

ZONING BOARD OF REVIEW MINUTES
Tuesday, September 25, 2018 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Richard Land, Chair; Melody Alger, Chris Mulhearn, Jody Sceery, and Ashley Cullion.

Absent: Barry Golden (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner and David D'Agostino, Town Solicitor.

Mr. Land, Chair of the Board, called the meeting to order at 7:00 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. **Jeffrey Lynch** for property located at 68 Friendship Street; Map 75 A.P. 2 Lot 214 (Zoned Residential, R-10). The Applicant requires a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone which sets forth the setbacks for the zone. The Applicant is requesting to construct a covered front porch to the existing structure which will not comply with the front setback requirement.

Ms. Alger, being a direct abutter to the application, had to recuse herself from the subject hearing leaving insufficient quorum to hear the application. Staff suggested holding a special meeting in which the remaining ZBR members could attend to accommodate the Applicant.

The ZBR members and the Applicant rescheduled the hearing to Thursday, October 18, 2018 at 5pm based on member availability. The meeting will take place in Town Council Chambers.

2. **Marshall Muir (Foreign Events LLC)** for property owned by **209 Holdings LLC** located at 205 Main Street; Map 85 A.P. 1 Lot 213 (Zoned Commercial Downtown, CD-1). The Applicant seeks Dimensional Variances under Chapter 260 of the Town Code, Zoning Ordinance, Article III, Section 260-8(J) Outside Storage & Dumpsters; Article VI, Off-Street Parking Regulations, Section 260-20 Required Off-Street Parking Spaces, and Section 260-24 Off-Street Loading Areas. Additionally relief is required from Table 2 of Chapter 260, Table of Dimensional Regulations for minimum frontage, lot coverage and side yard setbacks. The Dimensional Variances are required because the Applicant seeks to open a hookah bar at the subject property and the change of use necessitates relief since there is a lack of on-site parking and dimensional non-conformities already exist.

Attorney William Carline represented the application for Marshall Muir and Foreign Events. Also present was Jason Kindness. Atty. Carline established

that Mr. Muir is currently in Florida with his wife who is pregnant and can no longer travel.

Atty. Carline advised the Board he submitted the affidavit recognizing the legal advertisement was published and sent to all abutters certified/return receipt mail.

As a housecleaning measure, Atty. Carline recalled the last time this application was in front of the Board the main concern was in regards to egress into/out of the property; the Town indicated the application should be reviewed by the Fire Safety Code Board of Appeal and possibly the State Building Code of Appeals. He referred the ZBR to their packet where a copy of the Fire Safety Code Board of Appeals decision could be found – he noted he and his client appeared before said board and they did approve the application with conditions. Atty. Carline reviewed the Fire Safety Code conditions as follows: 1.the occupant load of the facility can be no more than a 49 person capacity; 2. the gate located within the exit discharge must be removed and 3. A trash management plan for the facility and the exit discharge area shall be developed and implemented at the direction and to the satisfaction of the E.G. Fire Marshal's Office.

Atty. Carline confirmed the alley will remain clear as the Fire Marshal was very clear himself that he will be driving by every single day making sure the alley and exit is clear. He added his client will make it his daily routine to make sure that nothing obstructs the egress point.

Atty. Carline disclosed that he also submitted the application to the State Building Code Board of Appeals, specifically, Mr. Jean Enos, who in turn returned the application back to him saying that the State Building Code Board would be satisfied as long as the Fire Safety Code Board has been satisfied.

Atty. Carline moved on to the concerns raised in the planning staff report specifically parking which appears to be a constant issue in the downtown area. Atty. Carline said he spoke with Mr. Muir earlier today and has resolved to obtaining a valet service contractor which can certainly be a condition of any approvals this Board grants. He added the parking contract

can get secured and be able to accommodate the 49 people that the Fire Safety Board imposed. Atty. Carline pointed out that given the current parking conditions it just makes sense to include a valet service.

