

## **ZONING BOARD OF REVIEW MINUTES**

**Tuesday May 27, 2014 Meeting 7:00 pm**

**Town Council Chambers, Town Hall**

Present: Joseph Russolino (Chair), Jennifer Fairbank (Vice-Chair), Renu Englehart, Richard Land, Jody Sceery and Ashley Cullion (Alternate).

Absent: Stephen Zubiago (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; Wayne Pimental, Building Official; and Peter Clarkin, Town Solicitor.

Mr. Russolino, 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 and 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 Appeal Hearings – 7:00 PM

1. **Denis Marchand** for property located at 240-242 Main Street; being Map 85 A.P. 1 Lot 165 (Zoned Commercial Downtown, CD-1). The Applicant seeks a *reconsideration* of the denied ZBR decision heard on February 25, 2014. The request is based upon new relevant evidence/information previously unavailable at the original hearing that may warrant the reconsideration/rehearing of the previous decision. The Applicant originally sought Dimensional Variances under Table 2 of Chapter 260 of the Town Code, Zoning Ordinance, Dimensional Regulations by Zone; Article V, Section 260-14(B) Nonconforming by Dimension; Section 260-20 Required Off-Street Parking Spaces, Section 260-24 Off-Street Loading Areas, and Section 260-25 Parking Lot Landscaping. The Dimensional Variances are required because the Applicant seeks to add an addition to the rear of the existing structure which constitutes as an intensification to the legal nonconforming property and the number of required off street parking spaces cannot be met.

Mr. Russolino confirmed that this is a request for a reconsideration of the denied ZBR decision heard on February 25<sup>th</sup> of this year; this request is based on new information that was not presented at the original hearing that may warrant the reconsideration of the previous decision. He explained that the Applicant will state their case for reconsideration and the Board will take a vote on whether or not to rehear or not rehear the case. Mr. Russolino went on to say if there is a motion and it carries to rehear the application then the matter will be confined to the issues that are clearly being impacted this evening. With that being said, Mr. Russolino stated that he has a letter from the applicant, Mr. David Spaziano, dated April 14, 2014 and the minutes from the February 25<sup>th</sup> meeting that he would like to make as part of the official record. He added that all members of the Board also have copies of the original decision.

Attorney Sergio Spaziano represented the Applicant, David Spaziano. He explained that he is requesting a reconsideration of the originally denied

Zoning Board decision, particularly the information, the new information being about the property which will show some parking spaces that were testified by Mr. Thomas Murphy that are in fact legal parking spaces and the testimony associated with that should be certainly weighed differently than it was. Atty. Spaziano also noted that Mr. Spaziano has obtained some parking leases which will enable him to reduce the amount of parking relief he needs down to eight spaces. Atty. Spaziano noted that he would be going to submit the survey into the record as an exhibit and with it the parking leases which the Board most likely already has a copy of.

Mr. Russolino questioned if that was the whole request. Atty. Spaziano confirmed that the request for reconsideration is on that basis.

Mr. Russolino asked if the attorney stated exactly the issue and why it is material. Atty. Spaziano noted that it is material because the parking which was originally requested was for nineteen parking spaces of relief; now the Applicant is only requesting eight spots of relief. Furthermore, the new survey shows that the parking spaces would allegedly interfere with the impact of the parking spots and now there is information that we no longer have that situation.

Mr. Russolino asked for a motion to reconsider the application.

Motion by Ms. Sceery to reconsider the original application. Seconded by Ms. Englehart.

Mr. Russolino commented that he believes there to be material changes from the original application that weigh very heavily on the Board.

VOTE: 5 – 0.

Mr. Russolino asked Atty. Spaziano and only to focus on the issues at hand.

Atty. Spaziano submitted the new survey as an exhibit. He explained that the borderline of the “gangway” looking at the crossing which are proposed parking spots parallel to the building – were proposed after conversations were had with the Building Official to accommodate some parking at that

location. Atty. Spaziano reminded the Board they heard from Mr. Thomas Murphy at the prior meeting and reiterated what he said, that being, there were three spaces in the rear perpendicular to his building which are used for tenants of his building. Atty. Spaziano confirmed that those three spaces, parked perpendicular, encroach into the gangway. Atty. Spaziano added that Mr. Murphy suggested at the last hearing that the proposed small addition to the rear of the building would interfere with the three parking spots at that location. Atty. Spaziano asserted that by parking parallel to Mr. Murphy's building would allow better accessibility and continuance of Mr. Murphy's tenants to use those spaces. Otherwise, Atty. Spaziano stated there is no parking for Alex & Ani.

