



Zoning Board of Appeals
Department of Planning & Community Development
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Shawyn Patterson-Howard
Mayor

Michael Justino
Chair

**ZONING BOARD OF APPEALS
MEETING MINUTES
for May 17, 2022**

A regular meeting of the Zoning Board of Appeals was held at 6:30 PM on Tuesday, May 17, 2022, in the Mayor's Conference Room on the first floor of City Hall. Applicants and members of the public were permitted to attend and make public comment via in person attendance.

The new Chair, Mr. Michael Justino, introduced himself to the members of the ZBA as well as the community. He indicated that the roll call was the first item on the agenda.

ROLL CALL

The Chair called the roll: In addition to the Chair, attending were the following Commissioners: Mr. Solly, Mr. Cutler and Ms. Darden. Commissioner Elvira Castillo was not able to attend.

Also attending were Marlon Molina, 2nd Deputy Commissioner, Maria Pace, Land Use Board Secretary, Nkechi Nwachukwu, Land Use Counsel and Bob Galvin, Planning Administrator.

With a quorum of four members present, the Chair opened the regular meeting at 6:30 pm. The Chair read the notice for the Zoning Board of Appeals meeting for Tuesday, May 17, 2022.

Item 2 - APPROVAL OF MINUTES

The Chair asked if the Commissioners had an opportunity to review the draft minutes and if there were any questions or changes. There being none, the Chair asked for a motion to approve the minutes of the April 19, 2022, regular meeting. Commissioner Cutler made the motion, seconded by Commissioner Darden. The Chair indicated that he would abstain on the vote since he was not present, having not yet started as Chair. The April 19, 2022, minutes were approved by a vote of 3 in favor with 1 abstention.

Closed Public Hearing

The Chair read the description for Calendar #1760-Z 259 South Fulton Avenue (Section 169.24, Block 4039, Lot 14) located in the RMF-10 Zoning District.

The Chair indicated that applicant's new rendering was received today and does not provide the public or the ZBA members with sufficient time to review. The new rendering should not be discussed tonight and could be put off to the next meeting. It was a mistake to close the public hearing at the Board's April 19, 2022, meeting.

Commissioner Cutler indicated that there was no mistake made. The public hearing for the application was opened on February 15, 2022, and remained open for three months receiving all public comment and written information until it was closed on April 19, 2022. Additionally, the record was kept open for an additional ten days to receive public comment. Both Commissioners Cutler and Darden indicated that they had reviewed the new rendering and that there is no reason to put the meeting off to next month. The public is available, and the applicant can show the new rendering to the public. The ZBA can entertain more comments if they choose.

Commissioner Rausse explained that the time for public hearing has been closed; however, the ZBA may wish to consider additional written comments from the public. The Chair withdrew the word "mistake" and indicated that the Board should consider allowing the public to submit written comments regarding the new rendering. He introduced Mr. Adesso, the Applicant's Attorney.

Mr. Adesso indicated that we have come with a new streetscape rendering and are prepared to answer any questions. He introduced Mr. Victor Castillo, the Applicant's architect.

Mr. Castillo showed the new rendering and explained it to the Board and adjacent property owners. He described the height of the proposed building at 30' relative to the adjacent residences at approximately 29'. He described the streetscape and materials for the proposed building. He also showed the various views from the sidewalk in front of the proposed building. He indicated that the building is setback the required 20' from the property line. The properties on the north and south are single and two-family residences. The property to the back is the rear yard of an apartment building on Amsterdam Place and an unopened paper street (New Street). The subject property has been vacant for many years. The property and surrounding properties are in the RMF-10 zone.

Commissioner Cutler stated that the architect did a nice job with the renderings. He asked the architect to confirm the height of the proposed building and the

surrounding buildings. The architect confirmed that the proposed building is 30' and the surrounding homes to the north and south are approximately 29'.

Mr. Adesso summarized the one area variance request for lot frontage and width which is 66.91' whereas 75' is the minimum required in the RMF-10 zoning district. He indicated that the project had been reduced to fit into the streetscape and provides more tax revenue to the city for a currently vacant parcel.

