

REGULAR MEETING OF THE PLANNING BOARD OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY EVENING, MAY 9, 2019. VICE CHAIRMAN GREGG DAVID PRESIDED.

The meeting began with an affirmation of the Open Public Meetings Act. The schedule of meetings is on file in the Borough Clerks' office, was posted on the bulletin board, and has been mailed to the Local Source, and the Star Ledger.

Pledge of Allegiance was led by Vice Chairman David.

ROLL CALL

Mr. David, Mr. Grimaldi, Mr. Pantina, Mr. Mazzeo, Mr. Ladauti, Mr. Calello. Mr. Picerno, Mr. Schielke, Mr. Cuppari and Mr. Kenny were absent. Also present were Mr. Lou Rago, Esq., Mr. Kevin O'Brien, Planner and Mr. Christian Cueto, Engineer.

Approval of April 11, 2019 Minutes

Motion was made by Mr. Grimaldi, seconded by Mr. Mazzeo. All in favor.

Communications: None

Resolution: Application #369 Site Plan
ADHP Real Estate, LLC
1700 Galloping Hill Road
Block 182, Lot 2

Mr. O'Brien asked if Mr. Rago received corrections for page 6, Item #10.....he corrected the ordinance section. PB Secretary said the changes were made on Application #369, page 6, Item #10.

Motion was made by Mr. Mazzeo, seconded by Mr. Grimaldi to approve the resolution for ADHP Real Estate, LLC. Roll Call: Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Mazzeo voted yes, Mr. Ladauti voted yes, Mr. Calello voted yes.

Zoning Appeal #1-1 - Front Yard Fence Denial
Setta Savaian
316 North 22nd Street
Block 18, Lot 6

Mr. Rago said one change was made correcting the ordinance number in the resolution. Mr. Ladauti stated 2 members of the Planning Board voted no on this application and he asked Mr. Rago if they can vote on the resolution. Mr. Rago said neither should vote on the resolution and said you can memorialize a resolution with 1 vote.

Motion was made by Mr. Mazzeo, seconded by Grimaldi to approve resolution for Zoning Appeal #1, Front Yard fence, Setta Savaian. Roll Call: Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Mazzeo voted yes.

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Zoning Appeal #2-2 – Office Warehouse to Office
Mr. Carl Vitale
344-346 Monroe Avenue
Block 27, Lot 8

Mr. Rago said there was a change in the ordinance number on this resolution. He said this case was a reversal involving the issues that we were talking about in terms of possible rezoning. It was determined that minor site plan approval would not be required for what Mr. Vitale wanted to do.

Motion was made by Ladauti, seconded by Mr. Calello to approve Zoning Appeal #2-2. Roll Call: Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Ladauti voted yes, Mr. Calello voted yes.

Application #376 & #2-10
Boright Realty, LLC
20 & 30 Boright Avenue

Mr. Rago said we heard 20 & 30 Boright Avenues together because there was common ownership with a totally inter related site. He said he thought the best way to approach this resolution was to reference both of them but put it in one resolution. Mr. Falkin, the applicant's attorney he had some extremely minor changes with regards to the resolution and Kathi made the corrections. The main issue was, we understood there would be 30 of the new parking spaces being leased back to the newer building but it is actually 20.

Mr. Falkin said the application was submitted for 20 parking spaces on 30 Boright for use by 20, he thinks the 30 came up because Kevin's report initially said 30 and then we corrected the record at the meeting but still 30 go in.....so 20 is the correct number. The additional 13 spaces are for the use of tenants at 30 Boright. Mr. O'Brien said we had corrected that on the record.

Mr. Grimaldi said one of the conditions for that approval was that the original conditions still have to be met because the building is still under construction. Mr. Rago said that was #5 on page 5 in the resolution.... last sentence..."unless modified herein, all conditions that had prior approvals shall remain in full force in effect".

Mr. David said one vote will be for both applications #375 & 376 for both 20 & 30 Boright.

