

BOROUGH OF RARITAN
Land Use Board Meeting
MINUTES
June 23, 2021

CALL TO ORDER & FLAG SALUTE

The meeting was called to order at 6:40 p.m. in the Borough of Raritan Municipal Building. Ms. Thomas read the open public meetings statement into the record.

ROLL CALL

Present

Debra Thomas
Mr. Cunningham
Mr. DeCicco
Ms. Goetsch
Ms. Windrem
Mr. Brown
Ms. Sherwin
Mr. Delacruz

Also Present

Larry Cohen, Board Attorney
Stan Schrek, Board Engineer
Lou Gara, Construction/Zoning Official

Absent

Mr. Sinagra
Mayor Bray
Councilman Carra
Ms. Carra
Mr. Krajewski

ENGINEERING REPORT

Mr. Shrek advised that there were no pertinent updates.

PLANNING REPORT

In the absence of Ms. Knowles, there was no Planning report.

CONSTRUCTION OFFICIAL REPORT

Mr. Gara provided updates/information on the following projects:

- Angelone Florist was sold. Building to be renovated and landlord is looking for new tenants.
- New Shop n Stop tenant (unofficial) which is not a grocery store or national chain is coming.

Calling it positive, Mr. Gara endorsed the downtown rehabilitation area recommendations. Mr. Shrek suggested that the Board establish a subcommittee to review the upcoming report (anticipated end of the month according to Ms. Thomas) and enabling ordinance. They resolved to use the TRC. Mr. Gara and Mr. Shrek clarified for Mr. Brown that it was the project the Board has a presentation about recently. Mr. Brown asked whether funding for it was tied to the Master Plan. A discussed ensued on how to proceed.

TRC MEETING UPDATE

Chairwoman Thomas advised that there were no TRC meetings scheduled and that none had been held.

AD HOC COMMITTEE (Cannabis Dispensaries)

Mr. Cunningham advised that there was no action that the committee needed to take in the absence of the applicant's authorization from the State.

PEDESTRIAN BIKE & SAFETY

Ms. Knowles was not present to provide an update.

APPLICATION/HEARING

- **CGR, LLC and 93 West Somerset Street, LLC
5 First Street & 93 West Somerset Street (Block 85 Lot 15 & Block 103 Lot 2)
Site Plan Application with "C" and "D" Variances**

Ms. Goetsch recused and moved to the audience.

Attorney John Sullivan entered his appearance on behalf of the applicant and recapped prior testimony. He advised that revised plans (Architecturals dated June 10 and Engineering plans dated June 8) had been submitted in response to the concerns expressed by the Board. A brief discussion ensued about distribution of the plans as Mr. Schrek indicated that he had not received the architectural. Mr. Sullivan advised that the only "real" revision was with respect to refuse.

Mr. Cohen confirmed that a supermajority was present. [Mr. Delacruz & Ms. Sherwin certified they listened to the audio from the May hearing].

Raymond Vella acknowledged that he remained under oath. He spoke about the distance between the two sites and loading/unloading for the residence on the First Avenue side. He offered that they would propose to shorten the time for the one hour parking spots in front of the building (from 1 hour to a number of minutes instead). He acknowledged that this would require approval from the governing body as well as Somerset County and spoke about how he would monitor them. Mr. Vella testified that this pertains to loading for the residential use on the second floor only as the commercial use (1st floor) has loading inside of the garage.

Mr. Vella responded to questions from Ms. Thomas about the status of construction on the house on Lyman/Somerset Streets. He spoke about the exterior improvements that would be completed in time. In response to a question from Ms. Thomas about parking for the first floor tenant with "multiple cars," Mr. Vella explained that he rarely sees them and gave them a spot on the side. He stated that he believed it is a two bedroom.

Ms. Thomas polled the Board for questions/comments.

