

BOROUGH of GARWOOD
PLANNING BOARD

MEETING of April 12, 2023

Chair Stephen Greet opened the meeting at 7:30 p.m. and read the following:

Pursuant to the Open Public Meeting Law, this is to state for the record that adequate notice of this meeting has been provided to the public by publication in the Union County Hawk on December 29, 2022 and by filing of said notice in the office of the Municipal Clerk. This is a regularly scheduled meeting of the Board.

Flag Salute – Moment of Silence

ROLL CALL

Present: Chair Stephen Greet, Vice-Chair Kathleen Villaggio-remotely, Ken Capobianco, William Nierstedt, Richard McCormack, Paul Tarantino, Stephanie Bianco, Steve Barcan (Alt. I)-remotely, Mary Ann Hay (Alt II), (Alt. III) Alt. IV - VACANT

Absent: None

Excused: Mayor Jen Blumenstock, Councilman Vincent Kearney

Also present were Board Attorney Donald Fraser, Christian Cueto, P.E., present for Victor Vinegra, P.E., P.P. (who was attending remotely) and Board Secretary Adele Lewis.

Board Attorney Fraser announced that Councilman Kearney is not present as he would be recusing himself from hearing Mr. Kelly’s application as Mr. Kelly is now a declared candidate for council. Additionally, Mr. Kearney would not be able to hear the Use Variance application also on for the evening.

MINUTES

- **MINUTES OF THE MARCH 22, 2023 PLANNING BOARD MEETING**

On a motion by Ken Capobianco, and seconded by William Nierstedt, the Board voted by general consent to adopt the minutes of the March 22, 2023 Planning Board meeting.

OLD BUSINESS

Draft Ordinance Short Term Rental Regulations (*Continuation*)

Chair Greet stated the Board would be continuing the discussion on short term rental regulations. He noted the Board contained some new members and provided background. He thanked Mr. Barcan and Mr. Nierstedt for their diligent work on researching the matter and preparing a draft ordinance. He asked Mr. Nierstedt to provide his reasoning for the best path forward.

Mr. Nierstedt thanked Chair Greet for acknowledging the time and effort that he and Mr. Barcan have spent on the research and drafting of the proposed ordinance.

Mr. Nierstedt read the following statement into the record:

“As I was one of the supporters for this board to explore the possibility of the Borough adopting a Short-Term rental ordinance, and I am now going to vote against this ordinance, I thought that

it would be best for this board and for the strength of its recommendation for non-adoption to Borough Council that I make an actual statement explaining my findings.

I embarked on this ordinance writing because of a truism taught to me by my first planning boss – ‘Anything land use can go next door to any other land use provided that you can identify all of the impacts that a new use entails and adequately address them’. As I learned the potential impacts of this proposed use, I came to the realization that in Garwood, given our densely developed land use pattern, we cannot adequately address the impacts. Those impacts include the following:

- The underlying purpose of land use regulations/i.e., zoning – is the protection of property values. This is not based on aesthetics or other esoteric thinking, but on actual finance. The courts agreed that municipalities have the right to adopt regulations to maintain a certain quality of property value within its borders so that it can assess values, collect taxes, and provide necessary services. In my mind, this requires stable neighborhoods – be they residential, commercial, or industrial uses. Neighborhoods that are in constant change do not maintain their property values, stability, or character. Short term Rentals are not inherently stable, thus, in my opinion, they do not lead to the protection of property values.
- An inability to mitigate potential impacts given that Garwood’s land development pattern is based on 40 and 50’ wide lots. There is simply inadequate lot width to provide any landscape screening, buffers, or other mitigatory measures between this use and neighboring properties.
- The regulatory administration of this use became a nightmare. Our proposed ordinance involved to a higher degree than with any other uses – the offices of the Borough Administrator, Zoning Officer, Property Maintenance Officer, the Construction Official/housing inspector, the Planning Board, the Zoning Board of Adjustment, and the Police and Fire Departments at a minimum. The administration of this ordinance would place additional financial burdens on our Borough for which I could not see an accompanying public benefit. Those who know me know that I always say the recycling mantra of ‘Reduce, Reuse, Recycle’ emphasizing that the ‘REDUCE’ word – meaning don’t buy it in the first place comes first. That’s because that’s the easiest way to reduce a product’s environmental impact. It’s the same with this use – if we want to reduce the property value and financial impact, don’t buy it in the first place.
- Parking. There is simply no way that parking for this use could be enforced or not impact a neighborhood. Requiring that the original Single Family, 2 Family or apartment use be required to provide the required minimum number of parking spaces for its own use is a must requirement, and even though this ordinance would not require that the owner be on premises during the short-term rental, there would almost always be one of the owner’s autos parked on site, which would lead to any short-term rental user parking in the street... where there aren’t enough spaces already.
- Finally, a six-page ordinance for one use, the creation of a new application form for just this one use, and the creation of a new processing, inspection, and enforcement system all led me to one point – the realization that this use cannot be placed in Garwood without negative impact that cannot be adequately addressed given its land

