

**ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
May 15, 2023**

**CALL TO
ORDER**

The meeting was called to order at 7:03 p.m.
1 City Hall Plaza
Rahway, NJ 07065

Adequate notice of this meeting, as required by the New Jersey Open Public Meetings Act, also known as the Sunshine Law, has been provided by an Annual Notice sent to the City's official newspaper NJ Star Ledger on January 12th, 2023 and posted on the bulletin board of the Municipal Complex, posted on the City website, and filed with the Clerk of the City.

FLAG SALUTE

The Board will then salute the flag.

ROLL CALL

On a call of the roll, the following Board Members and Officials should be present:

BOARD

Ms. Joann Gemenden, Commissioner
Mr. Adrian Zapotocky, Commissioner
Mr. James Heim, Commissioner
Mr. William Tomkiewicz, Commissioner
Mr. Richard Zdan, Commissioner
Ms. Robert Parson, 1st Alternate Commissioner
Mr. Roy L. Smith, 2nd Alternate Commissioner
Ms. Courtney Anderson-Harvey, 3rd Alternate Commissioner
Mr. James E. Pelletiere, Commissioner Vice Chairman
Mr. William Hering, Commissioner Chairman
Mr. Malcolm Thorpe, Esq, Board Attorney
Ms. Jacqueline Dirmann, Board Engineer
Mr. Kevin O'Brien, Board Planner
Ms. Leigh Fleming, Board Planner
Mr. Steven Decker, Acting Board Secretary

Absent from this meeting was Commissioner Smith which was an excused absence.

- Board Planner Kevin O'Brien was excused from this meeting, Leigh Fleming served as Board Planner.

Swearing In

Commissioner Richard Zdan was sworn in as a Commissioner.

Commissioner Courtney Anderson-Harvey was sworn in as an Alternate Commissioner.

REGULAR MEETING:

The meeting was called to order 7:03pm.

Chairman Hering opened the meeting with the salute to the flag, placing the Open Public Meeting Act Notice and reading of the agenda into the record.

The following action took place.

259 Elm Avenue, LLC.

259 Elm Avenue

Application #15/21

Block 151 Lot 4

Applicant seeking Preliminary and Final Major Site Plan, Use "D" Variance and Bulk "C" Variances

Attorney James McCarthy introduced the application and gave some background on this case. The applicant had appeared last September with a proposal for a 5-unit dwelling, which was not received well, so the applicant went back and significantly reduced the scope and intensity of the project. The new proposal consists of 4 units totaling 6 bedrooms. Originally it was a 5-unit 13-bedroom application. Attorney McCarthy addressed an announcement that was sent out regarding this application.

Leo Gonzalez of 316 Ridge Road, Dayton, New Jersey, the applicant was sworn in. Mr. Gonzalez is the owner of the property. The plans were changed, and scope was reduced. Mr. Gonzalez has owned other multi-family units in Rahway. He intends to work with the board and make the property a success.

The applicant's engineer Adnan Khan of 150 River Road, Montville, NJ was sworn in. Mr. Khan was accepted as an expert. The application is seeking variances on building coverage and maximum lot coverage. They are reducing coverage to 20.32% but still over 20%. Lot coverage is being reduced but still over the 60% maximum. Parking requirements for this proposal are 8 spaces, and they are proposing 11 parking spaces. There will be no addition to the house, only remodeling the inside. Building coverage will be reduced, because the porch on the west side of the building will be taken down. There will be 9 parking spaces from Bryant Street and 2 handicap spaces from Elm Ave. A 9x10 trash enclosure area will be provided. There will be a landscape screen on the north of the property. All lighting will be LED downward facing and shielded. A tree will be on the western area of the parking lot, and shrubs on Elm Ave.

Commissioner Zdan asked about the parking facing Elm Ave. Are there any similar properties with parking in the front on Elm Ave. The planner will testify, but Mr. Khan explained these parking spots are already there.

Leigh Fleming asked about the lighting being downward facing. She believes the lighting will cross property lines on the back and front of the building. Mr. Khan said the model on the plans is shown without the shield, with the shield any spillover will be eliminated.