An extensive discussion on the spaces in front of the First Ave. property ensued in response to questions from Mr. Brown. Mr. Vella confirmed that the [1 hour parking] spots currently used by the businesses there do not belong to him. He offered that adjusting the time on those spaces could help the florist and the pizzeria with pick ups rather than people using Quick Check. Mr. Brown questioned the amount of control the applicant would have over the spaces and the capacity in which he would be able to police them unless the County would be willing to change the signage. Mr. Vella offered that they would be monitored by the Town. Mr. Cunningham opined that 20 minute parking would be a good idea. He asked about the timeline for construction on the corner building. Mr. Vella advised that they were currently sheetrocking and would be working from the bottom, up. He explained how the potential approval would also tie in to this. Mr. Gara helped clarify the reasoning behind the timeline for construction after Ms. Thomas remarked that it is an eyesore.

Ms. Thomas opened the floor to questions of Mr. Vella.

Lucy Sandler (resident of 812 Old York Rd. and owner of House of Blooms at 7 First Avenue) asked about the area of coverage/vantage points provided by the cameras on First Avenue. Mr. Vella testified that a Super would take care of the building and that any tenant parking in the spots would be towed. He responded to questions from Ms. Sandler about the duties of the Super as well as compensation.

Mr. Vella responded to additional questions/comments from Ms. Sandler regarding enforcement of the parking. She expressed concerns about her and the pizzeria losing business and/or having to become "parking police." Mr. Vella asserted that he would make himself available to them. Ms. Thomas suggested that he provide them with contact information for the Super and Ms. Sandler responded that it was not her responsibility. He testified that he would do his best. A discussion regarding changing the signage to convert the spaces to a loading zone ensued. Mr. Schrek offered that while the applicant is making an attempt, he has to talk to the governing body ultimately.

Adele Goetsch (speaking from the audience) thanked Mr. Vella for addressing the backyard fencing. She commented that there are no markings on the asphalt delineating the spaces. Mr. Schrek opined on this. Ms. Goetsch was making a comment on offsite parking when Mr. Cohen reminded her that it was not appropriate to make statements during the period for questions. She acknowledged and asked whether there were other sites in Raritan where parking isn't completed on the site. Mr. Cohen referenced the Borough Ordinance as it relates to shared parking.

Mr. Vella responded to a question from Mr. Brown about the amount of the parking as it relates to the length of the building. Mr. Brown affirmed Ms. Goetsch's statement about the lack of parking space "markers."

Architect Ivano Marulanda of James R. Guerra Architects, P.A. (55 Jefferson Ave., Elizabeth) acknowledged that having been previously sworn, he remained under oath. Mr. Marulanda reviewed the plan revisions and identified the mixed use building as 5 First Avenue. He identified the existing garage, proposed office location (front of building) and refuse area. Mr. Marulanda testified that there would be 3 apartments on the second floor which would enable a reduction in the footprint. He identified a stairway to the 2nd floor and provided testimony on the layout/dimensions of the front, middle and rear units (1055, 926 and 1110 square feet respectively).

Ms. Thomas asked about the ability to convert the proposal to two apartments rather than three, as previously discussed. Mr. Schrek advised that they had a conversation about that in an attempt to have parking comport. Mr. Marulanda advised that this part of the plan had not changed. Mr. Cohen reminded that zoning requires a minimum of 900 square feet for each unit.

Mr. Marulanda presented Sheet A200 of his plan set and identified it as "Front Elevations." He spoke in detail about façade materials as well as the windows, doors and roof. Mr. Sullivan confirmed that the only design change was to the 1st floor where a refuse area was added. Mr. Cunningham asked about egress from the rear apartment. Mr. Marulanda reviewed the fire rated features such as egress windows which Mr. Gara mentioned. He identified the loading/unloading area in response to a question from Mr. Brown regarding the area to the left of the garage door.

Mr. Brown asked about prior uses on the site. Mr. Vella explained that it was an HVAC/cabinet fabricator/"sewing place" where they used to have deliveries and loading on top of the bldg via forklift/barn door. He testified that he would be going out "very rarely" and that the office area would not be used "daily."