Atty. Spaziano went on to say originally the parking variance was for nineteen spots; the Applicant has secured parking leases within the 500 foot radius for eleven of those spots and is now asking for eight spaces of relief. He noted that the prior establishment (a hair salon) would have required 14 parking spaces) and was operating illegally and never received approval from the Board based on parking. He explained that this Board would be benefiting by eliminating a need for 14 and now only the need for eight spaces.

Atty. Spaziano asserted that the current location of the restaurant which is two doors down requires nineteen parking spaces; by moving to the new location the restaurant is eliminating the request for eight – the remaining eight are being leased. He went on to say that once Mr. Spaziano leaves the current location, the nonconforming situation with respect to parking, there is none.

Mr. Russolino noted that he visited the site and noticed that three properties converge. He questioned if everybody installed a fence would vehicles be able to get through as it appears that everyone needs to work together to utilize that back space. He commented that there are parking signs for Alex & Ani, there are three separate parking spaces marked off and all are on property six feet from the building – they are not real spaces so if a fence was installed, nobody would be able to park there.

Atty. Spaziano understood Mr. Russolino's comment and noted that a fence was proposed at the last hearing; he stated a fence would be impossible to be built back there. He explained that Mr. Osman's property forms an "L" behind it, which there is a hair salon right between the two properties in question, and the fence would block his own spots even for his own tenants – a fence is impossible and benefits no one in this case.

Mr. Russolino opened the hearing for public comments.

Mr. Denis Marchand of 197 Ide Road, North Scituate, owner of 240-242 Main Street, stated that he had had meetings with the owners of the Alex & Ani building and he has spoken with Ben Osman. He explained that whether or not this application passes, he is working with Mr. Murphy to let him have those parking spaces because he did not want to interfere with the Alex & Ani business. His point being that the owners of the buildings are working together behind the scenes although it may appear we are going to be adversaries for this ruling.

Mr. Steve Villari of 95 Main Street who also owns a business at 97 Main Street spoke in favor of the application. He explained that he has been in business in East Greenwich for 31 years – David Spaziano has been in town for a couple of years and is willing to take a risk, spend money and invest in his business – he is successful.

Ms. Diane Villari of 95 Main Street who also has a business at 97 Main Street and has been on Main Street since 1979 and represents the Main Street Merchants. She spoke in favor of the application and encourages businesses to come to East Greenwich. Ms. Villari asserted that visitors find a place to park, especially a business with evening hours, such as a restaurant.

Ms. Janet Zartarian of 86 Harbour Island Rd., Narragansett; an employee of the Town of East Greenwich for the last 19 years and a prior resident of East Greenwich for 18 years spoke in favor of the Applicant. Ms. Zartarian explained that she does all her shopping on Main Street and will find a place to park; she noted the Main Street area is simply not a place where one can park in front of the store you want to shop in – it will never be.

Ms. Kim Balkcom of 80 Rector Street and the Chair of the Historic District Commission explained that no one has seen more than the HDC the number of businesses that come and go on Main Street; unfortunately there are a lot of businesses that do not have long staying power – this business does. She stated that Mr. Spaziano is obviously being forced to move to a different space and is making a substantial attempt to do that. She added that if he cannot do that he will move to another town where East Greenwich loses – Mr. Spaziano is a huge asset to Main Street.

Ms. Kristen Carron of 2 Harwood Drive and a member of the Historic District Commission spoke in favor of the application. She stated that Mr. Spaziano should be allowed the variance; she added that she is a relatively new resident to East Greenwich and one of the reasons her family moved to town is because of Main Street, because of the businesses, because of the restaurants, and she believes that the Oyster Bar is definitely an asset to Main Street and she would hate to see it go. Ms. Carron commented the fact that the owner of the restaurant wants to spend money in town and renovate a new building; he should be rewarded and not punished.

Attorney Maureen Hobson representing Ben Osman noted the Board should be considering two things – the two things Mr. Spaziano is looking for is the parking exception and the dimensional exception. Atty. Hobson stated there is nothing new in his reconsideration plan relative to the initial variation. She noted in the E.G. zoning ordinance a nonconforming use, if granted the right to expand, have the full dimensional requirements of the Town – this clearly does not. Atty. Hobson went on to say that in regards to the parking spaces – they were discussed last time – the leases were discussed last time. She asserted the only thing that is new that has been brought in is the cars that are parked in a working lot and possibly on Mr. Marchand's lot have been discovered – the cars are still remaining, shifting around the parking. She noted the statement relative to the landlock issue of the parking spaces behind the red building is a correct statement. However, that individual has an egress through the Marchand property. So in effect, if the Marchand property were to utilize the three parking spaces and the Osman property were to be closed off, the people in the red building would be foreclosed from any parking. She stated that it is an incorrect statement that Mr. Osman cannot build a fence; he certainly can. Is he looking to do

