

ZONING BOARD OF REVIEW MINUTES
Tuesday, February 25 , 2020 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Richard Land, Chairman; Christopher Mulhearn, Vice-Chairman; Melody Alger, Ashley Cullion, David Collier (Alternate) and Barry Golden (Alternate).

Absent: Jody Sceery.

Staff: Lea Anthony Hitchen, Assistant Town Planner and Peter Skwirz, Legal Counsel.

Mr. Land, Chair of the Board, called the meeting to order at 7:05 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept any new and further testimony unless it is specifically requested by a Board member. The Board

will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Review Hearings - 7:00 PM

1. **Steven N. Filippou (Filippou 's Twisted Pizza)** for property owned by **Aud War Realty, Co., Inc.** located at 450 Main Street; Map 75 A.P. 3 Lot 105 (Zoned Commercial Downtown, CD-1). The Applicant seeks a Dimensional Variance under Chapter 260 of the Town Code, Zoning Ordinance; Article VI, Off-Street Parking Regulations. The Dimensional Variance is required because there is insufficient parking to accommodate the sixty (60) seats inside and the seventy (70) seats outside for a total of 130 existing seats in the full service restaurant.

Attorney James A. Kupa with offices located at 6500 Post Road, North Kingstown, RI represented the applicant Mr. Steven N. Filippou, owner of Filippou's Twisted Pizza located at 450 Main Street.

Atty. Kupa submitted a document which Mr. Filippou described as the dining area layout for Filippou's Restaurant which was marked as "Exhibit A."

Atty. Kupa explained Mr. Filippou is the owner and operator of Filippou's Twisted Pizza which is located towards the southern end of the Main Street spine for the last thirteen years. Atty. Kupa recalled having known Mr. Filippou since they were kids; Mr. Filippou's parents were in the restaurant business as well and had him working in the kitchen at 8 years old. Atty. Kupa described Mr. Filippou as one of the hardest working people he knows as being in the restaurant business is a tough business to be in. Atty. Kupa acknowledged Mr. Filippou and his wife Joanne give back to the

community, government agencies and food pantries often; it is a first class, affordable dining experience on Main Street.

Atty. Kupa explained the restaurant business is not a stagnant business; it is constantly changing to meet the needs of its customers with updated menus and drink choices and things change within the restaurant itself. Atty. Kupa noted during the “off” season there are about 30 employees while Mr. Filippou employs 50 people during the busy summer season.

Atty. Kupa pointed out the Staff Report speaks about previous Zoning Boards being kind to Mr. Filippou in granting prior relief. He did not disagree but noted the subject parcel has zero onsite parking and the entire building encompasses almost the entire lot therefore relief was necessary.

Atty. Kupa noted one of the main reasons Mr. Filippou chose 450 Main Street as the location for his restaurant was due to the friendly business atmosphere the Town of East Greenwich has always provided to him and his employees and it has been a great relationship to this day.

Atty. Kupa referred to the 2009 ZBR decision which granted twenty-four exterior seats in addition to the to already approved inside seats equaling the existing 94 seat capacity. He acknowledged 94 seats is a good amount of seating but asserted Mr. Filippou has always had 127-130 seats since the restaurant’s opening. Atty. Kupa stated the restaurant has passed every fire code inspection fore the last 13 years and has never exceeded the fire code capacity limit. Additionally, when the exterior front overhang/awning was installed the only condition the Town imposed was that it not be on the sidewalk but only be on the 450 Main Street property which Mr. Filippou complied with according to Atty. Kupa.

Atty. Kupa felt the application met the following standards, those being: the application will not alter the general character of the

surrounding area nor will it impair the intent of the zoning ordinance. He noted the 18 parking spaces being requested (36 additional seats) is the least relief necessary to keep the business financially viable. A hardship will definitely occur if the additional seats are not granted as it would be an inconvenience at this point in time due to competition as well as a menu that consists of grinders, weiners and fries - a customer receipt is typically a \$6 grinder, not in the \$100s of dollars as some other restaurants along Main Street.

Atty. Kupa acknowledged the difficulty of operating a restaurant business financially. The Filippou family needs to keep Twisted Pizza running as a destination restaurant which has been a local favorite for 13 years. He added both Steve and Joanne Filippou would like to participate in the upcoming Town's downtown parking study commission as business owner representatives in order to find solutions to the parking issues. In conclusion, Atty. Kupa stated Mr. Filippou simply wants to continue operating the successful business with the current seating that exists on the seating plan as submitted.