The Chairwoman opened the floor to questions of the witness.

Ms. Sandler asked about the timeframes for construction and how parking in the front would be impacted as a result. Mr. Vella related that it would normally take 6-9 months but could not make any guarantees because of Covid/current supply chain issues. He explained that the location of the dumpster would be relevant to parking impact.

David Stires, P.E. acknowledged that having been previously sworn, he remained under oath. Mr. Stires explained that there were no revisions made to the plan for the First Avenue property. He discussed the plan revisions with respect to the Somerset Street property made in response to Board comment and include reconfiguration of the parking lot to create 8 [conforming] spaces as well as modifications to the driveway width in order to provide for a conforming driveway as well.

Mr. Stires explained that curbing around perimeter was added at Mr. Schrek's request and that they were able to shift the parking lot away from Lyman Street/remove the retaining wall. He explained that vinyl fencing from the back corner of the neighbor's garage had been added in addition to landscaping in front of the fence area and a sidewalk behind the existing two family in addition to stairs down Lyman Street. He explained that modifications had also been made to the existing sidewalk/cross over with Somerset and First Avenues.

Mr. Stires explained that a retaining wall had been added in order to address comments on the addition of green space and that the parking lot would be re-graded in response to concerns from the Board engineer about the direction of flow heading east to the neighbor's property. He explained that while they had removed two spots, they added one. Ms. Thomas pointed out that there was already a deficit of one space. Mr. Stires offered that the Traffic Engineer would address this and responded to a question about the driveway.

Mr. Stires confirmed that the total number of spaces for both sites was eight (8). The total number of spaces needed for both buildings was discussed. Mr. Stires explained that the Traffic Engineer found a slight discrepancy. Lighting was discussed. Mr. Schrek indicated that wall mounted lighting would be adequate. Further discussion on the lighting plan ensued. The Board concluded that lighting would be subject to the review and approval of Mr. Schrek and Mr. Cohen.

Ms. Thomas opened the floor to questions of the witness. There were none.

Traffic Engineer Craig Peregoy, was sworn and qualified. Mr. Peregoy testified that he reviewed the proposal for efficiency, safety and for compliance with RSIS requirements. He spoke about the criteria used in calculating the amount of parking needed for the two family house and the (3) two bedroom apartments (9.5 spaces which he related gets rounded down to 9). Mr. Cohen agreed that this is a minimal deviation which RSIS provides for. Mr. Peregoy testified that traffic signal timing was contemplated. Mr. Cohen read from the ordinance with respect to the arrangement being proposed.

The direction of travel on foot was discussed. Mr. Vella was asked whether another doorway could be installed at the rear of the building. He explained that all entrances are in the front because the building itself encumbers the whole lot. Mr. Cohen clarified that they were talking about the mixed use building and confirmed with Mr. Vella that a door could not be installed in the rear of the building. Mr. Schrek concurred with Peregoy's calculations but rounded the 9.5 upwards to 10. Mr. Peregoy testified that RSIS only rounds up if the number is greater than .5. *Mr. Schrek later confirmed that RSIS does provide for rounding down of the .5 rather than up.*

At the behest of Mr. Cohen, Mr. Peregoy clarified that nine (9) spaces would be needed for residential parking where eight (8) are being provided, resulting in the need for a variance with respect to a deficiency of (1) space. Mr. Schrek concurred.

Mr. Peregoy addressed the commercial parking requirements. He testified that three (3) cars can fit in the garage. Ms. Thomas suggested that the building manager could park inside of the garage. Mr. Vella testified that he would agree to have the Super park in the garage in order to address the deficit.

Ms. Thomas opened the floor to questions of the witness.

Mr. Brown asked Mr. Peregoy to comment on safety as it relates to egress from the parking lot onto Somerset Street (specifically, taking the left hand turn into consideration). Mr. Peregoy testified that it would depend greatly on the time of day/night and testified that he observed the traffic personally in response to additional questions from Mr. Brown.

