

ZONING BOARD OF REVIEW MINUTES
Tuesday, March 22, 2016 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Richard Land, Chair; Renu Englehart, Vice-Chair; Ashley Cullion, Christopher Mulhearn, Jody Sceery and Barry Golden (Alternate).

Absent: Melody Alger (Alternate)

Staff: Lea Anthony Hitchen, Assistant Town Planner; Wayne Pimental, Building/Zoning Official; and Sarah Jette Wheeler, Legal Counsel.

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 prejudice 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 Appeal Hearings – 7:00 PM

1. **David J. Molusis** for property located at 77 Greene Street; Map 75 A.P. 3 Lot 2 (Zoned Residential, R-10). The Applicant seeks Dimensional Variances from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone which sets forth the side yard setbacks and lot coverage (structure). Additionally, the Applicant seeks relief from Article V, Section 260-14 Nonconforming by Dimension. The Applicant seeks to construct an addition to the existing structure which constitutes as an intensification to the legal nonconforming property and build a detached one-car garage within the side setback.

Mr. David Molusis of 77 Greene Street, owner of the property, represented the application. Mr. Molusis explained he purchased the home last July and has spent a number of months working on architect drawings which he conceptually presented to the Historic District Commission last month and received a very favorable review. Mr. Molusis confirmed he was before the Zoning Board to get relief for the west side setback for a one-story rear addition to the existing home as well as relief from the east side setback for a detached one car garage.

Mr. Molusis brought a color rendering of the proposed project which he passed around to the board members. He asserted that he must return to the Historic District Commission for a final plan review in order to obtain a Certificate of Appropriateness.

Mr. Molusis confirmed he spoke to all of his immediate neighbors, those being across the street and side by side, all of whom do not have any problems with the project.

When asked if the addition can be seen from the street Mr. Molusis verified the rear addition will be directly behind the house.

Mr. Land opened the hearing to public comments. With no public comments Mr. Land asked for a motion.

Motion by Ms. Englehart to approve the application as submitted. Seconded by Ms. Sceery.

Ms. Cullion noted the project will enhance the appearance of the home and looks very nice.

VOTE: 5 – 0.

- 2. Foreign Events, LLC** for property located at 234 Main Street; Map 85 A.P. 1 Lot 164 (Zoned Commercial Downtown, CD-1). The Applicant seeks Dimensional Variances under Chapter 260 of the Town Code, Zoning Ordinance, Article VI, Off-Street Parking Regulations, Section 260-20 Required Off-Street Parking Spaces; Section 260-21(B) Location and Ownership of Parking Spaces; and Section 260-24 Off- Street Loading Areas. The Dimensional Variances are required because the Applicant seeks to open a restaurant/lounge at the subject property and the change of use necessitates relief since there is insufficient parking and dimensional non-conformities already exist.

Attorney Peter Nolan, with offices located at 1070 Main Street, Coventry, represented Foreign Events, LLC. Atty. Nolan explained the applicant needs three variances – one is for the parking requirement which requires 1 parking space for every 2 persons for the proposed restaurant. Additionally there are an existing 3 apartments on the parcel which require 1.5 parking spaces per unit, necessitating 5 parking spaces for a total of 38 parking spaces. With the existing two parking spaces on-site the requested relief is 36. Atty. Nolan asked the Board to take into consideration the 11 parking spaces behind Stencil Jewelers (formerly Wood Jewelers) located at 40 Main Street; Mr. Stencil is a principal behind the Kai Bar who purchased the parking lot which provides for 11 spaces – this is not within the 500' radius which is required under the zoning ordinance so there is a request for a variance. Atty. Nolan explained one of the 11 spaces has been allocated for the apartment above the jewelry store; however Woods/Stencil Jewelers will

be closed after 5 pm – Kai Bar will open at 5 pm. Additionally, there will be a valet service (The Valet Connection, the same company to service Rocco's Bistro, will park vehicles as they pull up to the establishment). The third issue Atty. Nolan explained is there is no loading facility and there is no need for a loading dock. He described Kai as being like every over establishment on Main Street in that deliveries will be made in the morning where trucks will pull up in the morning, unload their provisions and leave.