Ms. Fleming asked if bollards could replace the light pole. Mr. Khan stated they would need lighting on the building along with bollards to sufficiently light the parking lot.

Ms. Fleming asked why the front parking was not eliminated to lower impervious coverage. Mr. Khan stated they were trying to maximize parking due to resident concerns. If the board asks, the applicant is willing to eliminate the parking spaces and make more green space.

Ms. Fleming asked how the trash enclosure will be emptied. Mr. Khan stated they will be taken out to the curb on trash day. The applicant will have a property manager to move the trash cans in and out.

Board Engineer Jacqueline Dirmann asked about the last application having 12 parking spots proposed and now only 11. They are proposing replacing the 1 parking spot with the trash enclosure. The trash will be collected by the city. They will have separate cans not a dumpster.

Ms. Dirmann asked why 2 proposed ADA spaces are proposed instead of 1. Mr. Khan stated they were originally ADA and they were leaving both. Ms. Dirmann believes they should eliminate 1 ADA space and just leave a regular parking space.

Commissioner Pellettiere asked why they will be removing a porch on the west side. The architect will explain.

Commissioner Parson asked the applicant if the property manager lives in Rahway. Mr. Gonzalez stated that the property manager lives in Linden. Mr. Parson also asked if the handicap lift will be in the front. If the ADA parking spot moves, the ADA lift will move to the back area.

Commissioner Heim asked for clarity on the handicap space.

Commissioner Gemenden asked if the parking spaces were reduced if it would eliminate the need for 1 bulk "C" variance. It may not eliminate it but will reduce it.

Chris Zehnder of 215 Jefferson Ave. Elizabeth, NJ the applicant's architect was sworn in. Mr. Zehnder was accepted as an expert. The exterior of the building will remain unchanged except for some siding and paint. A lift was proposed instead of a ramp because they are smaller and take up less room. No windows locations are being changed. There were a couple windows added on the wall near the parking. The building will be cleaned up and match the paint that is there.

The house will consist of 3 units on the ground level floor and 1 unit on the 2nd floor. The 3rd floor will be gutted and fire proofed with sprinklers. The door to the 3rd floor will be locked, it will only be used for storage for property management. The basement will only be used for laundry, mechanicals and some storage. On the first floor the 2 apartments are 660 sq ft, and the other apartment unit is 950 sq ft, the 2nd floor unit will be 1030 square feet and 2 bedrooms. They reduced the size to try to create smaller units so they will not be used by multiple tenants. Bathrooms and kitchens are handicap accessible. The upper level is not required to be handicap accessible. They are proposing the removal of the elevator which was in the north corner of the building. They will match existing siding and painting. The basement area will be open, this way it can be monitored, and each residence will get a quadrant to use. Windows that are being replaced will match existing windows. The apartments will utilize vertical electric ac and heating units that are run outside, and are for smaller residences.

Commissioner Zdan stated he was impressed with the changes to the exterior of the building and keeping with the historic nature of the building. Mr. Zehnder stated they will keep the wooden clapboards. Windows will match.

Commissioner Pellettiere asked if any advice was given to reduce to 3 units since now the apartment units are small. Mr. Zehnder stated there was concern about the large apartments being used by multiple people/families. They wanted to stay at 4 units since they have the space and the parking units available.

Commissioner Parson asked if the HVAC was a mini split. It is not. Also asked if each unit will have their own meter unit. Yes, there will be 5 meters, 1 for general common areas and 4 for the individual apartments. Commissioner Parson asked about the heat pump, and if each unit will need a heat pump outside. Mr. Zehnder explained that it is all inside the unit, and will not have outside units.

Engineer Dirmann explained that the 2 spaces in the front will be expanded and the tree in the front on Elm will be taken down.

Mr. Khan responded that the 2 spaces can be taken away and the tree can be left.

Commissioner Zdan stated that they are changing from a driveway in the front on Elm to a parking area in the front yard.

Planner Fleming asked if the white vinyl fence along Bryant is staying. Mr. Khan stated that the fence is coming down. Ms. Fleming wanted to know if there is enough landscaping to buffer from the surrounding properties. Mr. Khan stated the back has sufficient landscaping, and that buffering can be added to prevent lights shining through.

