

TOWNSHIP OF SADDLE BROOK
ZONING BOARD OF ADJUSTMENT MINUTES
November 1, 2021 Regular Meeting

The Saddle Brook Zoning Board of Adjustment will hold a regular meeting 7:00 p.m. on Monday November 1, 2021 at **(Town Hall 93 Market Street)**

1. CALL THE MEETING TO ORDER

2. FLAG SALUTE

3. OPEN PUBLIC MEETING ACT: adequate notice of this meeting has been sent to all members of the Zoning Board and to all legal newspapers in Accordance with all the Provisions of the “Open Meetings Act”, Chapter 231, P.L. 1975.

4. ROLL CALL

Ms. Murray, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Champy, Mr. Duffy – Present. Mr. Gatto and Mr. Burbano are absent. Also in attendance is Stephen Pellino the Board Attorney, Anthony Kurus the Board Engineer and Gary Paparozzi the Board Planner.

5. NEW BUSINESS

A.) Chefler Foods, LLC, 400 Lyster Avenue, Block 1009, Lot 9

Applicant requests to use the rear/east side of the property for truck parking with exterior improvements consisting of new timber curbing, gravel paving and landscaping. (Applicant was carried from the October 4th meeting and has asked to be adjourned until the January 2022 meeting). Day TBD

Mr. Duffy asks if anyone has any questions about the letter from Mr. Sarlo asking to be carried to the January meeting. The Board discusses the request and the additional information they had asked for at the prior meeting.

Mr. Schilp makes a motion seconded by Ms. Murray to accept the letter and approve the request.

Mr. Duffy – Roll call.

Roll call - Ms. Murray, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Duffy – YES.

Mr. Pellino suggests writing a letter to Mr. Sarlo telling him the Board has agreed to carry his application to January but it is his obligation to check to determine the exact date in January and notice appropriately. The Board agrees.

B.) Curcio Realty, LLC, 156 Midland Avenue, Block 403, Lot 9

Applicant requests to convert six existing single-room occupancy units on the 2nd floor into 2 one-bedroom units in noncompliance with Township Code, Section 206, Schedule I, Attachment I, Schedule I, Part I.

Mr. Duffy asks Mr. Pellino if the notice is in order for this application and he says that it is in order.

Kimberly Bennett is the attorney representing Michael Curcio who is the applicant in this matter.

Ms. Bennett explains that this application was first heard in August of 2020 and that they are asking for a request for interpretation pursuant to NJSA 40:55D-70 B which empowers the Zoning Board to hear special questions or interpret Zoning Ordinance and questions on the Zoning Map. We previously requested to bifurcate the application so that the interpretation is heard first depending upon the Board’s decision tonight we may or may not return for a Use Variance. The property is located in the OM office mid-rise district near the municipal boundary with the City of Garfield. We are requesting to convert 6

single room occupancy units on the second floor of the building into 2 one bedroom apartment units. Residential uses are not permitted in the zone.

Ms. Bennett introduces Michael Curcio to the Board and says he will be giving testimony for this application.

Mr. Pellino swears Mr. Curcio in. He states his name spells his last and gives his address as 1 Harvest Lane Kinnelon New Jersey.

Ms. Bennett – We presently have 2 two bedroom apartments on the first floor, 6 single room occupancy units on the second floor which are currently unoccupied. On the third floor there is one apartment. All the renovations will be to the interior of the building and there is no expansion of the physical structure. We are asking for an interpretation as to whether a D2 variance is necessary. We cited a case Lehen vs Atlantic Highlands Zoning Board. I would like to read an analysis into the record if that is okay. The Lehen case confirmed that existing nonconforming uses may not be enlarged as of right meaning they would require a variance except where the change is so negligible or insubstantial that it does not warrant any administrative interference. The court went on to state that the inquiry was focused on the quality character and intensity of the use the impact on the neighborhood and the need for zoning. In that case they had a multi-family dwelling with 5 rental units single occupancy similar to what we have here which were converted into apartments. In that case the applicant planned to remodel the third floor to convert the occupancy units into an apartment. This would reduce the total number of dwelling units although the total number of units increases from 5 to 6 the actual number of dwelling units decreases which is the exact facts of our situation here. In that case the appellate division made a determination that there was no need for a D2 variance because it was not an expansion of a nonconforming use. The case also discussed a separate issue about expanding the floor area finding that the applicant could not expand the floor area without a variance. We are making no expansion of the floor area here. In terms of the revisions to the single resident occupant units the court said there was not an expansion no increase in intensity of the property. While you are increasing the number of apartments you are decreasing the number of dwelling units the same scenario as we have here. Does the Board have any questions for Mr. Curcio?