development pattern, on its zoning and master plan goals, and thus property values, and should not be accommodated at this time. “

Mr. Nierstedt also indicated that his opinion evolved over the many months’ discussions and his own research and he recommends the Board recommend that the Governing Body not adopt an ordinance permitting short-term rentals.

Mr. Barcan added that the reason he initially supported the ordinance and it appeared to be a source of income for residents. He noted that the majority of the residents who appeared at the past meeting were opposed to short term rentals.

On a motion by Ken Capobianco and seconded by Richard McCormack, the Board voted Affirmative (9) Stephen Greet, Kathleen Villaggio, Ken Capobianco, William Nierstedt, Richard McCormack, Paul Tarantino, Stephanie Bianco, Steve Barcan, Mary Ann Hay to recommend to the Mayor and Council that they not adopt an ordinance permitting short term rentals.

APPLICATIONS

Case PB22-05

267 Spruce Avenue (Continuation)

Block 511 Lot 1 R-A Zone

Applicant: Frank Kelly, Jr.

*Seeking a Certificate of non-conformity for a two-family
Residence in the R-A / single family zone*

Stephen Hehl, Esq. of Javerbaum Wurgaft, Union, NJ continued to represent the applicant and provided an overview of the previous testimony. He noted the house was constructed before the 1922 zoning ordinance. Mr. Hehl referenced all the additional information submitted including multiple year tax returns, 2008 Master Plan appendix recognizing the property as a two-family, the contact of sale, which listed the name of the tenant as well as cancelled checks. Additionally, he noted that there will be testimony by Ms. Macintyre to verify the use.

Ms. Maryanne Macintyre, executor of brother’s estate was sworn in. She stated her brother purchased the property in 1997. At the time of sale there was a tenant. Her brother always lived in the apartment above with a tenant below. She stated it has always been a two-family and the current tenant has been there since 2014.

Questions of the Board:

Mr. Capobianco inquired if there a clear delineation between apartments.

Ms. McIntyre stated yes, there is an entry way with locked doors at each apartment.

Mr. Nierstedt reviewed the new proofs and stated the proofs show it has been a two-family for a long time. He inquired how the garage has been used. Ms. Macintyre stated it has been used for storage. He inquired about the shed which is right on the property line, and requested improvements be made to the property. He listed the property maintenance repairs and noted the applicant testified that he will improve the property. Mr. Nierstedt stated he would like to see the removal of the dead plants in front of house, the masonry to be repaired, the fence be painted, removal of the boards covering the windows and replace missing windows, garage repaired, clean up the sideyard.

Mr. Hehl stated that they are here on a limited scope and they are here for the certificate of non-conformity. He noted the property has received Continued Certificate of Occupancy and will need a CCO when sold and that would be a code enforcement matter.

Mr. Fraser stated that the house could be considered the pre-existing condition but the Board could find that the proofs are not sufficient for the shed. Mr. Nierstedt stated that the garage doors are perpendicular to the house and not accessible. He questioned the claim of 4 parking spaces. Ms. McIntyre stated the garage was built as a carriage house and not a garage. She stated that there have been four cars parked without utilizing the garage.

Mr. McCormack inquired about the financial report and the steam boilers. Mr. Hehl stated that the house was built before the adoption of the zoning ordinance. It only became a one family zone in 1974. It was agreed there had not been sufficient evidence provided for the shed to have been proven to be preexisting and a condition of approval will be that the shed should be removed.