Mr. Marshall Muir, a principal of Kai Bar, explained the proposed establishment is a high end business where people can go to relax either while they wait for their table at another restaurant nearby or a place to go before or after they have their meal. He noted food will be served; the plan is to serve a set menu with small appetizer plates such as meatball sliders, something similar to Main Street Coffee. Mr. Muir said he is trying to simulate a New York style bar where all of the seating is done at the bar and along the walls; there will also be bench seating and small stools that create small environments, small areas with couches.

Mr. Muir asserted he got the business idea to have another location for people to wait at when a restaurant in the Main Street area gets busy with the hope that a restaurant would push patrons his way and when their table is ready that particular restaurant could call us and we could announce their table is ready at whatever restaurant. He explained that he would like to have a working relationship with nearby restaurants to setup this system. Mr. Muir confirmed he already has received his liquor license; he approached the liquor license first because if he wasn't able to obtain the license he would not move forward with the process in the first place – it just seemed like the license would be the first step.

In terms of parking, Mr. Muir established there are only two parking spaces on-site. He confirmed he has made arrangements with The Valet Connection to park vehicles. Mr. Muir believes The Valet Connection does currently pick up at La Masseria and at The Oyster Bar right in the general vicinity of the crosswalk. Mr. Muir also confirmed he has a written agreement with Mr. Stencil for the use of a parking lot behind his jewelry store which will be recorded in land evidence. Mr. Muir agreed that if the Board saw fit in the event the Kai Bar, a stand and mingle establishment,

were to fail, could not be turned into a 56 seat full scale restaurant. Mr. Muir did not have any objection if that were to occur.

Atty. Nolan stated that none of the existing establishments along Main Street can supply the parking that is mandated by the zoning ordinance. He suggested the ordinance be amended to reduce the number of spaces for restaurants. Atty. Nolan noted Staff has indicated that perhaps there are too many restaurants in Town and there are six commercial vacancies along Main Street. She also mentions there have been various successful businesses at this subject location – a Tea Room, an Alex & Ani – all of which have gone out of business. Atty. Nolan is of the perspective that East Greenwich is blessed to have wonderful restaurants in town, rather than being a Wickford, Appanaug, or Coventry – this Town is lucky to have “too many” thriving restaurants.

Atty. Nolan believed the reason for being here this evening is to bring a nice establishment into Town; quite frankly if the area becomes oversaturated businesses will take care of themselves and the demand will not be there – those not successful will go out of business. Atty. Nolan added that he prefers to drive down Main Street and not be able to find a parking spot; it means the area is thriving. He personally is a resident two blocks from Town Hall – he can park his car on Peirce Street or Rector Street and walk down; there is nothing wrong with a valet service parking a car on Rector Street or Peirce Street; nothing at all. Atty. Nolan asked the Board to give some serious thought to the application.

Ms. Englehart questioned the hours of the business. Mr. Muir stated the hours will generally be between 5 pm to 1 am although there is a possibility of having a lunch menu on Friday, Saturday and Sunday and will open at noon. He asserted there will not be a full lunch menu but anticipates serving sandwiches, chili, etc.

Ms. Englehart asked about the apartment situation within the parcel. Mr. Muir confirmed there is an existing apartment above the commercial space and one unit to the rear; those apartments would have the rights to the on-site two parking spaces. Mr. Muir stated the restaurant employees would

either park behind Wood Jewelers or walk to work since the manager lives within walking distance.

Ms. Englehart inquired about patron parking protocol. Mr. Muir stated a patron will valet or park wherever they intend to have dinner. Atty. Nolan said Mr. Muir brought up a good point in that LaMasseria and most other restaurants have to have a certain number of spaces; he questioned if the Applicant is duplicating some of the spaces as there appears to be some overlap.

