to alleviate the parking issues, Mr. Dale DeJoy who owns 58 Main Street has offered him permission to use his parking lot after 5 pm. Mr. Spaziano asserted that his restaurant (Greenwich Bay Oyster Bar) opens at 3 pm and closes at 1am but typically winds down at 10 pm – so after 5 pm is when his restaurant patrons could use Mr. DeJoy's parking spaces.

Ms. Hitchen questioned the number of parking spaces Mr. DeJoy has offered. Mr. Spaziano noted that Mr. DeJoy is allowing the use of six parking spaces that are not currently being used.

Ms. Fairbank asked if there was anything in writing for confirmation regarding this parking lease agreement. Mr. Spaziano acknowledged that he and Mr. DeJoy discussed the parking lease earlier today and at this point only has an email but he would be happy to prepare a more detailed lease.

Mr. Spaziano submitted the lease to Solicitor Clarkin for review; Mr. Russolino noted it should be marked as an Exhibit.

Mr. Russolino asked if the lease is for a specified term. Mr. Spaziano indicated there is no specified time frame as the parking spaces would be indefinitely given to him as he and Mr. DeJoy have a good rapport.

Ms. Sceery questioned where 58 Main Street is in relation to 240 Main Street. Mr. Russolino questioned how legally binding the “parking lease agreement” was that Mr. Spaziano submitted.

Mr. Spaziano admitted that Mr. DeJoy was a friend but essentially he was helping provide more parking spaces than he has now.

Mr. Russolino commented that he drove by the existing Greenwich Bay Oyster Bar location and the proposed location and noticed they look quite similar. Mr. Spaziano affirmed that the two space layouts are almost exact, he will still have the same 38 capacity, the bar size will remain the same, the same recessed door with alcoves where there will be benches – the only difference is the proposed location is slightly smaller and an addition is needed to accommodate kitchen space. He also acknowledged that according to the Building Official he will have to install an additional bathroom per building code requirements but besides that the new location will be a “cookie cut” of his current location.

Mr. Russolino acknowledged that there were two additional sections of the zoning ordinance that Mr. Spaziano should have requested relief from on the application, those being Section 260-24 of the Off-Street Parking Ordinance which requires a loading dock; the subject site does not have one, nor is there room to create one; and Section 260-25, Parking Lot Landscaping which sets forth the parking lot landscaping requirements.

Mr. Spaziano verified that he is amending his application to include Section 260-24 and 260-25.

Ms. Englehart questioned if the six leased parking spaces would be solely used for employees. Mr. Spaziano explained those parking spaces would be available for his use; he has a maximum of 4 employees working at any time; he admitted that he would not send anyone else to park there.

Mr. Russolino commented that there has been a parking problem for all Main Street business owners in the 20 years that he has been a member of the ZBR and he has never seen anyone be able to satisfy the parking requirement. He verified that there will be no change to the restaurant’s

number of seats, amount of square footage so that the parking situation should essentially be no different than what it is currently. Mr. Spaziano concurred that the statement is correct.

Ms. Hitchen asked if 58 Main Street was within 500 feet of 240 Main Street as parking spaces may be provided on another lot as long as that lot is located within 500 feet. Mr. Spaziano said he would be guessing as to how far 58 Main Street is from the subject property.

Ms. Englehart inquired as to why the Applicant is planning on moving. Mr. Spaziano explained he was put into a predicament where his lease agreement changed far enough to put him into a bad position.

With no further questions from the Board, Mr. Russolino opened the hearing to the public.

Mr. David Iannuccilli of 982 Frenchtown Road stated that he owns a building within the 200' abutters radius map and spoke in favor of the application as he has a good relationship with the Applicant and he supports him and his business venture but he had a couple of concerns. Mr. Iannuccilli noted the main concern was that of the dumpster since he and Mr. Spaziano have been sharing a dumpster for the last 1 ½ years which is dumped weekly. He asked what the new dumpster arrangement would be at the new location.