Mr. Cunningham related that his only concern was the math with respect to the number of spaces needed. He related that his view is that there are a total of 11 bedrooms in 5 units which he opined really equates to 10 spots. Mr. Peregoy deferred to Planning testimony regarding. Visitor parking was discussed.

Ms. Thomas opened the floor to questions of Mr. Peregoy.

Mr. Peregoy responded to a question from **Andy Sibiia** of 19 Gaston Ave. about when the census information as it relates to the traffic analysis criteria. Ms. Sandler asked why there was no requirement for visitor parking. Mr. Peregoy explained that it is built into the existing calculations. At the request of Ms. Sandler, he defined the term "1/2 space" from "a utility perspective."

Matthew Flynn, P.P. of John McDonough Associates was sworn and qualified.

Mr. Cohen remarked that the ordinance was all encompassing with respect to permitted uses. He asked Mr. Sullivan to confirm that the construction business that he filed a use variance for didn't fit into any of the permitted use categories. Mr. Sullivan offered that it does and deferred to the (forthcoming) planning testimony. A brief discussion ensued about the permitted uses under the ordinance. Mr. Shrek asserted that he did not agree that the use is permitted, particularly because the list of permitted uses is indeed very broad. He commented that if the ordinance was NOT so detailed, he would agree.

Mr. Flynn presented a packet of maps of the site/surrounding properties and distributed copies of it to the Board. A brief discussion ensued about previously marked exhibits. Mr. Cohen related that the last exhibit (Site Plan dated June 8) was marked as A3. As such, the planning exhibit was marked as **EXHIBIT A-4** into testimony. Mr. Flynn identified Sheet 1 as a simple parcels map showing property lines, Sheet 2 as an aerial map, Sheet 3 as a color coded land use map and Sheet 4 as a zoning map. He spoke at length about existing conditions.

Mr. Flynn identified the lot lines and pointed out the mass and scale of the buildings on Sheet 1. He testified that this would qualify as an adaptive re-use since there were no new buildings being proposed and that it would be in tandem with the neighborhood pattern. Speaking to consistency/compatibility, he identified another paved parking lot behind the building.

With respect to Lot 15 in particular, Mr. Flynn referred to the color coded areas on the Land Use Map. Using these, he explained that the lot would remain residential and that the industrial area would become commercial. Speaking further to consistency, he pointed out that the property is at the end of a cluster of non residential uses and that the transitional area is surrounded by residential uses.

Mr. Flynn called attention to a prominent line on the zoning map showing different permitted uses on each side. He offered that a goal of planning is to blend land uses in order to maintain compatibility and testified

that this proposal speaks to that.

Mr. Flynn clarified that the D2 variance is for an extension of a non conforming use and that the D5 is for density. He offered that he would put forth the proofs for the D1 in question rather than conceding to it or denying the need for it. He offered that office uses are permitted in the D1 zone, to the extent that an office is being provided; he acknowledged however, that the site also contemplates storage which is not permitted.

With respect to Lot 15, Mr. Flynn offered that because it is "tucked away" in a corner of the B1 zone and not in the middle of a residential zone but rather, is bordered on two sides by residential that there is compatibility. He testified that some of the uses in the B1 zone are applicable to the site because it is undersized. He explained that some of the commercial uses require visitors and offered that since it is undersized that is appropriate to use it in the proposed form.

Mr. Flynn testified that they would be bringing the longstanding industrial property into harmony with the area. He advised that the Master Plan states that the B1 is intended for mixed use and that the building mass would remain the same while several functional and visual upgrades would be done, bringing in more residents.