that? No. Atty. Hobson noted that her client is very nervous as he has a building that is compliant for the restaurant that has not been before this Board previously and he will have to re-rent that building to someone else should Mr. Spaziano leave which is certainly his right. She added that Mr. Osman needs to protect those parking spaces for whatever business is going to come into that space. In summary, Atty. Hobson stated provisional grants have to be granted on the unique characters of the building or the real estate, that renders it not useable; in this particular case she has done research on the prior uses – the hardship here is unique that Mr. Spaziano wishes to operate because of the past the property has been a drugstore, an antique store, a retail store, an audio shop, a gift shop, a hair salon as well as a liquor store – it has nothing to do with the unique characteristics of the property but all has to do with the unique characters of the use of Mr. Spaziano which is to split the property. Atty. Hobson suggested to the Board's consideration they are not compliant with the parking requirements, with the offsite loading and refuse the application as the Board did previously.

Mr. Russolino commented that he has been on the ZBR for over 20 years and East Greenwich has always been pro-business for Main Street; he could not recall someone coming here with satisfactory or adequate parking spaces to open a business. He asked Atty. Hobson to respond to his comment. He added that if this Board were to deny everything there would be no businesses on Main Street. Mr. Russolino added that Mr. Spaziano actually went out and got some lease commitments which will alleviate to accommodate the issue.

Atty. Hobson asserted the lease is explained the same as the last hearing, although Mr. Spaziano did not have it in hand; if he has them the lease is for a one year period. She added that one of the leases is for a 3 month period; she did not see how that alleviates any parking or congestion on Main Street because you are not relieving any type of congestion in the area, you are just adding it. She realized last time the comparison was apples to apples and Mr. Spaziano was moving a restaurant with 30 seats from one place to another, but that is not a fact because the place where he is now has 20 parking spaces.

Mr. David Schaller, owner of 219 Main Street raised the issues of the lease and whether it was the same lease. Ms. Hitchen confirmed it was not the same lease from the first hearing. Mr. Schaller then questioned the terms of the lease being a one year term for approval does that mean that the restaurant will have to close when the lease is up.

Mr. Land confirmed the answer is no; if the Board were to approve the application, it would not be conditioned on it closing if leases are not renewed – that would not be an issue.

Mr. Schaller stated the Town conducted a study back in 2002 and the area which this Board is considering this variance is one of the most congested areas on Main Street – such detrimental change would affect businesses that are already there. He added that the parking spaces issued by the Town Council paid \$16,000 for emergency parking in the town. He has seen the parking variances that this Board has granted over 100 spaces in the past years; close to 150 illegal variances. He did not understand how a hair salon can be a restaurant and have seating on the sidewalk – it blocks the sidewalk during the day. Mr. Schaller noted the left hand does not know what the right hand is doing here because when you destroy the parking for his customers it is detrimental to his business. He has 20 years of experience on Main Street and the parking situation is steadily eroding; his own business does not comply with the parking ordinance. Mr. Schaller suggested the Board vote against the application because there is no parking next to the business and he has done a great job; he has survived where very people have; Mr. Spaziano is a good restaurateur but the parking variance the other building is going to need and the parking demanded is going to keep increasing.

Ms. Englehart questioned who owns the little red building in between Mr. Osman's building and Mr. Marchand's building. Mr. David Spaziano stated Ms. Marie Scott owns the red building and has access/egress through both the gangway access off Main Street and Mr. Osman's access off Main Street.

Ms. Englehart asked where Mr. Spaziano's customers currently park now. Mr. Osman stated behind his building.

Ms. Fairbank asked to go back to what was alluded to, that would eliminate night parking. Atty. Hobson explained that the easement between Alex & Ani and the Marchand property – once they get behind the three spaces that are scheduled to be used by Mr. Spaziano there is no access to the three spaces directly behind the red building – the red building has that space there; it does not have any lines drawn by way of a lot line where she only has so many feet behind the building. Atty. Hobson added that it does not extend all the way to the end of the property.

Ms. Fairbank clarified that she wants to know if Ms. Scott has any parking spaces or not. Atty. Hobson stated that she presently goes through Mr. Osman's lot or she goes through the Alex & Ani gangway; if they use the parking as they proposed on the gangway side of the Marchand property, there will be no access to the three spaces that Ms. Scott has unless she goes through Mr. Osman's property to which there is no easement.

Ms. Fairbank asked if Ms. Scott physically has parking spaces or does she just park there. Atty. Hobson confirmed that she physically has some space for a small compact car but there is no way to maneuver in or out.

Ms. Fairbank understood Ms. Scott has space for a small car but she wanted an answer to whether she has legal parking spaces.

Ms. Hitchen verified that David Spaziano is actually leasing three parking spaces from Marie Scott and asked Atty. Spaziano to speak to that specific lease.