Atty. Carline noted the planning staff report also had concerns about trash management as there can no longer be stored trash bins in the egress area. His client has proposed piggybacking on Rocco's restaurant trash plan – Rocco's puts their trash up above in the backside of the rear parking area therefore Atty. Carline said Mr. Muir has secured the same company that takes care of Rocco's trash to also remove this trash. He added the trash company has the ability to pick up the trash as frequently as needed whether that being daily, every other day, whatever is needed to remove the trash and keep trash levels down to a minimum – this should also alleviate the Fire Department's concerns – to get trash out of the alleyway and put it in the same location where there is already trash services in place.

Atty. Carline felt as though he addressed the two major hurdles and affirmed Mr. Kindness was present and could answer any questions regarding the actual structure.

Atty. Carline summarized the application noting the proposed use is a change to the current use as there was a former fitness/nutritional business at the subject location. He emphasized that the proposed business has a much more focused timeframe – according to Mr. Muir the hookah business will not open until 5 pm therefore not much will be happening at this location (during the daytime hours). Atty. Carline raised the issue of food service which he noted was more of a RI Department of Health issue but there is nothing his client can do without DOH approval.

Atty. Carline referred to other hookah bars in the state with locations being in Cranston, Providence and Newport and pointed out actually serve food on the premises in the same location. Atty. Carline assured the Board he was not an expert on this topic however these establishments actually prepare the hookah and food in the same kitchen. He would not elaborate on whether that is good, bad or ugly but that is not the intention at this proposed site. He pointed out there is a pizza place that takes up half of the location/building space called Papa Franco's pizza; his client has indicated

he is working with Papa Franco's owners as there has been talk of them not wanting to keep the pizza joint there anymore; Mr. Muir is looking to acquire it if they were to get rid of it. Atty. Carline circled back to the original application (November 2017) when the intent was to have Papa Franco's supply the hookah bar with food and would not be prepared around the hookah – as far as the DOH would be concerned the food prep would essentially be in the same location but at two separate entities so no food will be prepared at the same location as the hookah bar. If circumstances do change and Mr. Muir does acquire the pizza place, Atty. Carline said it will stay the same; the plan is not to merge but will remain a separate pizza joint for regular patrons as well as supply food for the hookah bar.

Atty. Carline reassured the Board that even if the variances are granted the DOH will still have to sign off on this type of facility so there will be additional protections coming even after the ZBR's decision in order to make sure things are done properly and to state health standards.

Ms. Alger asked for confirmation on the capacity the Fire Safety Code Board imposed. Atty. Carline confirmed the capacity is 49 people and noted the original occupant load was close to 80 people but the Fire Safety Board felt keeping the capacity under 50 was a better target considering the reduced egress.

Ms. Cullion inquired if that egress was previously used for trash storage. Atty. Carline asserted there has always been an exit there but there is a gate which blocked from easily getting out thus the reason for the gate to be removed.

Ms. Cullion asked how Papa Franco's trash is removed and its storage location. Atty. Carline was unsure and deferred to Mr. Kindness for an answer. Mr. Kindness believed the trash goes to the rear of the building (on top) as well.

Ms. Cullion queried as to who owns the property to the rear of the building and wondered if it was part of the subject parcel. Atty. Carline was not sure and thought it was a good question. He said he would obtain that answer.

Mr. Mulhearn pointed out that as he understood the application, it is a change of use and acknowledged the Town of East Greenwich does not issue a license for a hookah bar.

Atty. Carline said that is correct.

Mr. Mulhearn pointed out the State of Rhode Island does not issue a license for a hookah bar.

Atty. Carline stated that statement is also correct, there is no such license.

Mr. Mulhearn asserted there is a great deal of controversy among licensing throughout the State as to whether or not these hookah bars are in fact legal operations.

Again, Atty. Carline said that was an accurate statement.

Mr. Mulhearn queried as to whether there has been an application made to the Town Council for a Class B liquor license under the moniker of this being a hookah bar.

Atty. Carline said no, not at this time as the process calls for Zoning Board approvals first but is aware Town Council approvals are also required.

Mr. Mulhearn questioned if the request has been made to the Town Council for a victualing license for the dispensing of food.