Mr. Spaziano explained that he researched dumpster options with Blake Macera who provided either a 2 yard sized dumpster or plastic dumpsters on casters which can be dumped up to two times per week and he can have as many as he needs and they can be power washed out. He added that either option dumpster are on casters and can be pushed underneath the kitchen addition as both dumpster options have a small profile and are light in weight. Mr. Spaziano acknowledged he would have to break the gentleman's agreement he has with Mr. Iannuccilli. Mr. Iannuccilli confirmed he was satisfied with Mr. Spaziano's response.

Mr. David Schaller of 1265 Frenchtown Road, noted that he was under the assumption that the parking spaces Mr. DeJoy is offering the Applicant has already been given to Main Street Coffee.

Ms. Hitchen stated that Main Street Coffee did appear before the ZBR a couple of years ago for an internal addition that would have required more parking spaces and there was an agreement in place for Main Street Coffee to use Mr. DeJoy's parking spaces but the addition never happened thus Main Street Coffee is not using those spaces.

Mr. Schaller reminded the Board there was a parking study performed downtown by the Town about ten years ago that noted the downtown had significant parking issues and this Board's generosity has given up over 150 spaces over the last ten years. Mr. Schaller admitted that he has complained about parking on Main Street before but finds it surprising that no Board members reference the study as it is an engineered study paid for by the Town; he finds that the Board has "apparently operated ignorance on that study." He added that giving up the spaces is very difficult for those that see the valet parking go on in front of his store (Chocolate Delicacy) during operating hours. His final thought was the Board was killing the small business of the Town by allowing parking variances.

Mr. Ben Osman, owner of 250 Main Street and is located two buildings south of 240 Main Street informed the Board that the buildings "connect" in the rear by way of a big parking lot. His concern is that there is already a huge problem with parking in this area and the Applicant's customers will continue to think the same parking lot is the lot they are to park in if Mr. Spaziano moves his restaurant down two buildings.

Mr. Osman asserted that he is all for new businesses in Town. He suggested installing a fence in the back although he admitted that would not fix the entire problem. Mr. Osman noted that his residents constantly cannot find parking spots because restaurant customers are using them; this forces him to regularly call the police station.

Ms. Sceery asked if the existing signs that say something to the effect of 'this spot is for ____; violators will be towed' are at all helpful for proper parking

designation. Mr. Osman commented that people generally park where it is convenient.

Ms. Sceery asked Mr. Spaziano if he plans to install appropriate parking signage at 240-242 Main Street. Mr. Spaziano explained that he has already had the discussion with the owner of the building and his intention is to improve the signs that already exist but his upmost concern is for the residents who live there.

Mr. Osman again requested to have a fence installed around the 240 Main Street property. Ms. Hitchen commented that there is a whole parcel in between 240 and 250 Main Street; she questioned where a fence could go. Mr. Osman informed the Board that 240 Main Street cannot be self-sufficient without using/driving through his lot; vehicles for 240 Main Street will continue to use his lot and limit the spaces that are supposed to be for his tenants. He explained that the parking lot in back connects the three buildings; he has 22 parking spaces, the red building (dog salon) in the middle has about 2 spaces and 240 Main Street has either 4 or 5 parking spots. Mr. Osman asserted that with only two curb cuts off Main Street leading to the back of the three buildings it creates what appears to be one big parking lot which connects together; if there is not a fence people will continue to use the parking lot as if it were one lot.

Ms. Fairbank questioned Mr. Osman why he would ask the Applicant to install a fence and he would not just install his own fence/chain/marked signs for the protection of his own property. Mr. Osman replied that he was not the one opening the business. He added that he has been cooperative with all the neighbors and he is pro-business and likes to maximize the use of one's property but to also minimize the impact on other's property.

Ms. Fairbank suggested Mr. Osman should minimize the impact himself as well. Mr. Osman explained that if he were to install fencing, the middle maroon building (246 Main Street) would not have access to their parking spaces – they have to drive through his lot in order to get to their designated two spots as he shares a parking area with that building.

Mr. Thomas Murphy of 851 Shermantown Road, Saunderstown stated he owns 232, 234, 236 and 238 Main Street, one of which is the Alex & Ani building (234 Main Street). He stated that Alex & Ani employs about 24-30 people which is a great boost for the downtown economy and he was able to convince them to move to this location at his own great expense. He noted that before moving to this property Alex & Ani did have concern about the downtown parking. Mr. Murphy asserted that if he was able to supply parking to Alex & Ani management then the company would agree to move in – he therefore created spaces with signs that call for the Alex & Ani employees to be able to park at the back side of the building which would be furthest east part of the building in front of the yellow duplex which he also owns.