Mr. Muir believed most of his clientele that visit the establishment will be from Main Street, meaning that they just finished dinner and want to get an after dinner cocktail – he did not anticipate anyone driving from Providence to visit just the Kai Bar as it will be very similar to Main Street Coffee.

Ms. Englehart asked if patrons will valet along Queen Street, not Main Street in order to not block the existing crosswalk. Atty. Nolan noted the Applicant could certainly have a valet service on the corner.

Ms. Englehart asserted she understood the reasoning for a loading dock relief but inquired where a dumpster would be located. Mr. Muir said he plans to put a dumpster by the side stairs of the building; if not he is of the understanding he can obtain extra recycling bins.

Ms. Englehart was of the opinion the application is excessive and the Applicant is requesting for a lot of relief. She agrees with Staff that the Town is hitting a point where there is not a lot of extra parking, particularly in the evening. She thought the Applicant has a great idea but it is excessive and wondered if the seats can be reduced.

Atty. Nolan commented the Town is lucky to have a parking “problem” on Main Street; if one goes to Wickford or Apponaug nobody is there and parking is a plenty – East Greenwich has a vibrant Main Street and the Town should be very fortunate.

Ms. Englehart noted her concern of where the valet company will be parking the vehicles. She asked where the vehicles will be parked and noted that the

public lots are almost always full. Atty. Nolan mentioned there is plenty of public on-street parking.

Mr. Land queried at what point is enough enough and at what point is too much enough. He referenced Atty. Nolan's comment of suggesting that everyone can park on side streets but asked when it becomes the neighbor's opportunity to say they have had enough. He said he did not mean to pass judgement on the issue. Mr. Land reiterated the Applicant is seeking almost 100 percent relief; the reality is the Applicant is trying to fit a square peg into a round hole. He stated the ZBR and community have allowed people to force the square peg into the round hole but it should not be because the Town needs a vibrant downtown; one more restaurant is not going to make or break that and the Board should be judging on the merits of the application not on a future downtown plan.

Ms. Sceery questioned where the valeted vehicles will be parked and if that conversation has occurred between the Applicant and owner of the Valet Connection. From her viewpoint, Ms. Sceery said it appears the vehicles are being parked in a "black hole."

Mr. Land recalled from the "Rocco's Bistro" application, the ZBR required a definitive agreement specifying the lots where the valeted vehicles will be parked. Atty. Nolan remarked that the valet company has the right to use the public parking lot. Ms. Englehart asked again where the valeted vehicles for this application will be parked.

Atty. Nolan noted that if there are too many cars then maybe that is up to the Town Council to decide how many restaurants to have in a given area.

Mr. Muir verified that he has asked The Valet Connection where they plan to put the vehicles; they informed him that they have negotiated on a private lot but do not have the exact location – until contracts are locked in the owner of The Valet Connection does not want his name on record. Mr. Land and commented that appeared secretive, which other Board members agreed.

Ms. Cullion commented she drove down the narrow gangway and queried how a dumpster will be accessed by a trash removal company. Mr. Muir said he was not opposed to adding more recycling bins to a dumpster, similar to what other restaurants do. Atty. Nolan said the dumpster can be wheeled out to Main Street on the day the trash is to be picked up.

Ms. Hitchen asked if there will be a beer tap at the bar. Mr. Muir confirmed there will be no beer tap. Ms. Hitchen commented not having a beer tap will mean a lot more recycling of bottles. Mr. Muir said the plan is to have bottled beer, no cans. Mr. Muir said he will recycle.

Ms. Englehart asked if there will be entertainment. Mr. Muir confirmed there will be acoustic entertainment but there will be nothing with speakers and no disc jockeys. He prefers to have an environment where patrons can talk to each other.

Ms. Englehart again voiced her opinion that the application was excessive and has nothing to do with the Town; the Applicant is seeking 95 percent parking relief. She asked where all the cars going to go. She liked the idea that the plan is to accommodate in a private lot but questioned where the mythical lot is.

Ms. Sceery mentioned that she has never had a problem parking along Main Street. Mr. Muir asserted that he, being from Warwick, has also never had a problem finding parking along Main Street.