Atty. Hobson commented that those spaces are not marked spaces; they appear from the naked eye to be able to fit some small compact cars. Her opinion is that they were not designated spaces.

Mr. David Spaziano clarified that by reviewing the survey you will see the gangway shared by Mr. Marchand and Mr. Murphy and you will see the two parking spots that do not qualify. He mentioned the "line" on the actual Marchand property which goes right and beyond that line there is another line which is the throughway and has always been used as the throughway. He added that if one comes off Main Street down the gangway and bear

right that is Ms. Scott's area and the rest of her employee's park behind that building.

Mr. David Spaziano stated that an 18 wheeler truck could navigate in the rear throughway; there is plenty of room to navigate a vehicle.

Atty. Spaziano noted that the three spots that are in discussion are existing spots; additionally the parking spaces behind Ms. Scott's building are also legal spots. He stated that although he does not represent her so he cannot say for certain but there were marked spots behind that building which Atty. Hobson is referring to and which Ms. Scott is leasing to his client. Atty. Spaziano went on to say that Atty. Hobson has misrepresented those spots and a car can and does in fact pull around Ms. Scott's parking space – there is certainly room between those spaces and Mr. Osman's property.

Ms. Sceery asked if the parking spaces in question are parallel to the spots existing. Mr. Spaziano stated the spots are after that so you would actually pull perpendicular to it.

Ms. Marie Schaller who owns 219 Main Street spoke against the application. She stated her business is directly across the street and she has a similar situation due to an easement that goes over two other lots so she can park her car. She explained if her easement is blocked then you are taking the use of her property and that is going against her deed. She also pointed out that when valet cars are parked – those cars need to go somewhere; the valet will take up every space on the street that they can as close as they can and whatever space they can fit into.

Ms. Kristen Carron made one point regarding the easement that everyone is discussing – we do not have a copy of the deed in front of us so we do not know if there is an easement or not an easement and the owner of the salon is not here. She added that if the owner was really concerned that granting this application would take away her easement and obstruct her property she would be here to represent that.

Mr. Land clarified that he has heard nothing about interfering with an easement. He asked to clarify this easement for the record.

Atty. Spaziano advised that by looking at the survey you can see behind that building with the exception of the proposed addition which is already there – the proposal certainly has nothing to do with the easement because it ends the building; the three parking spaces – there is not an easement. He noted that if there is an easement there certainly is space and a throughway there; any easement would be beyond those parking spaces.

Atty. Clarkin advised that easement or not, the person who we are talking about may or may not have this alleged easement is the person who is leasing Mr. Spaziano the spaces. He found it hard to believe that she is having a problem with this if she is letting him lease her property. Atty. Clarkin added that Ms. Scott has to well aware of what is going on.

Atty. Hobson noted that the parking space would be for the exclusive use of the Applicant now, they cannot grant that use of exclusivity nor can they grant that because they will be used for other businesses. She was of the opinion that sometimes Mr. Spaziano would be open and conflict with these businesses, other times the business may be closed. In addition to that, Atty. Hobson added, that as an officer of the court and a title examiner, across the gangway that extends to the red building there is no easement on the Osman property which she researched herself.

With no further questions Mr. Russolino asked for a motion.

Motion by Mr. Land to approve the application as presented. Seconded by Ms. Englehart.

Mr. Russolino stated that he has been on the Board for a very long time; Main Street is something that draws people in as a destination location and he did not recall ever recall anyone coming before this Board with adequate and sufficient parking to comply with the Zoning Ordinance. He thought the Applicant has made multiple attempts with successful leases to elevate and accommodate the concerns and has done as much as he can do. Mr. Russolino is of the opinion that the Applicant has met all the relevant standards and he will be voting in favor of the motion.

Ms. Englehart stated that she is also in favor of the motion – this section of Town is an older part of town without enough parking. Going forward, she added, that there is the municipal parking lot and for some reason there is an idea that some people feel that they should be able to park in front of their own building and that doesn't happen in New York – this does not happen in Providence or Wakefield or Main Street, East Greenwich. Ms. Englehart stated that people need to walk and by walking to other businesses.

Ms. Sceery concurred and noted that there is never enough parking on Main Street. She noted that businesses are thriving in East Greenwich in spite of the parking issue; the parking leases are great and she will be voting in favor of the application.

VOTE: 5 – 0.

### **Zoning Board of Review Business**

1. Minutes: Review/action on the minutes of the March 25, 2014 meetings.

Motion by Ms. Fairbank to approve the March 25, 2014 minutes. Second by Mr. Land. Motion supported 5 – 0.

With conclusion of all business, there was a motion by Ms. Sceery, second by Mr. Land to adjourn at 8:45 PM. Motion supported 5-0.

Minutes respectfully submitted by:

Lea Anthony Hitchen,  
Assistant Town Planner

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