Mr. Mazzer – What's in the basement?

Mr. Curcio – A washer dryer and utilities for the building a water heater and furnaces.

Mr. Mazzer – There's one water heater.

Mr. Curcio – No there is 3. Two for the two bedroom apartments on the first floor and one larger one for the rest of the building.

Mr. Mazzer – Do you have any parking?

Mr. Curcio – There is one spot in the back that people park and they park on Lanza Avenue. Some of the people park in my other parking lot.

Mr. Mazzer – In that case did they say anything about parking?

Ms. Bennett looks through the paperwork for the information. Not finding anything she says that the number of occupants is reduced so the parking adequately accommodates what exists now and it is being reduced. So we are not making an expansion. There is parking on the street which is what the tenants use now.

Ms. Murray – There is a concrete area behind the building that could be striped for parking but there's a crane from the business behind it sitting there along with 2 pieces of equipment that block the driveway that allows you to drive from the street and around. I don't agree with your adequate parking. Is there a variance that allowed you to have one spot for the entire building? I don't see one. I know when this was brought in the last time there were a couple of questions asked. Number one was there a variance for the parking and number two was there a variance for attic space living and nobody had an answer. We don't allow living in an attic unless there is a variance for it.

Mr. Curcio – It's not an attic really.

Ms. Murray – It says attic floor on your drawing.

Mr. Curcio – It does?

Mr. Duffy – Yeah it does.

Ms. Murray – If you've got this many people in here there should have been a variance for zero or one parking and there isn't.

Mr. Paparozzi – During my inspection on the front door it says there are 2 apartments on the third floor.

Ms. Bennett – On the drawing you can see there is only one apartment. Not sure about the history of the sign.

There is more discussion about the parking and Ms. Bennett brings out the fact that they are not expanding what is there and do they require a variance or not.

Mr. Pellino asks if Mr. Curcio can shed any light as to how they got to where they are.

Mr. Curcio explains that his parents bought the property when he and his sister were children in a trust for them. It was always a rooming house and the apartment upstairs was always there. The downstairs was the Hob Nob Pub at one time. It was about 45 years ago that they bought it.

Mr. Duffy asks if the property has been that way since then.

Mr. Curcio says yes it has. The 2 apartments on the first floor were done about 20 years ago when the bar was eliminated.

Mr. Pellino asks if there was a Zoning Application in connection with that and if there was a resolution for it. Mr. Curcio says that he thinks there probably was but does not have any paperwork to support that.

Mr. Curcio says that the second floor was always a rooming house even when the bar was there and the third floor was a single apartment that has been occupied by the same tenant for over 30 years.

Mr. Schilp asks if it's possible to designate parking on their adjacent property for the tenants to use.

Mr. Curcio says that there is plenty of room in the lot for extra spaces.

Mr. Pellino mentions that they would actually be reducing the parking requirement by making these changes.

Ms. Bennett says that between the parking that exists the street parking and the parking lot there is adequate parking.

There is discussion among the Board and the applicant about how and where there is available parking.

Ms. Bennett says that the applicant would be amenable to some of these ideas but that we are here to determine if a variance is required.

Mr. Mazzer suggests that if they had prior approval that it would be an easy decision.