Mr. Land opened the hearing for public comments.

Mr. David Schaller of 1265 Frenchtown Road referenced the 2005 parking study prepared by Pare Engineering. Since the last time he counted and was driven off Main Street, the ZBR has gave up well over 200 parking spaces for zoning purposes and the Zoning Board decisions have forced him out of East Greenwich – but he is glad he left. Mr. Schaller believed the proposed business model is interesting in that is sharing parking with other restaurants – he thinks the Applicant is making a mistake and is going to blow a lot of money.

Without any further comments from the public, Mr. Land opened the hearing for a motion.

Motion to approve the application by Ms. Sceery. Seconded by Ms. Cullion.

Mr. Land asked for discussion on the motion.

Ms. Englehart thought it is necessary for the ZBR to suggest to the Town Council and the Planning Department/Planning Board that there needs to be a thorough discussion on the topic of Main Street parking as this is a big problem.

Ms. Sceery questioned the authority the Applicant has if he were to sell the business as to what type of restrictions can be put on it. Atty. Nolan assumed the zoning decision can state it can only be a stand and mingle restaurant.

Mr. Mulhearn advised that there should be a condition that it is relegated and limited exclusively to a stand and mingle style establishment and not apply to any full service restaurant; if anyone wanted to operate a full service restaurant they would be required to come to the ZBR for zoning relief. Atty. Nolan agreed with Mr. Mulhearn's statement.

Mr. Land requested further clarification on the number of parking spaces. Atty. Nolan stated 33 spaces are required but the staff report states 36. Ms. Hitchen referred everyone to page 9 of the staff report, noting there the legal nonconforming parcel provides for an existing 2 on-site parking spaces. Restaurants require 1 parking space for every 2 persons of rated capacity. The request is to have a 57 seat bar with an anticipated 8 employees during the peak shift, creating a 65 person capacity requiring 33 parking spaces. Additionally there are 3 apartments on the parcel which require 1.5 parking spaces per unit, necessitating 5 parking spaces for a total of 38 parking spaces. With the existing two parking spaces the requested relief is 36. Ms. Hitchen reminded the Board the Applicant has requested to use the parking lot behind Stencil Jewelers where there is 10 spaces, so the relief can be reduced to 26 spaces. She noted the parking lot behind Stencil Jewelers was

well over 1500' away so an additional variance was needed due to it being more than 500' away from the subject property.

Ms. Sceery asked what would happen if the ZBR grants conditional approval to the Valet company without specific parking locations. Ms. Hitchen recalled that in the case of Rocco's Bistro they were to revise their Valet Connection contract as well as have it recorded in land evidence – they were to specifically include where the private lots were located and to strike out language that they would valet vehicles in municipal parking lots. She noted that although the proposed Kai Bar contract with the Valet Connection does not include parking in municipal lots, it should definitely include the private lots location and be recorded before the establishment opens for business. Ms. Hitchen recommended that by requiring this of the Applicant would keep better track of where these private lots are located and if there is any duplication.

Mr. Mulhearn questioned how the 57 seat capacity was rated and how the determination was made that it would be a 57 seat restaurant. Mr. Muir explained the interior seating was created by McGeorge Architects who used a standard design practice. Mr. Muir guessed that he would not actually have 57 seats and noted he would most likely have a little less. Mr. Mulhearn suggested the Applicant was putting the cart before the horse considering the capacity is not known yet and the Applicant is essentially requesting the maximum relief possible.

Mr. Muir commented that when the Fire Department was contacted regarding the rated capacity they would not visit the site until everything is ready so he was stuck as to how to arrive at a specific number. He essentially left the capacity in the architect's hands since they have experience with this situation.

Ms. Sceery questioned if the Applicant would be willing to reduce the number of seats which in turn would reduce the parking relief needed. Mr. Muir responded that the establishment could probably work with 50 seats.

