

BOROUGH OF SOUTH RIVER ZONING BOARD OF ADJUSTMENTS REGULAR MEETING MINUTES

Tuesday, September 24, 2024 – 7:00 p.m.

Location: 61 Main Street, the Criminal Justice Center

Public Announcement – Open Public Meetings Act

The meeting was called to order by Chairman Bodak at 7:00 pm followed by the Pledge of Allegiance. He recited the following announcement, *“In compliance with Chapter 231 of Public Laws of 1975 and by resolution, notice of this meeting has been provided as required, filed with the Borough Clerk, the Home News Tribune, The Sentinel and posted in the lobby of Borough of South River Municipal Building on January 24, 2024.”*

The Zoning Board of Adjustments may take formal action at this meeting.

Roll Call

Present: Sandra Adelino, Ruell Brown, John Frost (A1), Nick Giannakopoulos, Jeremiah O’Grady, Edward Trygar, Robert Bodak

Absent: Christian Eleto

Also Present: James Kinneally, Attorney; Bruce Koch, Engineer; Todd Bletcher, Borough Planner; Arthur Londensky, Administrator

Flag Salute

Chairman Bodak called the meeting to order and led the salute to the flag.

John Frost was sworn in prior to the start of the meeting. Chairman Bodak welcomed him back onto the Board.

Approval Of Minutes – August 27, 2024

Mr. Trygar wanted to make the motion to table the minutes. Ms. Moy read the revision to the minutes. Mr. Trygar explained that the discussion was whether there was substantial enough changes to plans; that the details of the discussion were not in the minutes. Mr. Trygar’s request was to have the details of his concerns in the minutes so if anyone reading the minutes in the future can make their own conclusion. Chairman Bodak asked Mr. Kinneally if we should table the minutes. Mr. Kinneally responded that minutes cannot be used to as evidentiary in the Courts. Minutes are required by law and if anyone wants to challenge the minutes, they would have to order the transcript to be transcribed. Minutes are an overview of what was discussed in the meeting. Per Mr. Kinneally, the recorded meeting is the legal transcript of the meeting. Mr. Trygar opined that it was not a burden to add a line or two to keep the residents informed; he is willing to write it himself.

The motion to table the minutes of the regular meeting dated August 27, 2024 was first moved by Mr. Trygar; there was no second.

The motion to approve the regular meeting minutes dated August 27, 202 was first moved by Mr. Giannakopoulos; there was no second. Minutes were tabled as written.

Resolution

ZB–2023–02, Jess Buffalino

107 George St. Block: 105 Lot: 6

The motion to approve *Resolution File #ZB–2024–12* for application File ZB–2023–02, Jess Buffalino and Charmaine Larkin was first moved by Mr. Giannakopoulos, seconded by Mr. Trygar

Roll Call Vote with Eligibility: Giannakopoulos, Trygar, Bodak

Absent: Eleto

Motion carries



Completeness Hearings

File ZB-2024-04, Shamdai Khan

37 Levinson Ave. Block: 332 Lot: 7.03

Application for D variance to construct an expansion to single family dwelling

Carried from 05/14/24, 06/25/24, 08/27/24.

Ms. Moy reported that the applicant's architect has not resubmitted documents for review. The applicant and architect have been informed by email and Ms. Moy has not received a response. Mr. Bletcher spoke to the architect after the May 28, 2024 meeting and have not heard from him since. The initial application was submitted May 14, 2024. Ms. Moy will inform the applicant that if we do not receive a response, we may have to dismiss the application by the end of the year.

The motion to carry *File ZB-2024-04, Shamdai Khan* for completeness hearing at the October 22, 2024 meeting with the condition that the applicant is informed that if resubmission is not made in time for the October meeting, we will may dismiss the application by the end of the year, was first moved by Mr. Giannakopoulos. Per Mr. Kinneally, we do not need a time extension since the application was declared incomplete. Ms. Adelino seconded the motion, all in favor by voice vote.