Atty. Kupa said he also received an email from the owner of the Red Stripe restaurant who was in full support of the application.

Mr. Steve Filippou and Atty. Kupa submitted "Exhibit B" described as a letter from the owner of the 450 Main Street property, being Mark Finn, dated February 25, 2020, in support of Mr. Filippou to continue operating his restaurant with the existing number of seats both inside and outside..

Mr. Steve Filippou explained his family has been in the restaurant business for over 50 years; has a great track record; and his Twisted Pizza restaurant is a family oriented lower key establishment where a family can go after a game or a wedding or funeral and is not too expensive. He noted Twisted Pizza has multiple locations where none of the locations have had a blemish with the law as far as having too many seats. He asserted as far as

seating he has had the same seating all along; he might have moved tables around but have not changed the amount of seating. Every fire marshal inspection has measured spacing and up to this point there has never been an issue. Mr. Filippou testified there have not been seats added since 2009. He stressed the importance of keeping the same number of seats and tables not only to him but to his employees as well so they can continue to make a living.

Mr. Land opened the hearing for public comments.

Mr. Peter Jones of 425 Main Street, directly across the street from the subject property, stated Mr. Filippou has been a great neighbor; there has never been a noise issue; there has never been a congestion issue; there are never boisterous patrons on Saturday nights in July and there is still parking available for customers. Mr. Jones recognized Mr. Filippou as a very generous individual and was pleased to have him as a neighbor.

Mr. John Balfour of 32 Union Street, directly behind 450 Main Street, gave Mr. Filippou all the credit for fixing the sidewalk to make the area handicapped accessible which he was greatly for. Mr. Balfour suggested making Union Street a one-way street as it is currently very narrow as a two-way street.

Mr. Steve Erinakes recalled speaking in favor of Mr. Filippou's original liquor license application a number of years ago as he owns the abutting property with a parking lot. Mr. Erinakes has always been frank with Mr. Filippou with regards to his parking lot in that it belongs to him and is for the use of his tenants and their customers, not for Mr. Filippou's employees and customers. Mr. Erinakes was of the opinion it is the Town that is responsible for allowing the parking situation to become what it has. He did not want Mr. Filippou to be hurt by whatever comes of the hearing but he himself is being hurt; his insurance company has witnessed vehicles parking on his property only to visit a nearby destination - his insurance company has informed him if he does not try to

control this situation he will go from a commercial rated policy to a municipal policy which costs more money. Mr. Erinakes did not think he should have to pay more money to accommodate parking not only for his tenants but also for nearby restaurants and retail establishments. With the Town constantly allowing more restaurants more relief from the zoning ordinance he gets the brunt end of it.

Mr. Erinakes recalled the minimal amount of restaurants and bars that were in business 50 years ago versus the implosion of restaurants that exist today. He remembered sitting on a town board 43 years ago to solve the downtown parking problem; since then the Town has done nothing more than talk about it and only increase the amount of parking on Main Street. Mr. Erinakes was dismayed how one Town Council after another continues to allow the parking situation get worse.

Ms. Alger questioned how many employees Twisted Pizza has on a given day. Mr. Filippou explained some of the help is from the local neighborhood and those employees walk to work. At any given time during the summer he can have about 30 employees who park at Crestar as well as behind 461 Main Street (referred to as Alan Gammons building). He rarely parks anywhere near or behind his business and it has always been that way according to Mr. Filippou. On a given Friday night dinner shift Mr. Filippou stated he will have about 10 employees working at one time (3 waitresses, 1 person taking phone orders, 3 cooks, and 3 drivers).

Ms. Alger queried if Mr. Filippou has formal parking agreements with either Crestar or Mr. Gammons. Mr. Filippou said no; both have always told him to park there anytime ever since he started the business. Mr. Filippou also confirmed he did not have any formal parking agreements with anyone nearby.