Mr. Land was of the opinion that the reduction of four parking spaces was meaningless when the Board has issued over 200 spaces of relief over the

years. His thoughts if he was going to vote in favor is that he would want a parking agreement with the valet company to specify the specific location for the parking spots and they will be parking the vehicles there. Mr. Land added that to the extent that is a deviation from past practice he thought the circumstances in this Town and the number of restaurants opening dictates that the Board start considering these to the extent that the Board have not done so already at the point where the area is getting saturated. And if alternative locations for parking as restaurants come before the Board then there really needs to be reconsideration from a global perspective. Mr. Land took the opportunity to say that a parking study needs to be done and thought the Town Council should authorize a thorough parking study particularly the evening hours but should also cover all times and it should be something the ZBR can use as a resource when considering zoning applications going forward.

Mr. Land went on to say that if he were to vote in favor of the application there were a few conditions he would impose those being that whatever off-site parking is going to be provided by the valet parking service has to be dedicated specific spots and it cannot overlap with other commitments that that parking lot has given for other restaurants so that if there are 200 spots that are given away they are on private property. He would also grant the variance to the extent of the 10 spaces on the nearby property under the circumstances as he thought it is a reasonable accommodation in order to help the process along. To the extent it could be a binding condition he would take the Applicant up on the proposal that the property can only be used as a stand and mingle type location with a less than full service restaurant.

Mr. Mulhearn suggested that the condition restrict relief requested solely to a stand and mingle model and it would not be applicable to any future full service restaurant or tavern establishment.

Mr. Land commented that the parking spaces have to be distinct spaces where the Board is dealing with an imprecise model due to patrons arriving at different times, leaving at different times, and using the same spots over the course of a night. The problem is how many dedicated parking spaces shall the Board give out to restaurants. Mr. Land recommended the Town

or group of restaurants getting together to do a study as to how many vehicles are actually valet parking and study time usage and parking spaces in the Town. He thought that may be a worthwhile effort for the restaurants to undertake. Mr. Land was not compelled by the argument that there is lots of free parking in the nearby neighborhoods – he does not live in the abutting neighborhoods but is respectful of residents who do and frankly does not think the Board should be giving away parking spaces in front of their homes, whether it is a valet spot or to individuals walking down to restaurants in what should be quiet streets; although he did recognize spaces are available on those streets.

Mr. Muir added for the record that he believes his business will be seasonal in nature. Ms. Englehart said the summertime is always busier.

Mr. Golden asked for clarification as to how the Board will monitor the contract and how long it will run for. Mr. Land explained that the Applicant will have to present a contract that will be recorded; if the contract is for one year they will have to rerecord in another year, if it is a two year contract they will have to rerecord biannually - that will be a condition of their continued use of the property with the variance. Mr. Land confirmed the Applicant will present the contract to the Planning Department.

Mr. Mulhearn motioned to amend the original motion (made by Ms. Sceery) to approve the relief requested by Foreign Events, LLC subject to the following conditions: 1. the relief requested be restricted solely and exclusively to a stand and mingle model establishment and would not carry any grandfather rights and have no application to a full service restaurant or tavern establishment which would require a new request for relief. 2. A condition would be required that Foreign Events LLC/Kai Bar would be required to enter into a written contract with The Valet Connection (The Valet Connection or successor for valet services) for valet parking – that contracts to be recorded on an annualized basis or whatever term that contract to be with the Planning Department – to be done on a go forward basis. 3. Pursuant to valet parking services that there be dedicated private spaces sufficient to support the business establishment in the relief that has been requested – that is to be demonstrated through a document or evidence to be presented to the Planning Department.

Seconded by Ms. Cullion.

VOTE: 5 – 0.

Mr. Land strongly suggested the Town and restaurants study the parking situation in and around Main Street.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the January 26, 2016 meeting meetings.

Motion by Ms. Sceery to approve the minutes of January 26, 2016 as written.
Seconded by Ms. Cullion.

VOTE: 5 – 0.

With conclusion of all business, there was a motion by Mr. Mulhearn second by Ms. Englehart to adjourn at 8:20 PM. Motion supported 6-0.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

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