Nicholas Graviano of 101 Crawfords Corner Rd. Holmdel NJ. was sworn in as a planner for the applicant. Mr. Graviano was accepted as an expert. This application is in the R2 district and was previously used as a non-complying business and single family living use. Mr. Graviano stated there are other uses in the neighborhood, a funeral home next door, a day care and a house of worship. The applicant is seeking a variance for lot coverage and building coverage, but reducing both from the current state. Mr. Graviano stated that there is existing parking in the front yard. The applicant seeking a D1 use variance meets positive criteria that the building was previously used as mixed use which is not conforming. The neighborhood has a variety of land uses. This building is 1700 ft from the train station, which is an 8 minute walk. The masterplan encourages to propose multiuse housing areas near the downtown and train station. The applicant is putting an underutilized building to use, and will add units to the city with ADA accessibility. He believes there is sufficient space. It meets a good visual environment; the applicant is going to restore and retain the look. No additional setback relief is requested. This application satisfies goals of objective to master plan to promote a diversity of living option.

Commissioner Parson asked if the handicap lift is going to remain. Yes it will remain. However the applicant committed to removing the spaces, and the lift will come from the back entrance.

Commissioner Zdan asked about Mr. Graviano stating that there are other land uses allowed in the district, but noted there are not 4 families. Would they be willing to move to a 3 unit instead of a 4 unit building.

Planner Fleming stated that the 2019 master plan reexamine was conducted and there were certain properties included for changes, but this property wasn't part of this. The city does have zones where multi family properties are permitted. The zones are made to try to bring properties into conformity.

Mr. Graviano does not believe they have to show that there are other areas where the uses are suitable in other places in the city.

Commissioner Zapotocky asked if any of the multi-use buildings on Elm Ave. are occupied 24 hours per day. Commissioner Zapotocky does not believe the other uses Mr. Graviano spoke about are continuously used like an apartment would be. Commissioner Zapotocky does not believe multi-use and multi-family are the same.

The meeting was opened to the public for comment.

Cindy Solomon of 372 Elm Avenue was sworn in. Ms. Solomon stated the other uses described in the area are inherently beneficial. Ms. Solomon believes a 2 family is suitable, but to have a 4 family in a single family home is not permitted. She does not believe the burden of proof was met. Ms. Solomon believes that if a 4 family is permitted then it will set precedent that any large house can be made into a 4 family.

Commissioner Zdan believes that the existing use of the building should not be relevant.

Richard Sullivan of 274 Elm Ave. was sworn in. Mr. Sullivan lives diagonally across the street. Mr. Sullivan believes this has a burden of proof to improve general welfare of the community. Mr. Sullivan does not believe this application will help him or the community. Mr. Sullivan believes that the hardship was not met.

Jim Kennedy of 442 Elm Ave. was sworn in. Mr. Kennedy believes that allowing this application could allow all houses to be made into multi-unit houses when requested.

Jennifer Wesson Maier of 1314 Bryant Street was sworn in. Ms. Meyer lives across the street from this property. She stated that the parking lot of this house was used for church functions. She believes this will create parking issues on a street that already has parking issues. All houses in the neighborhood have back yards and this property doesn't have any back yard, it is only paving. There is no precedence for this in the area. This is about the health, safety, and welfare of the community and Ms. Wenson distributed a flyer concerning this.

Attorney Thorpe stated the board can only consider the testimony related to the application not other testimony from the public.

Alejandro Ortiz of 1265 Bryant Street was sworn in. He does not believe the application is bringing anything positive into the neighborhood. Adding 4 families to a 1 family house should not be permitted. Mr. Ortiz is concerned about the utilities, and the stress 4 families can put on these utilities. Mr. Ortiz is worried about the amount of garbage that can produced from the proposed. He also is concerned about the formaldehyde and chemicals that may be in this property and can be dangerous.

Mr. Graviano believes improving the property is more beneficial to the neighborhood. Retaining the historic structure of the building is a value to the neighborhood.