Motion was made by Mr. Grimaldi, seconded by Mr. Mazzeo to approve Application numbers 376 & 2-10 and Application #375, Boright Realty for 20 & 30 Boright Avenues. **Roll Call: Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Mazzeo voted yes, Mr. Ladauti voted yes, Mr. Calello voted yes.**

Old Business – None

Mr. Falkin said there is a second tenant for the remainder of the building, approximately 20,000 sq. ft., it is a company called Ventos USA, Inc. which is a subsidiary of a Spanish company. On Tuesday night, the Ventos company and their attorney, Don Pepe met with Mr. Herbert to review the Zoning Permit application. One of the issues that came up was whether or not there was a need for a parking variance because apparently according to the ordinance, 20 spaces would be required. He said he was not at the

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meeting and this came up yesterday morning. His understanding is, and he spoke to Kevin briefly about this, was that the resolution that we got in 2017 gave a variance for parking for the entire building, that is for the tenants they would have 47 spaces assuming that they conform to the use. We came before you at the April meeting because the 1st tenant Alpha had some different requirements, they had a mezzanine which affected the parking and we dealt with that issue in the resolution that was just adopted. The question is does Ventos need a parking variance, Mr. Falkin says they do not because we got the resolution based on 47 spaces. Ventos has actually designated 10 spaces in the lease, the number of employees is less than 10 at any one time so that requirement is not an issue. There are an additional 7 spaces on site for use of both Ventos and Alpha and those are undesignated spaces. The question is.....is a variance required or not, he does not want to go through a whole procedure and have Ventos go through a whole procedure and then the Board in a month or two from now decide...well what did you need it for in the first place when we don't believe that we do based upon the reading of the 2017 resolution and also restated in the resolution just adopted.

Mr. David said you laid out a lot of facts and from his perspective he would want to know if the combined occupancy meets the parking requirements for the particular property. He said he will defer to Mr. O'Brien to see if he has had an opportunity to look at this and provide the Board with his opinion as to whether they need to come back for a variance or not.

Mr. O'Brien said presuming, and he has not seen any plans, he spoke with Mr. Falkin yesterday, presuming there is no physical change and presuming this is an allowed use, in his opinion the parking variance would continue for this new tenant. Mr. Grimaldi said if the only difference is that it is no longer 1 tenant, its 2 but all the other facts, the bulk use, the split between office/warehouse, number of employees, everything else is the same, with the exception that there are 2 different tenancies in the building. Mr. O'Brien said we knew there were 2 tenants when we approved 20/30 Boright Avenue because that is the way the site had been configured. Mr. O'Brien said presuming that there is no change to the site physically in any way.... Mr. Grimaldi said and that the numbers for that building have not changed. Mr. O'Brien said correct as long as it's an allowed use because the variance was granted for an allowed use in the zone. He said when it first came to us we did not know what was going to go in there so the variance was for any allowable use. Mr. Rago said the parking was based on that. Mr. O'Brien said the fact that they had to get a new variance was because they added physical space which increased the parking requirement so therefore they needed a new variance from that but the other space is still under the direction of the original application and resolution. Mr. David asked if we were required to take any physical action. Mr. Grimaldi said maybe we should ask the Zoning Officer what gave him the reason to suggest that they would have to come in front of our Board?

Mr. Herbert said he is going to make a recommendation to go back to the original resolution when the building was presented to get approved to be built there and look at the language of what this board based the condition on in regards to estimating how many employees were going to fill the sq. footage of that building. He said he remembers reading that resolution, the original one, and the language was there. He said upon reading that and then the previous application that was just approved, our parking ordinance goes based by square footage or the amount of employees, whichever is greater. That is the language that is in the ordinance, he does not make it, he only reads what is presented to him. He said this potential tenant, we have only had a verbal discussion, there have been no plans or anything in that nature or any site plan showing the parking spaces, it was just a conversation and he told them the basic stuff they need and that is why he feels they need to go through the parking regulations, only because of what the original approval was based on, that is his opinion.