Ms. Bennett again states that they do not need a variance because they are reducing the intensity.

The Board continues to debate the parking issue.

Mr. Paparozzi is asked what the RSIS standard would be for this application. He says that if there are 2 apartments on the third floor like the sign on the door said then they would need 11 spaces. If there is only 1 on the third floor then the number would be 9 spaces. The second floor has several bedrooms but only 1 kitchen and 1 bathroom and if you have a one family house with 5 bedrooms and now you are adding another kitchen and bathroom so there is an argument to be made that the intensity would still be the same.

Mr. Pellino mentions that a single room occupancy rooming house is a different use than an apartment. The other argument in terms of needing a use variance is that you are changing the use not whether you are intensifying it or not.

Mr. Duffy asks how we should proceed here.

Mr. Pellino – If I understand counsel correctly they are not requesting a "D" variance they are just looking for the interpretation as to whether they need the D2 Variance or not.

Mr. Duffy – If we say they don't need the D2 Variance?

Mr. Pellino – They just go for their building permits.

Mr. Duffy asks if there are any other questions.

Mr. Paparozzi says that he agrees with the Construction Official that by having 2 kitchens and 2 bathrooms it is going to increase the intensity. If we are going to err on the side of caution I think it would require the variance.

Mr. Pellino has the opinion that it is a change of use so it would need a variance.

Mr. Tokosh mentions that they would need another fire escape if they were approved.

There are no other questions from the Board.

Mr. Duffy asks for a motion to open to the public.

Mr. Schilp makes a motion seconded by Mr. Tokosh to open to the public. All in favor – YES.

Mr. Duffy – having heard none.

Mr. Schilp makes a motion seconded by Ms. Murray to close to the public. All in favor – YES.

Ms. Bennett brings forward their architect Lawrence Parisi.

Mr. Pellino swears Mr. Parisi in he states his name spells his last and gives his address as 183 Market Street Saddle Brook.

Ms. Bennett questions Mr. Parisi in order to qualify him as an expert witness. The Board accepts his credentials and allows him to testify.

Ms. Bennett asks Mr. Parisi to describe the current conditions of the building at 156 Midland Avenue.

Mr. Parisi describes the interior layout of the building. First floor 2 two bedroom apartments in excellent condition, the third floor attic there is a living room bedroom a kitchen and a bath it is one unit.

Ms. Bennett – You can confirm the third floor was one unit.

Mr. Parisi – Yes. There is a fire escape that comes down from the attic space third level. There is street parking.

There are some questions and a discussion about the street parking and the part of Lanza Avenue that goes across Midland Avenue and also gives access to the scrap metal company.

Mr. Parisi continues saying that there are 3 or 4 spaces there where you can park and along the side of the building you can fit another 3 so that's 7.

He then describes the second floor as 6 bedrooms 1 bath and a kitchen area.

There is a brief debate as to whether or not it is a change of use as it will still be a residential dwelling. It will however be 2 different addresses and it will be going from a single unit with 6 bedrooms to 2 separate units. Mr. Parisi thinks it will be an improvement with less transient people and less traffic. He then tells the Board what the changes will be to that floor adding a bathroom and kitchen and maybe moving the windows around and siding. New plumbing and fire escape.

Mr. Mazzer asks if it is sprinklered.

Mr. Parisi – No.

The discussion returns to the parking and that they can probably get 5 or 6 spaces on the site with the street parking.

Ms. Bennett says that Mr. Curcio would be willing to dedicate some spaces in his other parking lot make sure they are reserved for the apartments. There is no parking on Midland Avenue.

Mr. Curcio says he has tenants that use it already.

Mr. Parisi describes the basement as having a washer and a dryer and water heaters.

Mr. Duffy – The basement is intended to remain the way it is right now correct.

Mr. Parisi – Yes.

There are some questions about the height of the ceiling on the third floor and it is determined to be 8 foot in most areas and tapers down.

