

ZONING BOARD OF ADJUSTMENT

APRIL 10, 2019 SPECIAL MEETING

PRESENT: John Hutchinson, Charles Ross, Mark Fitzgerald, Mr. Lisko, Mr. Greig, Mr. Cupoli and Mr. Fowler

ABSENT: Michelle Casserly and Judy Zoppi

ALSO, PRESENT: Board Attorney Kevin Kennedy, Board Secretary April Claudio, and Borough Engineer Jerry Freda

DOWN TO EARTH CONSTRUCTION – 102 2ND AVENUE

Mr. Kennedy stated this is a special meeting to continue the application from the February 28th meeting. Mr. Kennedy explained that Mr. Shipers, Mr. Brodsky and Mr. Middleton issued briefs to address the testimony provided at the last meeting. These were marked into the record as exhibits. Mr. Kennedy highlighted some points made in the briefs regarding the testimony previously provided by Mr. Theodore Lamicella. Mr. Brodsky felt the Board cannot rely on economic feasibility to grant a use variance. Mr. Middleton disagreed. Mr. Kennedy felt Mr. Lamicella's testimony should be allowed and considered within reason. The Board will decide what weight and deference Mr. Lamicella's testimony has.

Mr. Hutchinson stated it his understanding the Board is considering 6 units not a single-family home or another number of units. Mr. Kennedy confirmed at the end of all the testimony the Board will be voting is the application for 6 units with possible modifications if there are any.

Mr. Shipers had submitted a report of comparable sales data that Mr. Lamicella used for his testimony. Mr. Brodsky, objecting attorney, finished his cross examination of Mr. Lamicella. Mr. Lamicella explained the content of his report. Mr. Shipers pointed out the documents submitted by Mr. Lamicella were done at the request of Mr. Brodsky at the last meeting. At no time when the report was provided prior to the meeting did Mr. Brodsky question the validity of it and if more information was needed. Mr. Kennedy referred to his letter to all attorneys that referenced what information was requested to be provided based on the testimony at the last meeting. Mr. Shipers stated they were asked to provide comparable sales which they produced.

Mr. Brodsky asked if any of his report referenced any comparable sales or the market value of the property if there were to be a single-family home. Mr. Lamicella reiterated his testimony from the last meeting regarding this. Mr. Brodsky continued with his cross examination. Mr. Shipers felt Mr. Brodsky should ask questions rather than provide unproductive banter as he had a month to review the report provided by Mr. Lamicella. Mr. Brodsky questioned the assessment of the property vs Mr. Lamicella's testimony on what he feels the assessment would be. Mr. Brodsky asked what impact there would be on his client's property if there was a single-family home built. Mr. Lamicella stated there would be a positive impact however he feels the impact of the six units would have a greater positive impact.

Mr. Brodsky finished his cross examination and began his testimony in objection to the application. Joseph Puleo, 99 First Avenue, stated the property was for sale at \$3 million and learned last summer there was a contract for \$2.5 million. Mr. Shipers felt Mr. Brodsky was leading his client and not allowing him to testify. Mr. Puleo was shocked to learn of the offer and

ZONING BOARD OF ADJUSTMENT

APRIL 10, 2019 SPECIAL MEETING

had wanted to make a counter offer. After the first hearing on this application he was contacted by the current owner asking to discuss Mr. Puleo purchasing the property because Down to Earth was going to need more time. He stated that he was told by the current owner there is no contract with Down to Earth. He offered \$2.2 million to purchase the property but the current owner countered with 2.4 million. Mr. Brodsky submitted the offer in writing, but it was rejected because of fear of Down to Earth suing for cancelling their contract.

Mr. Brodsky submitted an email correspondence with the current owner's attorney regarding their offer to purchase the property. Mr. Shipers felt this document makes Mr. Brodsky a witness that he can now cross examine. Mr. Brodsky disagreed and wanted to clear the record on the allegations made by Mr. Shipers in his brief.

Mr. Brodsky presented his planner Peter Steck. He was asked to review the application and render an opinion on whether the statutory proofs were made to allow the Board to grant the project. He submitted a document of photographs used for his planning analysis. The current use of the property has no detriment. There has been new construction around it. The applicant documented the many multi family uses in the area which the Master Plan recognized but still designed this property to be a single-family use. He pointed out the 2006 re exam of the Master Plan determined FAR and building coverage are important. It also mentioned that multi family uses should no longer be permitted as a conditional use in the R75 zone. The 2016 re-exam stated those items were accomplished. He felt the applicant is proposing 3 times more density than what is referenced in the Master Plan. The footprint of the proposed building is larger than the existing building. Even though the setbacks are increasing from what is there today the proposed building is longer and taller which affects the air, light and space negatively. He pointed out the variances that are being requested which he feels are significantly different than what is required. The building and impervious coverage and floor area ratio are based on the size of the lot not the shape which they are grossly exceeding. It is his opinion that the municipal land use rules provided by the governing body and the planning board call for a single-family use. Felt the applicant is framing the application asking that the option is 6 units or the existing hotel. The implied benefit of getting rid of the seasonal hotel is incorrect as there is no detriment of it continuing to exist. Some may even call the property historic. The appraisal testimony should not have any effect on this because the Board cannot grant variances based on someone making a profit. Felt the applicant failed to provide the proofs required because this application is a detriment. This property is not going to look like two single family homes. There are so many variances and they are substantial. This proposal is inconsistent with the Master Plan. Feels the Board only has one choice and that is to deny the application.

Mr. Steck stated the height variance is also a D variance because it is 3.5 stories. He reiterated his testimony regarding the variances and how they are detrimental. Mr. Brodsky asked if the applicant is basically asking for a zone change by ignoring the zoning laws. Mr. Steck agreed.