As to the D2 variance, Mr. Flynn explained that the two family on Lot 2 is already there. He clarified that expansion of the use involves removal of the garage in order to create more parking spaces. Directing his comment to Mr. Sullivan, Mr. Cohen explained that he did not consider that to be an expansion of a non conforming use but rather, an addition of a parking lot. He offered that if parking were being added for the existing non conforming use only it would be considered accessory and therefore permitted; however it is an additional principal use since what is being contemplated is a parking lot for the subject property in addition to the property on First Avenue. As such, Mr. Cohen asserted that the variance is another D1, rather than a D2. He deferred to Mr. Shrek who concurred with his analysis. Mr. Cohen offered that this was included in the applicant's Notice as a result of prior conversations.

Mr. Sullivan asserted that since the ordinance permits shared parking, the question is whether there are really two principal uses. Referencing shared versus dedicated parking, Mr. Shrek spoke to the intent of the ordinance. Further discussion ensued on the type of variance required. Mr. Sullivan asserted that there would be dedicated/assigned parking for the First Avenue residents on W. Somerset Street as well as spaces dedicated to residents who live onsite.

Mr. Cohen offered that the applicant could/should proceed regardless since the proofs for a D1 are essentially the same as a D2. Mr. Sullivan stated for the record that the applicant would be adopting dedicated parking.

Referencing Medici v. BPR Co., 107 N.J. 1, Mr. Flynn put forth the proofs for the D1 variance. He testified that both variances could be justified under the same criteria. Speaking to site suitability, Mr. Flynn testified that the typical uses in the B1 zone would not apply since the lot is undersized. He offered that the retrofitting of the existing building addresses this. He added that there was no elimination of a complaint use and that the site is surrounded by mixed use at the edge of the zone bordering other residential uses.

Mr. Flynn testified that the location would enhance the customer base for merchants, bringing in residents that would take advantage of other shops in the area since the site is within walking distance of shopping, entertainment and transit. Mr. Flynn also testified as to compatibility as massing/size would remain unchanged. Calling the property unique because it does not front on West Somerset St. like most of the other properties in the B1, Mr. Flynn asserted that the office use is appropriate because it is less intensive.

As to the special reasons [positive criteria], Mr. Flynn testified that the proposal would promote the purposes

of zoning under sections A, E, G, I and M of the Land Use Law. He testified that there would be no detriment to the public good since there are adequate facilities, parking, façade upgrades and avoidance of a more intense use. As to any impacts to the zone plan, Mr. Flynn testified that it would not be inconsistent with the Zoning Ordinance or the Master Plan as it would enhance the commercial uses in the B1 Zone.

As for the D2, Mr. Flynn testified that they would be improving the site condition by effectuating positive redevelopment. Speaking to the benefits of expanding the non conforming use, he testified that there would be a new buffer in the rear, new fencing, and greenery facing the public view on Lyman St., provisions for off street parking, collection and disposal of runoff and new parking, all of which make rehab of the property across the street possible.

As to the negative criteria, Mr. Flynn testified that there would be no detriment as it was not substantially adverse in nature and would make the intersection safer and more functional given related improvements. Citing visual improvements (buffering) and new parking, he offered that it would contribute to the overall planning vision of the B1 district and planning intent of the area.

As to the D5 variance, Mr. Flynn indicated that he would rely on the testimony of the architect and traffic engineer who testified that the site has adequate capacity to accommodate the use.

Speaking to the positive criteria, Mr. Flynn offered that the location was appropriate for the density given proximity to shopping, employment and transportation. He testified that the proposed improvements would eliminate a vacant building, improve living conditions given the creation of new housing stock and add value and quality given the investment to the area.

Mr. Flynn provided [per acre] calculations on density in response to a request for same from Mr. Cohen.

As to the negative criteria, Mr. Flynn testified that the site can accommodate the increased density without undue hardship or substantial detriment to the surrounding area. He offered that there is compatibility with current land use and asserted that the proposed use is less intense than several of the permitted uses. He testified that there was adequate parking capacity despite the one space deficiency since the applicant offered to resolve it by having the Super park in the garage. Mr. Flynn offered that the additional density helps reduce potential for more intensive uses on the site and that the neighbor's view shed would actually be better.