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Mr. David said it is a good point because he does recall that the original application sold the structure more as a warehouse, which would imply a limited number of employees occupying the facility. He said obviously things have changed considerably from an employee perspectivehe is not saying whether you need one or not.....just that we need to be sure. Mr. Rago said Kevin prefaced it by saying that he has not seen the plans so something would have to be documented. Mr. Falkin said they would have to have a plan, we are at the point where they came preliminary before Mr. Herbert, they do have to have a plan and you do have to know what they are doing with some of their interior work within the building in order to complete it, but their use is warehouse, they have 2 offices and the number of employees is less than 10. He said we already dealt with the Alpha portion of their use which is obviously different than warehouse, we went through that at the last meeting so now we are left with the use of a warehouse which was exactly what was envisioned by the resolution back then. He said he has the resolution now. Mr. David asked how many parking spaces were allotted for the Alpha application.....and where he is going with this is that if originally we allowed 47 and now between the 2 uses the requirement is 57 then you have to come back, it doesn't matter how many employees. Mr. Falkin said we already dealt with that when originally the building was approved with 47 spaces and there is 47 spaces, then because of Alpha's need who had more parking spaces because of their use, that is when we took the 20 from 30 so basically we already took care of the parking issue. Mr. Grimaldi said that was for that section.....right now we don't know what is coming now. Mr. Falkin said he is suggesting that if it's less than 10 for the warehouse which is essentially 1/2 the number that is required by ordinance, we do have a variance so what are we coming back for. Mr. David said he thinks there are still a number of unknowns and until there are plans in front of us, the Board cannot make a determination of whether you need to come back so he thinks we should defer until there are plans in front of Mr. Herbert. Mr. Rago said once we get the details and you can talk to Kevin and Bob again and if it works out then you probably will not have to do anything but if it is something that we are not seeing now then you might.....he asked Mr. Herbert what he wants to see. Mr. Herbert said he already told him what he needs.....he can't make a determination on a Zoning Application by a discussion, it requires a survey, a site plan, a letter of operation, how many square feet, how many employees, hours of operation, if there are chemicals involved, we need data sheets.....he said there is a whole lot of stuff he needs to see before he can put his name on as a Zoning Officer. He can't determine on here say because if he did that we are talking questionable about a variance, the other part of that meeting was they may need a minor site plan because they will be putting a vent up through the roof, they did not give him a height elevation to the peak of the vent because there is a limitation on height in the buildings in all zones and then they are calling it a white room, it was presented to him as a fire safety room but they labeled it white to make sure that their product stays purified, not in the natural air. He said homes that are 500 ft. to the building, as a zoning officer, on behalf of the residents, he is concerned with fumes, he said there are a lot of factors. Mr. David said there are too many unknowns for this Board to make any commitments. Mr. Falkin said all the issues that Mr. Herbert raises are fair and obviously have to be dealt with, the only issue is that he is raising is the parking. Mr. Herbert said, unless his Board feels differently, we are not in a position... Mr. Grimaldi said once there is a concrete document, he thinks the two of them could probably stop it right there, it may need to come to us.....but there is nothing in front of us. Mr. Pantina said it would be like having a technical review meeting between the Zoning Officer and our Planner but you still need all that information, the only thing you would not need is that you won't have to publically formulize and come before the Board, if it gets settled between Kevin and Mr. Herbert.

Comments for the Good of the Board

None

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OPEN MEETING TO THE PUBLIC

Motion made by Mr. Ladauti, seconded by Mr. Grimaldi to open the meeting to the public.
All in favor.

Mr. Herbert, Kenilworth Zoning Officer – Mr. Herbert said regarding the resolutions passed to overturn his zoning decision, he highly respects the Board, the only request he has is that is it possible that we can enter for the record that both ordinances were ambiguous and that is why the zoning officer decided to do what he did and then the Board listening to the applicant and being fair to the applicants in your opinion, you based your opinion, it wasn't that I misread the ordinances. Mr. David said it was clearly stated, on the record because on the fence reversal he made the statement that the code was contradictory, it was actually for both. Mr. Grimaldi said it was not by Mr. Herbert's ill will or misreading it was Mr. Rago said in both resolutions he mentioned that you were put in an awkward position and in Savian he indicated that the ordinance was contradictory and ambiguous and that you made a determination but the ordinance was contradictory and he thinks in that matter we limited to that situation where the front yard issue was tricky and we did not want that to be a precedent for anyone else coming in so we limited to that. He also mentioned that if the fence was not constructed, the Board probably would not have reversed you, the issue was that it was already up and it would be a hardship for her to take it down. On both instances you did nothing wrong, you did what the ordinance said. Mr. Herbert said the fence application was denied twice and the fence still went up.

Motion made by Mr. Grimaldi, seconded by Mr. Ladauti to close the meeting to the public.
All in favor.

Adjournment

Motion to adjourn was made by Mr. Pantina, seconded by Mr. Grimaldi. All in favor.

Respectfully submitted by:
Kathleen Moschitta
Recording Secretary