On a motion by William Nierstedt and seconded by Chair Greet, the Board voted Affirmative (9) Chair Stephen Greet, Kathleen Villaggio, Ken Capobianco, William Nierstedt, Richard McCormack, Paul Tarantino, Steve Barcan, Stephanie Bianco, Mary Ann Hay to grant the certificate of Non-Conformity for a two-family house with the stipulation of the removal of the shed and the property maintenance as previously testified by the applicant that he will remove the dead plants in front of house, masonry to be repaired, fence be painted, remove the boards covering the windows and replace missing windows, garage repaired, clean up the side yard.

MOTION CARRIES 9-0

RECESS 8:05 -8:15 p.m.

Case PB23-01

10 South Avenue

Block 501.01 Lot 8 C/C Zone

Applicant: Garwood Chicken, LLC

Seeking Major Preliminary & Final Site Plan approval with Use Variance for a Popeye's Chicken with drive through facilities along with variances for rear yard setback & signage

Board Attorney Don Fraser noted that a court reporter was not present as required for a D Variance. It was agreed that a court reporter would prepare the transcript from the zoom and audio recordings.

Jason Tuvel, Esq. of Prime & Tuvel represented the applicant. He reviewed the variances being sought citing the two D variance, one for two principal uses and one for the two proposed Drive-throughs. He noted that there are no requests for bulk variances, however a request for variances for signage. He noted that the lot is oversized, and they will be well over the parking requirements. He noted operational characteristics such as hours of operations, number of employees.

Matthew Bersch, P.E., Dynamic Engineering was sworn and qualified.

EXHIBITS MARKED

- A-1 Enhanced Aerial Map w/colorization
- A-2 Aerial overlay dated 4/12/2023
- A-3 Site Plan rendering dated 4/12/2023
- A-4 signage board
- A-5 signage

Mr. Bersch noted that there are 180 required parking spaces for the site and there are 264 parking spaces. He noted that there will be ADA parking. He reviewed the drive isles and the drive through windows. He noted there is the ability for mobile ordering. He reviewed the trash and recycling pick up schedule and noted that it would be off peak hours. Mr. Nierstedt requested additional information regarding recycling and waste management. Ms. Hay recommended the removal of some parking spaces for green space. It was also recommended that the removal of the parking spaces to install a sidewalk for pedestrian walkway. He reviewed the landscaping proposed. Mr. Nierstedt requested that the number of trees be increased and use native species. Ms. Hay asked about the possibility of outdoor seating. He spoke to the impervious coverage and stated they are improving the stormwater management of the site. He reviewed the lighting and recommendation was made to lower the poles.

The applicant agreed to reduce the new pole height from 33 ft. to the Garwood building code standard of 25 ft.

The reduction in the pole height will also require a reduction in the lumen output in order to provide consistent levels of illumination in the areas with the 25 ft. poles and the areas which contain the existing 33 ft. poles

Mr. Bersch reviewed the signage and stated the illuminated signs will be off when the business is closed. The Board requested consideration to reducing the amount of signage. Mr. Bersch stated that the building is set back but he can work with Harbor Consultants to address the concerns in the review letter dated 4/7/2023.

Robert Girmaldi, R.A., Kenilworth, NJ was sworn and qualified. He reviewed the elevations included with the submission.

He reviewed the façade and stated the building is 18 ft. tall and stated the HVAC units are set in and will not be visible from the site. The parapet wall will be on all four sides of the building. The lighting will be shut down when the business is closed. He described the materials to be used. He reviewed the signage package. He testified to the refuse area and noted the area is larger than needed but this is for safety. A recommendation was made for screening of the area. An inquiry was made about greening of the building. Mr. Girmaldi noted that many of the materials are recycled and reclaimed materials. The Board inquired about the site's internal circulation, including for pedestrians and bicycles.

Mr. Tuvel requested that the application be carried to the May 24, 2023 meeting without the need for further notice. Mr. Tuvel will submit revised plans to address the comments of the Board and the Harbor Consultant letter 4/7/2023.

CLAIMS- *No claims were presented for payment:*

INVITATION TO ADDRESS THE BOARD

None

ADJOURNMENT - There being no further business, the Board adjourned 9:45 p.m.

The next meeting will be April 26, 2023 is cancelled. The next meeting will be May 24th

Respectfully Submitted,

Adele C. Lewis, Board Secretary