File ZB-2024-08, Joao Rocha

23 Levinson Ave Block: 332 Lots: 13, 14

Application for use and bulk variance to construct 2 family dwelling

Carried from 06/25/24, 07/23/24, 08/27/24

Lawrence Sachs, Esq. represented the applicant. Mr. Sachs has requested the application to be carried to the next meeting. The applicant will submit revised plans for next meeting.

The motion to carry **File ZB-2024-08, Joao Rocha** for completeness to the October 22, 2024 meeting was first moved by Mr. Giannakopoulos, seconded by Mr. Frost, all in favor by voice vote.

Opposed: Trygar

Mr. Trygar wanted to discuss the application; he expressed his concerns for hearing this application while there is an active litigation. Per Mr. Kinneally, the law suit is pending and there is a status conference in October. This application is a new application and the Board is required to act on the new application. The applicant indicated that he needs additional time to file revised application and requested to return for completeness at the October 22, 2024 meeting. Mr. Kinneally stated that this is the proper process the applicant is pursuing. Mr. Giannakopoulos' motion is only to carry the application to be heard for completeness at the next meeting.

Public Hearings

File ZB-2024-07, Garden River, LLC

141-143 Russell Ave., 1st Floor Block: 305 Lots: 3, 4

Application for cannabis cultivation variance

George Pressler, Esq. represented the applicant. He summarized the application; they are seeking a site plan waiver and D1 Use Variance and parking variance for the site located in the R75 zone. Applicant is proposes to operate a Class 1 Cultivation facility on the first and second floors of the building. Mr. Pressler addressed Mr. Bletcher's report dated July 15, 2024, page 2; he explained that the applicant already has approval for cultivation on the second floor; this application is to expand the initial application to include the first floor. The applicant will have a total of approximately 8,700 sf for the two floors. The applicant will be a tenant of the building which is still in the renovation stages by the owner.



James Higgins, Planner was introduced and sworn in. Mr. Higgins provided his credentials and was accepted by this Board. He summarized the application and explained what the applicant proposes; add the first floor to their second floor application with cannabis cultivation on both floors. The building is currently approved for light industrial; he opined that this application will not intensify the use of the building. Chairman Bodak asked for questions from the Board. He inquired about the security which can be answered by another witness. Mr. Frost inquired about distribution of the product. It is Mr. Higgins understanding that the product may be used for manufacturing for the groups on third floor, therefore less product will leave the building. Applicant will cultivate on the first 2 floors and potentially be processed on the third floor by those owners. Mr. Higgins explained how the product will be shipped out; this will be confirmed by applicant. All processes will be same as previously testified and approved for the second floor. Mr. Bletcher explained that this applicant received approval for growing only on the second floor. Two different applicants received manufacturing approvals for the third floor. There will be no processing on the first floor by this applicant; expansion only.

Ibrahim Khalifa, Engineer Manager and President for the applicant was introduced and sworn in. He explained the variation in the plans for two floors. Mr. Giannakopoulos expressed his concerns for the air quality emitting into the air. Mr. Khalifa explained how the filter system is anticipated to work. they are not manufacturing their product; he explained how the unused produce will be disposed of. Mr. Khalifa explained the hours of operation and number of anticipated employees. This applicant will work with the two groups on the third floor for security; State has access to the cameras to view. All guidelines set forth by the State will be adhered to.

Lawrence Johnson, Architect

Mr. Johnson was introduced and sworn in. Per Mr. Kinneally, he has appeared before this Board on prior occasions and was accepted by this Board as an Architect. Mr. Johnson provided architectural testimony; describing the site and layout of the proposed facility. He discussed the security, water system and waste, how the water will be processed and proposed amount of water to be used. Chairman Bodak asked about the exterior staircase; Mr. Johnson explained that the staircase will be recladded and encased. There was further discussion on the utility use for electric, water and sewer. Mr. Koch expressed his concerns for flooding on the first floor. Per Mr. Londensky, the water comes up about a couple of feet, but has not affected that area in a while. Mr. Koch suggested they consider anticipating the potential for flooding and take precautions.