Citing Pullen v. Township of South Plainfield 291 N.J. Super 1, Mr. Flynn held that the c variances are tied in to the use variances. He confirmed that the front yard parking setback for Lot 2 is a preexisting nonconformity. Mr. Schrek explained the protocol for addressing pre-existing situations to Mr. Cohen. The lack of buffer was referenced as a preexisting nonconformity as well. Speaking to the dumpsters, lot area, rear yard setbacks and impervious coverage, Mr. Flynn testified that these were all preexisting conditions necessary to effectuate positive redevelopment/adaptive reuse of the property.

Design waivers were discussed. Mr. Sullivan explained that loading/unloading would be done from within the three garage spaces for the commercial component of the proposal. Parking lot curbing was discussed as it relates to Lot 2. Design standards were discussed as they related to increased runoff. Mr. Sullivan spoke about storm water on that lot which led to further discussion about same.

Referring to discussions about whether Lot 2 required a D1 or D2 variance, Mr. Cohen asked Mr. Flynn to review the proofs he put forth with respect to the D1 assuming that the Board is looking at it more as a D2 because of having two principal uses on the same lot.

Mr. Flynn asserted that the testimony would be the same. Mr. Cohen offered that it would be a different set of

facts. Mr. Flynn advised that his stance was that the D1 for the principal lot is justified based on the D1 use variance for the other property. Mr. Cohen reiterated that that while he went through the uses, this is a different set of facts since this is not a pre-existing building being converted into a more compatible use. Further discussion ensued on the applicability of the proofs previously put forth. Mr. Flynn acquiesced, referencing Medici with regard to the parking lot as a principal permitted use.

With respect to site suitability, Mr. Flynn testified that there is already a parking lot behind the property, next to the property and a parking lot directly behind the site which is adjacent to another rear yard parking lot. As to the special reasons, Mr. Flynn offered that the same rationale would apply; specifically, Purpose (E) since allowing the parking lot in this location would effectuate the residential component of the mixed use development offsite; Purpose (G) since it would promote a variety of land uses in appropriate locations by allowing development on other properties; Purpose (I) since parking on that lot would promote a desirable visual environment via development of a "beautiful" mixed use building as opposed to a vacant industrial building; and Purpose (M) since efficient land use would be promoted as a result of creative and practical planning solutions being utilized.

As to public impacts, Mr. Flynn explained that they already have compatibility and as to impacts on the Zone Plan, Mr. Flynn explained that since a parking lot is a permitted principal use, there would be no substantial detriments.

Mr. Flynn responded to a question from Mr. Sullivan as to site upgrades on the West Somerset Street property. Mr. Cohen reminded the Board that public parking lots/garages are permitted principal uses in the B1 zone. Mr. Cohen asked about compatibility of the two family house with the proposed parking option. Mr. Flynn testified that it would be compatible since it was only for residential parking. He again referred to the neighboring paved parking areas.

Mr. Vella responded to a question from Mr. Cohen about how long the pre-existing industrial use was there and when it ceased. He advised that it was still being used for HVAC when he purchased the property in 2018.

Ms. Thomas polled the Board for questions. Mr. Gara responded to questions from Mr. Decicco about ownership of the properties. Mr. Cohen advised that there would be further discussion about this prior to deliberations.

Ms. Thomas opened the floor to questions of Mr. Flynn. There were none.

Andy Sibilila asked whether there were 10 apartments and 8 spots. Mr. Cohen explained that under RSIS which control parking density, there are 9 spaces required and they are providing 8 regardless of bedroom count. Mr. Sibilila remarked that traffic is "bad" and commented on the chances of the Super only needing one spot indefinitely. He remarked that as a resident who lives nearby, he believed people will wind up not parking across the street but nearby just because of human nature, creating a "good chance" for them to get run over. He opined that it would generate 20-25 spots.