Atty. Carline said not at this time because the food is going to come from...there is no food being prepared at this location at this time.

Mr. Mulhearn affirmed he was not being critical but to some extent the Applicant is putting the cart before the horse because it is a controversial operation; it technically cannot be licensed by the Town or the State of Rhode Island and the Applicant is asking for relief predicated on an operation that is controversial and questionable – again this is not a criticism but it would seem to him that it would make more sense to make the requisite application to obtain the approvals you know you can get before

you ask for and essentially contingent upon relief from the Zoning Board. Mr. Mulhearn asked for Atty. Carline's response.

Atty. Carline responded that if you cannot get a liquor license but can still have a hookah bar – whether or not that be a successful business plan or not the whole point is to have a bar at this location and that is the primary focus of this. You are saying the 'cart before the horse' but that is not necessarily what we are trying to do here. The Town Council may decide they do not want to have a liquor license later on, which is the purview of the Town. Atty. Carline acknowledged the structure is zoned commercial so we are talking about a use being a restaurant/bar/hookah bar – we are in a brave new world here so is one way better than the other he asked. It is something his client feels strongly about, this business asking permission to put this business in and dealing with the same issues every property owner on Main Street is faced with.

Mr. Mulhearn disclosed that he has a fair amount of licensing experience in a number of communities and is very familiar with these types of enterprises noting they are not the easiest to get permitted. From his perspective, Mr. Mulhearn said it would make more sense to obtain those approvals before the Applicant comes to the Zoning Board and seeks approval that essentially runs with the land forever potentially allowing certain uses or operations without actually knowing what will ultimately go in this location.

Ms. Sceery pointed out that maybe if the Applicant does not obtain the license they will not come before the Zoning Board. Mr. Mulhearn said his point exactly.

Diverting back to an earlier question from a ZBR member, Atty. Carline said it is the same owner (Carmella Casissi, 209 Holdings LLC) that owns the area behind the building.

Ms. Sceery recognized the submitted application indicates no valet service is to be provided yet based upon this evening's testimony a valet service will now be offered. She questioned Atty. Carline if the application will be amended.

Atty. Carline stated yes, we are; we are amending the application to indicate a valet service will be provided and we will provide a contract for whatever requirements the Town wants.

Mr. Land informed the Applicant of what the Zoning Board requires for valet parking, noting the Applicant must designate where the valet company will park vehicles. If the Applicant gets to that point of approving, Mr. Land acknowledged one of the conditions would be a specific agreement on vehicle parking spots that must be maintained and be consistent for the entire duration of the business. Mr. Land had concerns that some of the restaurants that the ZBR has attached this condition to the valet service is not following the agreement and not parking the vehicles in the location they are supposed to. He has specifically witnessed valet attendants finding an open spot on Main Street, park the vehicle then run back to a restaurant. For those people who visit downtown and do not want to use a valet it is becoming more and more difficult to find parking according to Mr. Land. He added that it is a good service to offer but there are people who do not want to valet their cars and it is a concern of his and he would certainly want that to be a condition if he were to vote in favor of it.

Mr. Land pointed out another concern is if the pizza place were coming before the ZBR with the same application, the Applicant is essentially the pizza place asking for 100 percent relief. If they were to come in Mr. Land was curious as to how the ZBR would view that, not just as a new business but an expansion of an existing business or an existing footprint.

Atty. Carline said it would not be necessarily the same person. He stated his client, Mr. Muir, does not want to see that go, if in fact he wants to provide food to people, it makes sense the pizza place is there and close by. We would hate to see that go.

Following up on Mr. Land's point, Mr. Mulhearn returned back to his original proposition, being making an application to the Town Council for approval of a Class BV liquor license, as he was not entirely certain the Applicant can obtain that license unless food is being dispensed out of that establishment. Although Mr. Mulhearn did not know for a fact whether a shared kitchen is allowed for a liquor license his experience has taught him it

cannot be done that way. He reiterated the concern being the Applicant is asking for relief and the ZBR does not even know if Mr. Muir has entitlement to the type of licensure that is the underpinning of this operation.