Mr. Duffy asks for a motion to open to the public for Mr. Parisi.

Mr. Schilp makes a motion seconded by Ms. Murray to open to the public. All in favor – YES.

Mr. Schilp makes a motion seconded by Mr. Manzo to close to the public. All in favor – YES.

Mr. Pellino explains that one of the powers of the Zoning Board is to give interpretations of ordinances and applications. The applicant is asking the Board to give an interpretation as to whether or not what is proposed will require a D2 Variance. Clearly we are dealing with a nonconforming use a use not permitted in the zone. The question is what the applicant is proposing an intensification of this nonconforming use or in my opinion a change in the nonconforming use. The law generally says the nonconforming use can continue without interruption as a matter of right but cannot be intensified or expanded or changed. Counsel has cited a case similar to ours where the appellate division held that a change from a rooming house to apartments is insignificant enough to not require a variance. My opinion is that it is a change a minor change but a change in the nonconforming use. I also think it is a less intense use and I agree with the architect that it probably is an improvement. The question before us is not whether or not to do that but whether they need it. If the Board says there is an expansion intensification or change in use then

they need a "D" Variance and will come back to the Board with an application. If the Board decides there is no intensification or change they go to the Building Department and get their permits.

Ms. Bennett – Respectfully if I may add my position is that the case says because the change is so insignificant when you are changing single room occupancies to apartments that does not increase the number of bedrooms that the "D" Variance is not necessary and we may move to building permit. So that is the question for the Board to decide whether they agree with that.

Mr. Mazzer says that he thinks it would be an improvement to the current situation but that it is a change. There is a discussion among the Board as to what it is they are deciding and how it moves forward after their decision.

Mr. Duffy asks how the motion should be worded.

Mr. Pellino – I think the motion would be the Board renders the interpretation that the applicant's plans do or do not require a "D" Variance.

Ms. Bennett - I agree with that formation.

Mr. Duffy makes a motion that the Board make an interpretation that the applicant's plans do require a "D" Variance as an expansion or change of a nonconforming use. Ms. Murray seconds the motion.

Roll Call – Ms. Murray, Mr. Mazzer, Mr. Manzo, Mr. Tokosh, Mr. Duffy – YES.

Mr. Schilp and Mr. Marz – NO.

The count is 5 to 2 so the motion carries.

Mr. Paparozzi asks that the applicant indicate where the dedicated additional parking will be.

Ms. Bennett asks that they be carried for the continuation of the application without notice to the December 6th meeting.

Mr. Pellino agrees that they will not need to renote and the Board announces that.

There is a discussion about what if any additional information the Board would like to see for their application at the next meeting.

C.) Curcio Realty II, LLC, 416 Lanza Avenue, Block 403, Lot 8

Applicant requests to construct an open canopy which is an expansion of a nonconforming use and may also require height and setback variances.

Ms. Bennett explains that they are in an OM Office Midrise District and the applicant would like to build an open canopy to prevent the leaking of contaminants into the ground during weather events. Construction of the canopy was requested by the NJDEP for their storm water regulations. This has been an ongoing discussion with them since at least 2014. There is an existing canopy on site that the Board previously approved and the proposal we are discussing tonight is about half the size of what is existing. The DEP requires the operations be covered to prevent the contamination of runoff. This wasn't submitted with this application but I do have an email from the DEP which confirms they are requesting a structure to be constructed over the operations.

The email is entered as exhibit A-1 and is dated Thursday October 30th 2014 from Mark Zuckerman Environmental Specialist at NJDEP.

Ms. Bennett reads the email out loud.

Mr. Pellino states that the notice is in order for the application.

Ms. Bennett – Mr. Parisi did not redraw the drawings we have here. We have older plans that show the existing canopy and the much smaller proposed canopy. The question is whether the Board will accept that and approve the proposed addition or if they need something else or what we need to do.

Ms. Bennett explains that the architect who drew the plans Mr. Chudzinski is not available for an in person meeting due to his health and is not able to testify.