James Wysocki of 986 Pierpont Street was sworn in. Mr. Wysocki suggested denying the request for a 4 family house. He believes this opens up opportunity for other 4 families in other large residences in the city.

Amber Wagner of 356 Elm Ave. was sworn in. Ms. Wagner agrees with the neighbors, moving a 4 family is too much for the neighborhood, and what could change if this is allowed to happen.

Megan Costa of 747 Beverly Rd. was sworn in. Ms. Costa is concerned about what will happen if this is allowed. Wants board members to ask themselves if this is approved then what happens next.

Charles Sweetman of 238 Elm Ave. was sworn in. Mr. Sweetman is concerned about who is moving into the neighborhood.

Allan Jenkins of 233 Elm Ave. was sworn in. Mr. Jenkins is worried about the neighbors that may park in front of the houses.

Yolanda Jenkins of 233 Elm Ave. was sworn in. Ms. Jenkins is concerned about the density. This is between the daycare and the church. People have been cutting across her yard and lawn routinely while walking in this area. There have been yard sales at 259 Elm Ave. and people cut across her yard. She is very concerned about the density of the neighborhood.

Cliff Lapaix of 1324 Bryant Street was sworn in. He lives across from the property at 259 Elm Ave. Mr. Lapaix believes this application is beneficial for the applicant and not for owners in the area. He does not believe this house and property will be maintained like the others around it. He is also concerned about what this could create like the other residents had mentioned. Mr. Lapaix does not find it conducive to what the area is trying to be, and will also create parking issues.

Wendy Wright of 1419 Church Street was sworn in. She is happy that the applicant is maintaining the exterior and the historic nature of the building. Yes, they are taking care of it now, but she is concerned what may happen and also concerned about increasing renters in residential area with single family homes.

Public portion of the meeting was closed.

Attorney McCarthy stated that the applicant likes Rahway and wants to be part of the community. Mr. McCarthy understands the concerns about the density. They are trying to reduce the density of the 4 family as much as possible. He believes positive and negative criteria has been met and the application should be approved.

Commissioner Zdan asked about the possibility of reducing the amount of units from 4 to 3. Mr. McCarthy responded that the applicant is willing to reduce the scope from 4 to 3 units, 2 bedrooms each. Mr. McCarthy asked that it would be a condition that the professionals review the plan. Attorney Thorpe commented it would have to come back to the board.

Mr. McCarthy asked if the board would consider a bifurcated application. The use now and then the plan later.

Commissioner Pellettiere does not think this would not be proper. He does not believe application met the positive criteria.

The applicant chose to move forward with the current application as presented.

Commissioner Pellettiere motioned to deny the application on failing to meet positive criteria.

Commissioner Zdan seconded the motion and also felt the application did not properly address negative criteria either.

Motion: Commissioner Pellettiere

Second: Commissioner Zdan

Yes: Commissioners Zdan, Gemenden, Tomkiewicz, Zapotocky, Heim, Pellettiere, and Chairman Hering

No: none

Abstain: Commissioners Parson and Anderson-Harvey

Absent: Commissioner Smith

Motion approved to deny the application approved

Chairman Hering believes it is an overuse of the development of the property. Positive did not outweigh the negative.

MINUTES: Any necessary changes to the Zoning Board of Adjustment meeting minutes of February 27, 2023 shall be made and approved by action of the Commissioners

Motion: Commissioner Zdan

Second: Commissioner Gemenden

Yes: Commissioners Zdan, Gemenden, Tomkiewicz, Zapotocky, Heim, and Chairman Hering

No: none

Abstain: Commissioners Pellettiere, Parson, and Anderson-Harvey

Absent: Commissioner Smith

Minutes were approved

Chairman Hering gave an update on the Planning Board.

A motion was made to adjourn the meeting.

Motion: Commissioner Zdan

Second: Commissioner Pellettiere

Yes: Commissioners Zdan, Gemenden, Tomkiewicz, Zapotocky, Heim, Parson, Anderson-Harvey, Pellettiere, and Chairman Hering

No: none

Abstain: none

Absent: Commissioner Smith

ADJOURN: There being no further business; the meeting was adjourned at 9:30 pm.