Chairman Bodak opened the floor to the public. Seeing none, the motion to close to the public was first moved by Mr. Giannakopoulos, seconded by Mr. Brown, all in favor by voice vote.

The motion to approve *File ZB-2024-07, Garden River, LLC* was first moved by Mr. Trygar, seconded by Mr. Giannakopoulos

Roll call in favor: Adelino, Brown, Giannakopoulos, O'Grady, Trygar, Frost Bodak

Opposed: None

Abstain: None

Absent: Eleto

File ZB-2024-09, AJ Andre & JR Properties

58 Old Bridge Turnpike Block: 215 Lots: 5, 8

Application for use and bulk variance to subdivide lot to construct a 2 family dwelling in R100

Lawrence Sachs, Esq. represented the applicant. Mr. Sachs summarized the application; applicant is seeking to relocate the lot line and construct a two family dwelling. Per Mr. Sachs, the two lots merged when the applicant acquired the property by operation of the law, however it is shown as two tax lots.



Brent Papi, Engineer with East Point Engineering, was introduced and sworn in. Mr. Kinneally stated that Mr. Papi has appeared before this Board in the past and was accepted by this Board. After marking in *Exhibit A1, Colorized Rendering of the Site Plan*, Mr. Papi described the site and its surrounding. He described what the applicant proposes and went over the variance requests. Mr. Sachs addressed Mr. Koch's report dated September 19, 2024; Mr. Papi agreed. Mr. Sachs addressed Mr. Bletcher's report dated August 13, 2024. Mr. Papi's testimony responded to his report. He did not find evidence of a house on the lots in the past.

Joseph Hyland, Architect was introduced and sworn in. Mr. Kinneally stated that Mr. Hyland has been accepted as an Architect by this Board on prior occasions. Mr. Hyland marked in *Exhibit A2, Colored Rendering of Propose Dwelling* and described the dwelling in more detail. Mr. Trygar is not in favor of the hammerhead, however, it is on a County Road.

Veena Sawant, Planner

Ms. Sawant was introduced and sworn in. Per Mr. Kinneally, she has appeared before this Board on prior occasions and was accepted by this Board as a professional Planner. Ms. Sawant marked in *Exhibits A3, Aerial Map* and *A4, Limited Tax Map*. She stated that there are other two family homes in the area and gave a description of the area, stating that there are three multifamily units in the area. She addressed the Master Plan (MP), provided testimony to justify the variance requests along with the positive and negative criteria. Mr. Sachs addressed the tax map, showing area where the applicant's lot is located. Mr. Sachs pointed out that the surrounding lots are undersized with the exception of applicant's and another lot. The floor was open to questions from the Board. Mr. Trygar asked about the number of multifamily in the area compared to the number of existing houses; unknown. Majority of the homes are single family units, however there are a several multifamily units. Mr. Sachs explained the reasoning for the 2 family unit instead of a single family unit. Applicant has the ability to subdivide the entire property into three lots; chooses to create two and construct multifamily home. Addressing the Master Plan, Chairman Bodak stated that this area is zoned for single family homes; Mr. Bletcher agreed that the MP zoning ordinance should be followed. The R100 requires 100' x 100' lot in this zone. Ms. Sawant stated that the overall goal of the MP is to create developments that are consistent with the existing land use patterns and density; she opines that this is why the two family home is suitable for the area. Chairman Bodak asked if the applicant would consider a subdivision and constructing a single family home; they have not discussed it. Per Mr. Bletcher, we have to consider when some of the houses were constructed. He opined it was reasonable to develop something on Lot 8. The Board should decide if they want to set aside the zoning ordinance and allow for the construction of the proposed two family dwelling on this property.

Chairman Bodak opened the floor to the public. Seeing none the motion to close to the public was first moved by Mr. Giannakopoulos, seconded by Mr. Brown, all in favor by voice vote.

Mr. Sachs summarized the application.