Ms. Cullion asked for how many years has the restaurant had this amount of outdoor seating. Mr. Filippou responded since he installed the patio in 2009. He noted prior to the patio the area was

a tarred unsafe parking lot which was removed for the cement patio. Ms. Cullion queried as to if this was the time Mr. Filippou ended up with about 130 chairs. Mr. Filippou confirmed saying he ordered all of the tables and chairs at one time which were ordered and delivered to the restaurant soon after that meeting.

Ms. Cullion questioned how often the outside patio is busy. Mr. Filippou said it varies; the weekends can be busy. Three or four tables can be occupied during a weekday afternoon. He noted the majority of outside business is during a Thursday night stroll, Friday, Saturday and Sunday afternoon. Mr. Filippou said it is hard to answer as the business can be hit or miss; the warmer months the patio will be used more. He reiterated the patio is not on the sidewalk and is completely on his property.

Mr. Land commented he was struggling with this application for a couple of reasons as Mr. Filippou came to the ZBR in 2009 seeking 24 outdoor seats and he just told the Board he installed 60 therefore going over the permitted allowance immediately.

Mr. Filippou clarified his recollection of the 2009 ZBR meeting, noting Mr. Joseph Zenga was chairing the meeting at the time and he left that meeting with the understanding that he had 155 seats. Mr. Filippou said he unfortunately lost all documents related to prior relief due to a flood but for some reason both he and his wife both agree and recall 155 seats being the number they heard in 2009. He added that being located on Main Street is hard to be sneaky and he would never try to blatantly get this by the Town.

Mr. Land commented he was only referring on what the record looks like but perhaps even more significant is the ZBR has a constant flow of restaurant applications seeking relief from the parking requirements. Mr. Filippou is essentially "grandfathered" in that he never would have received 155 seats of relief for a whole variety of reasons. These days, this Board is currently imposing upon applicant's restrictions and requirements for them to get the minimal amount of relief. Mr. Land felt the situation at hand is a

significant amount of relief and one option to be considered, as others have done, is to secure a valet service.

Mr. Filippou opposed the valet service idea since his restaurant does not have a given busy time like other restaurants. He admitted sometimes the restaurant can get busy from 4pm to 8pm but it is rarely packed all the time. Additionally, his customers are typically quick turnover, i.e. mom and son at 4pm, dad and daughter after soccer practice at 5pm, single man comes in after work for a beer and grinder then these customers leave; they don't stay. Mr. Filippou gave the example of him and his wife going to LaMasseria spending 3 hours there with other patrons staying just as long where a valet service would make more sense. His customers spend between 20-30 minutes at his restaurant.

Mr. Land questioned the general party size of customers. Mr. Filippou said his restaurant is catered to everyone and is hard to provide an exact number; generally during the day a couple of people will visit while families tend to visit on the weekends.

Ms. Cullion asked if it is necessary to have all the seats to accommodate the flexibility of seating. Mr. Filippou said absolutely, pointing out just last week he accommodated an entire soccer team, coaches and parents due to having the outdoor seating since there were already 18 people in the inside dining area; he was able to put the party of about 40 people easily outside with no issues and it worked out well - the bill was almost \$200, it helped him as well as his staff.

In summary Mr. Filippou noted he simply wants to maintain what he has had all along. To remove seats now would be a huge punishment and his staff would suffer the consequences in terms of layoffs.

With no further questions from the Board Mr. Land asked for a motion.

Ms. Alger motioned to approve the application.

Seconded by Ms. Cullion.

Mr. Land commented that if the Board were to deny the application outright the Applicant will have to remove 36 seats which is the entire front row of the outside space with the exception of one table which he thought was extreme. He recognized there seems to be some confusion as to what exactly was approved in the past as it relates to the record.

Ms. Alger commented on the 2009 ZBR decision in that it is very confusing; she referred to the decision and pointed out the Zoning Official said the indoor seating capacity was 45 people and outdoor seating capacity was 24 people (69 total) which is inconsistent with the staff report. Both Ms. Alger and Ms. Hitchen acknowledged the recorded 2009 ZBR decision is inaccurate. Ms. Hitchen stated 24 seats, no matter if it was being requested in 2009 or 2020 requires 12 parking spaces, not 24 parking spaces as stated in the decision.