The Chair indicated to the ZBA members that they needed to consider the 5 criteria for area variances in their decision.

The Board members indicated that they had reviewed the five criteria in their previous meeting and reviewed the Applicant's responses to the individual criteria which were included in the Applicant's application.

Commissioner Cutler thanked the public for coming out and commenting on how the proposed project and the neighborhood at large are affected.

Land Use Counsel indicated that the Board should indicate that they have reviewed the record for the application.

The Board members indicated that they had reviewed all public comments, the application submissions and supplemental renderings provided by the applicant.

Commissioner Darden made a motion to approve the application. There was no second for the motion.

Commissioner Cutler made another motion to deny the application, seconded by Commissioner Darden.

A roll call vote was conducted by the Ms. Pace, ZBA Secretary who explained that a "yes" vote would deny the application. Ms. Pace called the roll:

Chair indicated that he was abstaining

Commissioner Cutler voted yes (deny the application) – *"He stated that the proposed project did not fit into the context of the surrounding residences."*

Commissioner Darden voted yes (deny the application)

Commissioner Solly voted no (do not deny the application) – *"He stated that the project would provide tax revenue for the city. ."*

The final count on the motion to deny was

Yes	2
No	1

Abstain 1
Absent 1

Land Use Counsel explained that what we have here is a divided/split vote on a Motion to Deny the application. Counsel indicated that the ZBA Rules are silent regarding the effect of an abstention in the case of a split or divided vote. Therefore, guidance was sought from Robert’s Rules of Order.

FAQ #6 from the Official Robert’s Rules of Order website states, “if the rules explicitly require a majority or two thirds of the members present, ... an abstention will have the same effect as a “no” vote.” (Emphasis in the original.)

Art. IV(C)(5) of the ZBA rules does indeed state that, “Decision on any matter before the Board shall require an affirmative vote of a majority of the members present at a meeting.” Therefore, the abstention regarding the 259 S. Fulton project has the same effect as a “no” vote, thus creating a tie – 2 yeas and 2 nays.

Art. IV(C)(5) of the ZBA rules goes on to definitively state that, “A tie vote shall be considered a rejection of the matter or application under consideration.”

Therefore, the application is deemed rejected by operation of the ZBA rules regarding tie votes.

Mr. Adesso asked for a transcript of the meeting for a possible appeal.

Mr. Galvin, the Planning Administrator, advised Mr. Adesso to put in a written request to the Planning Department.

Continued Public Hearing

The Chair read the description for Calendar #1749-Z 339A - 341 North High Street (Section 165.45, Block 1094, Lot 43) located in the RMF-10 Zoning District.

The Chair indicated that this is a continued public hearing from the ZBA’s April 19, 2022, meeting.

The Applicant is proposing the existing 2 story office and industrial structure to be converted into residential and office use with a third-floor addition. The second floor will be converted into 6 apartments and 4 apartments will be provided on the 3rd floor. The subject property is in the RMF-10 zoning district. The subject property has undersized frontages along North High Street and Oakley Place.

There is an access easement to the parking lot for the property from West Lincoln Avenue. There is also 24' driveway easement from North High Street leading to small parking area. The structure is primarily constructed along interior property lines. The existing parking is 9 spaces with 7 spaces off Oakley Place and three spaces provided off of North High Street. This is an existing non-conformity with no change in the degree of non-conformity. The previous use required 25 spaces and the proposed use does not increase the required parking.

The original letter from Michael Zarin, special counsel to the City Council, dated March 30, 2021, was submitted to the ZBA. The letter indicates that *“It has become apparent, upon further review, that there does not appear to be any relief under a zoning amendment that can be provided for this project., and relief can be more appropriately obtained through dimensional variances from the Zoning Board of Appeals.”*

The Applicant is requesting several area variances under the following section of the Zoning Code:

- **lot coverage: 50.9% - required 40%**
- **impervious surface: 100% - required 10%**
- **lot area per dwelling unit: 1,317 sf -required 2,250 sf**
- **front yard setback: 0 ft – required 20 ft.**
- **side yard setback: 0ft – required 15 ft**
- **Rear yard setback: 0 ft – required 20 ft**

Applicant’s Attorney, Mr. Jack Addesso, has addressed the specific criteria for the requested area variances in the ZBA application.