Mr. Pellino – Since this is a nonconforming use the addition of any type of structure technically constitutes an expansion.

Ms. Bennett – I think that the variance is supported by the DEP's requirements.

Mr. Duffy – You're asking us to accept Mr. Chudzinski's drawings and then carry that as part of the application.

Ms. Bennett – Yes.

Mr. Duffy defers to Mr. Pellino for his opinion and he says that it is a question for the Board as to whether or not they are satisfied.

Ms. Bennett adds that she does not have the architect here to testify about the plans so if the Board requires new plans we would have to go that way.

Mr. Schilp – How high is the canopy going to be?

Mr. Curcio – Thirty three feet.

Mr. Schilp – Shorter than the other one?

Mr. Curcio – Yes the other one is 60 feet it's half the height.

Mr. Schilp – So it will be the same height as the house.

Mr. Curcio – Yeah about that height.

Mr. Pellino reminds the Board that Mr. Curcio should be sworn on again as this is a different application.

Mr. Pellino swears in Mr. Curcio again.

Mr. Duffy asks the Board if there are any objections to accepting Mr. Chudzinski's drawings without his testimony.

Mr. Curcio explains what the structure will be how it will be constructed and that if they ask for new drawings there will be no changes to the plan.

Ms. Bennett – The canopy is shown on the drawings there is just no testimony.

Mr. Mazzer states that when they go for permits they will have to provide the proper information to the Building Department.

There are no objections.

Mr. Paparozzi – I'm just questioning the date of the Chudzinski plan for the record 5/30/19.

Ms. Bennett – That's correct.

Mr. Duffy – We will accept the drawings.

Mr. Tokosh asks about the equipment they will be using and if it is the same as they are using for the other canopy. He is concerned about the crane height and if that could be a problem for the lower canopy.

Mr. Curcio tells him that the crane will not be used in that area and only forklifts or roll off trucks will be used under the new canopy. There will be no issues with the height of equipment used in under the new canopy.

There are no other questions from the Board.

Mr. Pellino reads from the Zoning Officer's Denial Letter and whether or not there will be height or setback variances required.

Mr. Paparozzi – I just marked it as an expansion of a nonconforming use.

Mr. Duffy asks for a motion to open to the public.

Ms. Murray makes a motion seconded by Mr. Schilp to open to the public. All in favor – YES.

Mr. Duffy – Having heard none.

Mr. Schilp makes a motion seconded by Ms. Murray to close to the public. All in favor – YES.

Mr. Schilp makes a motion to approve the application seconded by Mr. Manzo.

Roll Call – Ms. Murray, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Duffy – YES.

6. RESOLUTIONS

A.) Approval for Jessica & Anthony Fiore, 148 Platt Avenue, Block 506, Lot 3

B.) Approval for Krista & Anthony Breonte, 126 Nedellec Drive, Block 1511, Lot 2

C.) Approval for Brian Sheppard, 34 Welcome Road, Block 503, Lot 4

D.) Approval for Lorenzo & Angelica Scaduto, 177 Wilson Street, Block 1703, Lot 24

Mr. Schilp makes a motion to approve the resolutions seconded by Mr. Marz.

Roll Call – Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Tokosh, Mr. Marz, Mr. Duffy – YES.

7. MINUTES

Meeting of October 4, 2021 Regular Meeting

Mr. Schilp makes a motion to read and file the minutes from the previous meeting seconded by Mr. Marz. All in favor – YES.

8. COMMUNICATIONS

Anthony Kurus to the Zoning Board, 3/26/20
Anthony Kurus to the Zoning Board, 8/05/21 Revised
Gary Paparozzi to the Zoning Board, 5/30/20
Gary Paparozzi to the Zoning Board, 6/01/20
Charles Sarlo to the Zoning Board, 10/20/21

Mr. Schilp makes a motion to read and file the communications seconded by Ms. Murray. All in favor – YES.