Mr. Land questioned staff and legal counsel as to whether there is a waiting period if the Board proceeds with a vote and it is denied. Both Mr. D'Agostino and Ms. Hitchen noted if an application is denied an Applicant has to wait one year before a resubmission can be made. Mr. D'Agostino added that his concern was regarding administrative finality – would they then also have to address a substantially different application.

Mr. Mulhearn agreed noting any application within a one year time period would require a significant material change in circumstances or an entirely different application seeking different relief.

Mr. Land discussed possible options for the Applicant including seeking a continuance of the matter so they could address the other issues that were raised. Mr. D'Agostino added the Applicant could also withdraw the application without prejudice but that would trigger a readvertisement but would not have preclusive effect of a denial.

Mr. Land asked Atty. Carline if there was anything else he would like to add.

Atty. Carline said at this point no there is some concern about the fact that we should possibly investigate into other licensing first. He questioned if it was possible to request a continuance for one or two months in order to find out exactly where we need to go.

Mr. Land explained the Board cannot force a continuance but past practice has been to generally grant a continuance.

Ms. Sceery noted she would be in favor of a continuance in order for an Applicant to address all of the concerns upon return. She referenced the staff report which calls out some of the submitted plans show a door connecting the pizza place while other plans do not show a connecting door.

She was curious to know the actual details as to whether or not the door will connect the two establishments.

Atty. Carline acknowledged the different layout plans was odd but pointed out the actual plan reviewed by the State Fire Board includes a connecting door which was submitted in the application (and distributed to the Board, Staff marked as Exhibit #1).

Ms. Sceery clarified that the intent is to have a connecting door. Atty. Carline said yes out to the egress and the gate has to be removed so it has to be a free flow area out – there is to be nothing stopping at the street level.

Ms. Hitchen pointed out Papa Franco's eatery does not have restrooms; she was of the understanding one of the reasons for the connecting door is to allow Papa Franco's employees and patrons access to the restrooms.

Ms. Sceery suggested the Applicant find out from the RI Department of Health (DOH) if they will allow a hookah bar with or without food.

Atty. Carline admitted this is a brave new world but there are a couple of other hookah bars in the state which DOH has allowed hookah and food to be prepared in the same location in the same kitchen; that will not be the case here. He was of the opinion this setup may be a better situation since the food prep will be separate from the hookah prep.

Ms. Sceery noted that may be a good point but if a 10 year old walks into the pizza business she did not necessarily want that child walking in to get a hookah.

Atty. Carline asked the Board to think about what it takes to prepare the hookah; he reiterated there are some hookah locations in the state where hookah and food is prepared in the same actual kitchen. He asked if that made sense then pointed out that he was not the DOH.

Ms. Sceery opined that if a family goes in to the pizza establishment they expect to get a family atmosphere, not a hookah bar.

Ms. Hitchen queried if the plan layout needs to be approved at the DOH level before the Town Council level and if a month is sufficient time for a continuance in order to get answers from the DOH.

Mr. Mulhearn advised that a month should be enough time to certainly evaluate whether or not given the proposed configuration of the business makes it eligible for a Class BV liquor license, probably not enough time to have a hearing on it but to certainly know whether it is eligible given the proposed configuration of the business.

Atty. Carline hoped that with this honorable board he would be given the time in order to find out what his Applicant can get and what we are looking for that we would come forward in a month and say 'we have done A, B, and C' and this is a viable option and we would like to proceed on this end and table it until we get what we need to get then come back to the ZBR.

Mr. Land confirmed for the record that the Applicant is requesting a continuance. Atty. Carline said yes he is requesting a one month continuance to investigate further.

Motion by Mr. Mulhearn to continue the application to October 23, 2018. Seconded by Ms. Sceery. VOTE: 5 – 0.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the August 28, 2018 meeting.

Motion by Ms. Sceery to approve the August 28, 2018 minutes as written. Seconded by Ms. Cullion. Approved 5 – 0.

Motion to adjourn by Ms. Sceery. Seconded by Mr. Mulhearn. Approved 5–0.

Zoning Board of Review meeting adjourned at 7:45 pm.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

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