SEQRA Determination: The ZBA confirmed the proposed action as a Type II action at its April 19, 2022, meeting.

The Chair introduced Mr. Addesso, the applicant’s attorney.

Mr. Addesso provided a zoning history of the property. This matter was started two years ago. ZBA referred the application to the City Council. It was reviewed by Michael Zarin, the City Council’s land use attorney, which referred the matter back to the ZBA for variances . Area variances were granted by the ZBA for the commercial building in the 1960’s. The subject property was re-zoned by the City Council to RMF-10. The applicant now wants to build 10 units on top of the existing building.

Mr. Addesso introduced the applicant’s architect, Tom Abillama. He indicated that there are a number of area variances needed for the subject property. It is a very unusual lot.

Mr. Abillama reviewed the site plans and renderings for the project including the survey and aerial map.

Mr. Adesso reviewed the area variances required. We are not increasing the degree of non-conformity.

The Chair asked if the architect could help the board understand what is coming down. He pointed to the existing conditions.

Mr. Abillama stated that they are building on top of the building. It is designed to be a Tudor building with three levels for the building. He showed the easement from West Lincoln and North High.

The Chair asked about the easement from North High Street and about room for parking spaces.

Mr. Abillama reviewed the six parking spaces under the stairs and six loft units on second floor and the 4 units on the top floor. All windows are open to ventilation.

Mr. Abillama showed the view of the proposed building on Oakley, from North High Street, and from Lincoln Avenue.

Commissioner Cutler discussed the easement. The property appears to be land locked with two easements from Lincoln and North High. He asked how a land-locked property exist?

Mr. Adesso said that when lots were created, some property was land-locked in the process.

The Chair asked how a person gets into the building. Where is the entrance into the building?

Mr. Adesso explained how one gets in from North High Street. He discussed the legality of the access is being raised. If any of the residents have a right to the easement, they should provide the information to the Planning Department.

The Chair asked Mr. Adesso if the city has reviewed the easements.

Mr. Adesso said that according to the survey the applicant has access with the easements.

Mr. Adesso reviewed the issues with the property that were brought up previously. He mentioned the narrowness of the lot, relying on the easements and if the easements are not legal, then Applicant would not have a project.

The Chair asked what makes sense in clearing up the issue of the easements?

Commissioner Cutler asked if there is any easement language from the Title Company. From Lincoln is there a shared easement.

The Chair indicated that the Applicant would finish his presentation, then take a 2-minute recess for the public to review the renderings and then take public comment.

Commissioner Cutler continued with a question on the current use of the property. How is the property accessed and used? Review traffic related to existing office use and storage areas. Storage is a low-level traffic generator.

The Chair commented that there is a problem with parking. There is no place to park elsewhere.

There was a two-minute recess for the public to review the plans and renderings.

The Chair invited members of the public to comment.

Public – Dianna Benjamin – The office building has people coming in and out. There is a racoon problem on the property. If they build something on top of the building, it can look over their property. There is a parking problem especially on left side of Maple. What is going on with the current business in the building. The building at 341 High does not look like a business. There is little space in the easement for the cars nearby to turn in around in the easement. Does not know what the project will look like? How does it work? We have peaceful family residences but problem with parking and some fear about the people coming and going into the building.

The Chair wanted to know if it is a hotel.

Public – Ms. Michelle Purville – need to make applicant provide financial hardship for the variances.

Public- Dwayne Harkin – owned property for 18 years. This property was abandoned. Main corner has traffic going back and forth all hours of the night. Parking is a problem.

Mr. Adesso stated that since this application will be held over to next month, we can address the traffic and current use. We will also look into the easement issues.

Commissioner Cutler made a motion to hold the public hearing open until next month, seconded by Commissioner Darden, and carried by a vote of 4-0.