Mr. Mulhearn said he also read the 2009 decision and it does not make any sense. He is troubled by any notion to unring the bell as it is clear Mr. Filippou has operated his business since 2009 in clear view; he has been exceedingly candid; and as this Board is well aware with regard to recent liquor license renewals at the Town Council level there has been a tremendous amount of consternation and confusion caused by the so called "seat count." He noted the Town Council has been perplexed itself as to the difference between seating capacity and fire capacity and no one can make a determination on what should control. Mr. Mulhearn did not think the relief being requested is extraordinary as it would seem just by looking at the numbers in the application and seating chart that has been provided is consistent with at least the configuration of his business since at least 2009. For that reason he is in support of the application as presented. Furthermore, Mr. Mulhearn did not think the application presents an undue hardship on Main Street particularly given the location of this establishment.

Mr. Golden agreed with Mr. Mulhearn, noting from a practical standpoint the impact is not going to change based on what the ZBR does. However he mentioned people will continue to park on the street and therefore reduce the number of parking spaces available for other businesses closer to the more congested section of Main Street then it will become an unfair advantage not to impose a valet or other condition.

Mr. Filippou asked the Board again to understand his price point is difficult to support a valet service. He can only change so much for a grinder and pizza; his profit margin would decrease significantly if he has to implement a valet. He was of the opinion to impose something like a valet would cost money and would have a huge effect on his business.

Mr. Land noted he has commented at previous hearings about the shifting of the economic burden from one party to another; that is what is happening and it has become a major problem. Some restaurants have a valet, others are grandfathered and do not have a valet or any requirements for their use. Mr. Filippou is essentially shifting the economic burden of parking to the rest of the restaurants in town for whom the ZBR have required valet parking. He pointed out Mr. Filippou is not exclusive and it is not his fault but it is just the reality.

Mr. Land said he heard the concerns of imposing a condition of cost of a valet and recognized it is much easier for a restaurant who charges \$25-\$30 for an **entrée to absorb that cost than for this Applicant to do so**. He did like the idea of having some touch point down the road to revisit this issue after the parking study is complete.

Mr. Collier commented the Applicant deserves the parking study to be completed before the Board makes a decision.

The Board considered different options in order to allow Mr. Fillipou to continue running his business with the ability for the Board to revisit the seating issue after the parking study was complete. After discussion ensued the Board recognized it was easiest to approve, deny, or approve with conditions.

Mr. Land was of the opinion the record reflects based upon the testimony of Mr. Filippou his understanding of the history he was granted the relief to have 155 seats where he currently has 130 seats. The Board has some contradictory information from the actual approvals, one of which is clearly confusing and most likely incorrect. With that portion not reliable we have a record that reflects there is an argument that Mr. Filippou had already received relief. Mr. Land commented that in his view this is not a new burden on the Town; this is an existing business that has operated for 10+ years whom has never had an issue; never had any complaints; and it is one of these situations where to the extent the Board has been imposing new rules this maybe the one case it is prime for the exception to the rules.

Ms. Hitchen confirmed Mr. Golden will be the voting alternate.

Ms. Alger felt comfortable if there could be confirmation of statements from the Applicant on the record. She asked Mr. Filippou if he received a variance in 2009. Mr. Filippou testified that he did receive a variance in 2009.

Ms. Alger questioned if he installed an outdoor seating area in 2009. Mr. Filippou confirmed yes; he completely rebuilt the outdoor seating area in 2009.

Ms. Alger queried if Mr. Filippou has the same number of seats there today that he had in 2009. Mr. Filippou said yes.

Ms. Alger also questioned if Mr. Filippou has the same number of seats today that he had inside that he had in 2009. Mr. Filippou said absolutely.

Mr. Land reiterated the motion before the Board is to approve the application as submitted which would allow for the restaurant to retain the number of seats that it presently has based upon Exhibit A that was submitted at the beginning of the hearing.

Mr. Land noted after reviewing the application he believes the Applicant has met the relevant standards for the specific relief which are as follows:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Mr. Land commented that he believes the Board has established a record that those standards have been met.

VOTE: 5 - 0 (Land, Alger, Cullion, Mulhearn, and Golden).

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the November 26, 2019 appeal meeting and January 28, 2020 meeting.

Minutes tabled to the following month

Motion to adjourn by Mr. Golden. Seconded by Ms. Alger.
Approved 5 -0.

Zoning Board of Review meeting adjourned at 8:00 pm.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the
Planning Department.