At approximately 9:13 pm the Board took a brief recess. The Board reconvened at 9:29 pm. Roll call was taken. All were still present.

ZONING BOARD OF ADJUSTMENT

APRIL 10, 2019 SPECIAL MEETING

Mr. Shippers cross examined Mr. Steck. Mr. Steck stated he often testifies for people objecting to applications. Many of his clients are in North Jersey but has covered other areas of the State. Mr. Shippers pointed out there was a point Mr. Steck testified with an expired license. Mr. Steck stated he failed to pay to renew his license which he was unaware of and stopped testifying when it was brought to his attention. He quickly renewed his license. Mr. Shippers referenced a Hoboken case that Mr. Steck testified in where his testimony was discounted. Mr. Shippers stated his testimony was determined to be legally inaccurate and inadequate. Mr. Steck hasn't read the decision from that case in a long time, so he does not recall the exact wording of it. Mr. Shippers asked what documents Mr. Steck reviewed prior to giving his testimony. Mr. Steck stated he reviewed the Master Plan and re-exam reports. He did not review the seaport redevelopment plan because he felt it was irrelevant. Mr. Shippers questioned how often Mr. Steck has visited Belmar, the beach, if he can name any restaurants in town, if he spoke to the tenants of the current property, if he visited Belmar after hurricane sandy and other questions. Mr. Steck recalled visiting Belmar once in the last six months. He could not answer the other questions. He did speak to a tenant of one of the neighboring garden apartments after the initial board meeting. Mr. Shippers asked if multifamily use is predominant within a 400-ft area of the property. Mr. Steck could not adequately answer. Mr. Shippers asked Mr. Steck if he reviewed any redevelopment within a block of Ocean Avenue in the last 20 years. Mr. Steck did not. Mr. Brodsky objected to these questions and their relevance. Mr. Shippers stated he is trying to understand Mr. Steck's familiarity with Belmar, it's zoning and zone changes, and redevelopment projects. Mr. Shippers pointed out that since he is not aware of the development that has happened on Ocean Avenue then he is not aware of the number of variances that have been granted for these projects. Mr. Shippers asked if he reviewed the number of police calls that occurred at the existing property. Mr. Steck stated he did not because he felt it was not relevant given the number of variances being requested. He feels there is no detriment to the neighborhood by the use of the hotel. Mr. Shippers asked how many parking spaces exist now. Mr. Steck stated there is one. Mr. Shippers asked if that is adequate. Mr. Steck stated if it was new construction no, but it has successfully operated for years with the one parking space.

Mr. Shippers pointed out that while the hotel is a seasonal use it can be converted to year-round use. Mr. Steck agreed. Mr. Shippers stated year-round rooming houses can often turn into drug rehab facilities. Mr. Shippers questioned Mr. Steck's knowledge on rooming house laws. Mr. Shippers questioned Mr. Steck's testimony on the setbacks because he felt he did not understand the zoning regulations and his exhibit was inaccurate regarding the setbacks. Mr. Shippers referenced a case in Sea Girt where the Appellate Court overturned an application to replace a hotel with a newer hotel. Mr. Steck felt it was irrelevant as that was in a different town. Mr. Steck and Mr. Brodsky felt it was unfair of Mr. Shippers to question Mr. Steck about testimony he gave on previous applications that have no relevance to this application.

Mr. Shippers questioned Mr. Steck's testimony that economic feasibility is not relevant. Mr. Shippers questioned how it is not relevant. Mr. Steck stated zoning variances are not there to ensure a developer makes money. Mr. Shippers stated if nobody invests in a property it could fall into disrepair. Mr. Steck disagreed. Mr. Shippers asked if the proposal advances a more visually desirable environment than what exists. Mr. Steck could not answer that. Mr. Shippers asked his

ZONING BOARD OF ADJUSTMENT

APRIL 10, 2019 SPECIAL MEETING

opinion on gateway properties. Mr. Steck stated many towns benefit from gateway properties, but Belmar has not designated this property as a gateway.

At approximately 10:17 pm Mr. Shippers stated he needed a few minutes to look over his notes. Mr. Brodsky pointed out he has another witness to testify.

The Board discussed scheduling a special meeting in May to give this application a full hearing rather than bump someone else from a regular meeting agenda. Mr. Lisko suggested carrying the application to April 25th without the further need to renotice to allow time to pick a date for a special meeting in May.

At the April 25th meeting we will announce the date this application will continue to be heard.

Mr. Greig made a motion to adjourn this application, which was seconded by Mr. Cupoli and approved unanimously.

Ms. Claudio stated at the last meeting the Board was informed that a stop work order was issued for 1264 Briarwood because Mr. Bianchi felt they exceeded the scope of work the Board approved. Mr. Bianchi had stated much of the first-floor framing/wood structure was replaced which technically makes it new construction. The applicant's architect submitted a document disagreeing with Mr. Bianchi and explaining what they did and why, which the Board reviewed. It was determined that these changes did not trigger any new variances or exacerbate the variances approved or the existing conditions. The Board felt if Mr. Bianchi agreed with that then it would be acceptable for him to lift the stop work order. The Board felt it was not necessary for the applicant to come back before them unless there was a change to the variances. Mr. Kennedy will draft a letter to Mr. Bianchi outlining the Board's decision.

Mr. Cupoli made a motion to approve this, which was seconded by Mr. Fitzgerald and approved unanimously.

Mr. Fitzgerald made a motion to adjourn the meeting, which was seconded by Mr. Hutchinson and approved unanimously.