Continued Public Hearing

The Chair read the description for **Calendar #1764-Z 219 Tecumseh Avenue (Section 165.82, Block 4041, Lot 19)** located in the R2-4.5 Zoning District.

The Chair indicated that this is a continued public hearing from April 19, 2022. The Applicant's Engineer is Shahin Badaly, PE. Applicant is applying for three area variances in order to subdivide the subject property into two lots. The subject property consists of 8,000-sf (80' x 100') which is proposed to be subdivided into two 40' x 100' lots. Lot 19A is occupied by an existing residence at 219 Tecumseh Avenue. The existing 2,006-sf residence was built in 1903. Lot 19B will be vacant and used for the development of a new two-family residence. The subject property is an interior lot in the two-family R2-4.5 zone. It is on the east side of Tecumseh Avenue located between East Fourth Street and Beekman Avenue. Lot 19B has a significant tree (larger than 8" (DBH) in the middle of the parcel. The existing residence on Lot 19 does not indicate any off-street parking. It should be noted that the remaining lots on Tecumseh all have driveways to accommodate off-street parking.

Review of widths/frontages for lots along Tecumseh Avenue

Staff of the Planning Department conducted this review. On the east side of Tecumseh Avenue, the two adjacent properties to the north of the subject property and the five properties to the south all have a 40' lot width and frontage. This represents 88% or seven lots out of the eight interior lots on the east side of Tecumseh Avenue. The remaining lot has 65' frontage. On the west side of Tecumseh, there are eight interior lots with four lots having 40' frontage or 50% of the interior lots. There is one lot at 224 Tecumseh opposite the vacant portion of the subject property which has a double lot with 100' frontage. The remaining three lots on the west side have frontages of 50', 60' and 64'.

Area Variances

Applicant is requesting the following area variances:

- 1) *Lot Width and Frontage of 40'-0" where minimum of 50' is required*
- 2) *Lot Area of 4,000 S.F. where 4,500 S.F. is required*
- 3) *Lot Area per dwelling unit of 2,000 S.F where Lot Area per Dwelling Unit of 2,250 S.F. is required*

Applicant has addressed the specific criteria for the area variance in the application.

SEQRA – The ZBA confirmed that the proposed action is a Type II action at its April 19, 2022, meeting.

The Chair introduced Mr. Badaly who reviewed the requested area variances and the submitted commentary for the five criteria for area variances.

Mr. Badaly indicated that there was no room for a driveway but would ask for easement and variance for a shared driveway for the two residences. He also mentioned that he had looked at parking in the rear. However, there would need to be significant grading to provide parking at the rear of the property. The addition of a new two-family residence would result in new taxes for the city.

The Chair indicated that if a variance was granted, a condition can be provided to include a shared driveway between the two residences.

Commissioner Darden asked Mr. Badaly what the estimated taxes would be for a new lot.

Mr. Badaly indicated \$20,000 - \$25,000 for the new lot.

Commissioner Cutler asked about providing a rendering be provided with visual views as to what the 2-family houses look like together with the shared driveway for both houses.

Commissioner Darden asked that the 3d rendering also show landscaping. She also asked how the other homes on the street handle parking?

Public Comment – Ms. Shriver - more landscaping is needed would need to replace the tree that would need to be removed. The distance from the house on the right is 11’.

The Chair asked Ms. Pace, the Land Use Board Secretary, if she had other comments or objection letters submitted.

Ms. Pace indicated that the ZBA had received one objection letter which will be provided to the board members.

Commissioner Cutler made a motion to keep the public hearing open to accept new rendering, seconded by Commissioner Darden, and carried by a vote of 4-0. The submission should be provided 10 days prior to the meeting.

There being no other business, the Chair asked for a motion to adjourn.

Commissioner Cutler made a motion to adjourn the meeting, seconded by Commissioner Darden and carried by a vote of 4-0.

The meeting was closed at 8:30 pm.

**Maria Pace
Land Use Board Secretary**

**Robert Galvin, AICP
Planning Administrator**