The motion to approve *File ZB-2024-09, AJ Andre & JR Properties* was first moved by Mr. Brown, seconded by Ms. Adelino

Mr. Giannakopoulos would like to see the neighborhood remain R100, single family.

Mr. Trygar was not persuaded that it will keep in character of the neighborhood.

Mr. Frost does not believe it is consistent with the neighborhood and the land use pattern

Chairman Bodak does not feel it will fit in with the neighborhood and that a single family dwelling would be beautiful on this lot.

Roll call in favor: Adelino, Brown, O'Grady

Opposed: Giannakopoulos, Trygar, Frost, Bodak

Absent: Eleto

Motion: Denied



File ZB-2024-10, Antonio Fornarelli

17 Center Street

Block: 256 Lot: 12.02

Application for bulk variance to construction in ground pool

Ms. Moy reported that the applicant did not legal notice in a timely manner. The applicant will notice for the October 22, 2024 meeting.

The motion to carry *File ZB-2024-10, Antonio Fornarelli* for public hearing, provided the legal notice is proper, to the October 22, 2024 meeting was first moved by Mr. Giannakopoulos, seconded by Mr. Brown, all in favor by voice vote.

Board Comments

Mr. Frost inquired about an application approved last year, *File ZB-2023-11, 82 Management LLC*; applicant is parking buses and has not cleaned up the site. Per Mr. Londensky, the owner has 24 hours to remove the buses. If buses are not removed, the Borough will issue citations. Mr. Frost would like to also see him clean up the site; there is a lot of weeds growing on the site. The owner has also received citations for the overgrowth. Mr. Frost asked if we can bring the applicant back in to rescind decision. Mr. Kinneally responded that once this Board acts, we no longer have jurisdiction; it becomes a Code Enforcement issue.

Chairman Bodak stated that we are governed by the laws of the State of New Jersey about hearing applications. We cannot deny the applicant the right to be heard. Chairman Bodak always refers to Mr. Kinneally for the proper way to handle applications. Applications that has come forward has to be heard; they have the right present their application by the law. If we refuse to hear, we can be sued. We can always deny the application. Mr. Trygar's response is that he can read the documents and everything is the same. Mr. Kinneally explained if we do not give them the opportunity to be heard, they will take us to superior court, and the court will send it back telling us to hear the application. Per Mr. Kinneally, the applicant has to supply evidence to address the Res Judicata issue to convince this Board that the applications are different. Mr. Kinneally explained the process this Board has to take; Res Judicata first, Board decides if there is sufficient enough differences, then public hearing. There are guidelines to decide if there is enough differences to deem the application different. The criteria is in Mr. Bletcher's report. Mr. Londensky stated that the application was denied by one vote; the reasons were not strong enough and opined it would have been sent back or granted by the judge. They are sitting on DEP for the construction.

Public Comments

Chairman Bodak opened the floor to the public.

Mr. Londensky announced that we are starting our paving program.

Mr. Londensky announced that PSEG will be putting in new main gas lines on some of the side streets.

Mr. Londensky announced that at the next Council meeting, they will award the contract to move forward with the water program.

Mr. Trygar asked about the water meter replacement program. Mr. Londensky explained that all meters must be replaced in order for the program work properly. All residents should have been notified. Meters must be replaced by January.

Mr. Londensky announced that the utility bills are finally being mailed out. It includes a request for donation request to the Fire Dept. and a information to residents with a certain income can be eligible for inspection for lead paint and have their homes painted without cost; this is a grant from the DCA.

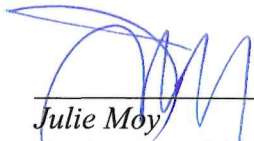


Seeing none, Mr. Giannakopoulos made the motion to close the public portion, seconded by Mr. Frost, all in favor by voice vote.

Adjournment

The motion to adjourn at 9:50 pm was first moved by Mr. O'Grady, seconded by Mr. Brown, all in favor by voice vote.

Respectfully submitted by:



Julie Moy
Zoning Board Secretary

Adopted: October 22, 2024