9. VOUCHERS

Neglia Engineering Assoc., 10/11/21, Suresh Patel, 31 Hutter Street, Block 1501, Lot 7 \$180
Basile Birchwale & Pellino, 10/01/21, Suresh Patel, 31 Hutter Street, Block 1501, Lot 7 \$250
Basile Birchwale & Pellino, 10/01/21, C.D.R. Realty, 435 President Street, Block 102, Lot 23 \$781.25
Paparozzi Associates Inc., 10/12/21, Chefler Foods, LLC, 400 Lyster Avenue, Block 1009, Lot 9 \$540
Return of Unused Escrow, 11/01/21, Anderson Rosario, 300 Grace Avenue, Block 411, Lot 3 \$31
Return of Unused Escrow, 11/01/21, Jason Staine, 47 William Street, Block 522, Lot 3 \$78.90
Return of Unused Escrow, 11/01/21, Ronny B. Pena, 82 Kuhn Drive, Block 1204, Lot 8 \$78.90
Return of Unused Escrow, 11/01/21, Jack Daniels Motors, 402 N. Midland Ave, Blk 401, Lot 12 \$63.75.

Mr. Schilp makes a motion seconded by Ms. Murray to pay the vouchers if the funds are available. All in favor – YES.

10. OPEN AND CLOSE MEETING TO THE PUBLIC

Ms. Murray makes a motion seconded by Mr. Schilp to open to the public. All in favor – YES.
Mr. Paparozzi says that he suggested to Ms. Bennett to use the plan for the canopy application for the plan for the 156 Midland application when they come back next month because it shows the entire site including the house on Midland Avenue and those adjacent to it.
Mr. Schilp makes a motion seconded by Ms. Murray to close to the public. All in favor – YES.
Mr. Duffy asks for suggestions on changing the zoning ordinance.
Mr. Schilp reads his list off.
Shed placement should be 18 inches from the property line. There are a lot of small lots in town.
Mr. Mazzer asks if he wrote down what they are now.
Mr. Schilp says that when he presents it to Council he will have the existing and then the proposed.
Mr. Paparozzi mentions that there is no hospital zone and that Kessler is in a residential zone and has to go to the Board for anything they do.
Ms. Murray disagrees with the shed distance and Mr. Schilp says we can talk about it.
Ms. Murray says maybe 3 feet would be good.
There is a discussion about what size constitutes a shed.
The Board discusses the rest of the list Mr. Schilp has put together. It is just a draft for discussion.
Mr. Paparozzi says that whatever is decided has to be approved by the Planning Board. He explains some of the other discrepancies that exist in the code that are not RSIS standards.
Mr. Schilp asks Mr. Paparozzi to put something together for the Board to present to the Mayor and Council.

Mr. Paparozzi says that they need a new zoning map because it is outdated and the one that we have is hard to read and interpret.

Mr. Schilp says they should count pavers as 100% coverage because they have compacted material under the pavers and sometimes they even use concrete.

He says all pools should not count as coverage at all.

Decks should not be counted as lot coverage if there is a minimum of 1/8" between the slats and that there is dirt or grass under the deck.

Mr. Mazzer – Almost everybody counts a deck as coverage.

There is a debate as to why they do but there is no clear answer.

Mr. Pellino says it may also have to do with the fact that maybe you don't want somebodies whole yard covered with a deck.

Mr. Paparozzi says he will email something to the Board for the next meeting and it can be discussed at the next meeting. Mr. Duffy will draft a letter to the Mayor and Council.

There is a proposed schedule of meetings and the January 3rd meeting is the only one that may need to change.

There are members up for their term this year. Mr. Burbano, Mr. Gatto, Mr. Mazzer and Ms. Murray are up for reappointment

Mr. Duffy mentions that they are having a plaque done for Mr. Gatto.

11. ADJOURN

Ms. Murray makes a motion seconded by Mr. Schilp to close the meeting. All in favor – YES.