Mr. Murphy added that he is all for business on Main Street but thought the 10'x20' addition would interfere with the access/right-of-way when one enters between his property and Mr. Marchand's property. He asserted that entering the alleyway heading east is a major safety issue and an access concern as you enter and bear to the right to access the parking lot. He compared the parking lot to bumper cars now. Mr. Murphy noted that he had signs installed that say for "Alex & Ani Management Only;" he gets multiple calls on a weekly basis from the Alex & Ani employees who say there are other cars in those spaces. Furthermore, in the yellow duplex in the back, Mr. Murphy commented there is an elderly woman and a single mother who also have designated parking with installed signs and they call him weekly about the same issue. In order to get the point across, Mr. Murphy advised that above the Alex & Ani storefront is a studio apartment whose parking space is also located in the back – it is a weekly call from the tenant. He asserted that people do not respect the fact that he has gone through great expense to produce very legible signs that say for residents only at certain addresses.

In conclusion, Mr. Murphy elucidated that in this condition it will be very restrictive and he does not think it is a good idea. He did not want to be selfish but the project could affect his lease renewal with a great company in Rhode Island.

Mr. Land referred to a picture in the staff report and pointed out a couple of vehicles toward the eastern most side of the building that are parked perpendicular to the building. He asked if that is how the signage is installed. Mr. Murphy noted the signage is in that location.

Mr. Land questioned how vehicles turn around. Mr. Murphy explained that cars have to back into the property in order to get out.

With no public comments, Mr. Russolino asked for a motion.

As no Board member was moving forward with making a motion, Mr. Russolino commented that if there is no motion then there is no vote then there is no approval.

Mr. Land motioned to approve the application as submitted. Second by Mr. Russolino.

Mr. Russolino asked for a discussion.

Mr. Russolino commented that the Board tries hard to maintain the vitality of Main Street and it is a very difficult process and also understands the constraints that are placed on all the owners. He could not think of a time being on the board that there has ever been someone who could comply with the parking requirements; it is a continuous battle and it is not going to change. Mr. Russolino added that he visited both 250 and 240 Main Street today and saw virtually no difference between the two other than the small addition that will be constructed on the back of the building. He thought the vitality of Main Street is critical and the landlords in the immediate vicinity have to try to work something out to try to help each other in any way they can. Mr. Russolino thought the Applicant had met all of the relevant standards and for that reason he would be voting in favor of the motion.

Mr. Land stated that he made the motion because he wanted to have a discussion on it. He sympathizes with the non-restaurant vendors downtown as it is absolutely impossible to park downtown at night, whether one is going to a restaurant or somewhere else. He was concerned that the

Board is expanding the use because the restaurant is going to move to 240 Main Street and then another possible restaurant is going in where he is moving out of.

Mr. Land said he was not at all compelled by the adjacent parking issues and has concerns about using other people's property to improve yours with the parking at Alex & Ani but it is a legitimate issue. He added that there are some constraints in the back of the property; he was not around for all the years that Mr. Russolino was voting on prior issues but he was torn on this one – maybe there is an opportunity for other Board members to chime in but this is a more difficult one because the Board is being asked to allow an expansion of this property and it is not simply existing space that is being reused for the same or similar purpose.

Ms. Englehart asked if the property owner was present.

Mr. Spaziano stated Mr. Marchand was not present but the contractor for the project is here who can speak to what we are trying to do; Mr. Marchand is the landlord who is in favor of the project.

Mr. Russolino called for a vote.

VOTE: 1 (Russolino support) – 4 (Land, Fairbank, Englehart, Sceery oppose).

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the January 28, 2014 meetings.

Motion by Ms. Sceery to approve the January 28, 2014 minutes. Second by Ms. Englehart. Motion supported 4 – 0.

With conclusion of all business, there was a motion by Ms. Sceery, second by Mr. Land to adjourn at 7:45 PM. Motion supported 5-0.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.