Mr. Sibilila asked whether the applicant has ever been convicted of a crime. Mr. Cohen suggested that the question was "improper." Mr. Sibilila asked if that applied even if it was "for bribing a Construction Official." He remarked that they should "Google search" him.

Ms. Sandler asked why Ray was present if Angela Vella is the sole member. Mr. Sullivan explained that he is testifying as a representative of the applicant. Mr. Cohen explained that he can produce a factual witness as long as they have knowledge of the facts that they are testifying to. Ms. Sandler asked about Angela's role. Mr. Cohen offered that she could have asked Mr. Vella that question and that it would be up to Mr. Sullivan as to

whether he wants to address it. She related that she is concerned about the proposal at 5 First Avenue and is not the only business owner who feels that way. She advised that she was also speaking this evening on behalf of Christian (owner of DeLucia's) who wasn't able to attend.

Ms. Sandler related that it was getting harder not to ask what about the business community with the presence of more luxury housing that inures to the benefit of developers. She related that aside from being a Florist in town, she is a Board of Education representative and is on the Board of Directors for Somerset County Business Partnership, donating a lot of time to advocating for the Borough and its residents. She asked who the Town values – “someone like Mr. Vella who can pay for experts and wedge something into a plan that is technically possible even though not practical” or “real business owners” like her “and Christian” who built their lives there and who chose to “really invest” in the town by living there, having businesses there and wanting to raise their families there. Ms. Sandler said she was hopeful that the town wouldn't sell them out for “a few potential parking improvements and a nicer building façade.” She concluded in saying that the business community is “worth more than that” and that she hoped the Board shared her opinion.

Ms. Goetsch asked Mr. Cohen whether she could make a statement. Mr. Cohen advised against it. Mr. Brown offered that she should be able to. Referencing case law, Mr. Cohen explained that it was better practice not to have a recused member comment. He explained that some Boards do not even allow a recused member to remain in the audience. Mr. Schrek validated this but referenced past practice of the Board in allowing recused members to comment. Mr. Gara clarified that while the recused member is entitled to speak, it may give someone standing for appeal. Mr. Cohen held that while there was nothing statutorily to prohibit the practice, it was not advisable. He offered that if that was the Board's practice, she could proceed with her comment. Ms. Goetsch indicated that although she did not think it was fair, she was not going to comment in light of all the discussion.

Mr. Gara asked whether he should/could read an email from Christian DeLucia regarding his concerns over construction and parking since he was unable to attend. Mr. Cohen explained that since it was permissible under the new rules for virtual meetings, it would be acceptable. Mr. Gara read the email into the record:

On Wed, May 26, 2021 at 8:49 AM Christian DeLucia <cdelucia1177@gmail.com> wrote:

Lou, I am unable to attend the zoom meeting tonight because My sons have a district baseball tournament game and as a business owner in town I don't normally have the chance to attend but I am able tonight. I have a few concerns regarding the construction that is up for approval at 5 1st Avenue as well as the parking that will be needed for the buildings tenants. It is highly unlikely that tenants will park in their designated parking lot, requiring them to cross a busy intersection, rather than park in front of their building ultimately taking parking spots away from my paying customers, as well as House of Blooms, and Sonic Boom Studios. On top of the noise disturbance, the construction will serve as an eyesore, taking up parking space with trucks, and block the sidewalk with equipment. The construction at 5 1st Avenue will directly affect all 3 of the corner businesses incomes and will make it close to impossible for people passing through Raritan to even know we're open. You have my full permission to voice these concerns to the public.

From Christian DeLucia owner DeLucia's Pizza Inc.

Ms. Thomas asked whether anything could be done during construction to lower impact on businesses. Mr. Gara offered that the company was very good to work with on the Block 81 development. He asserted that they would have to maintain the public sidewalk and safe working conditions while complying with commercial vehicle parking restrictions as well as placement of the dumpster at the discretion of the Police Department. Ms. Thomas asserted that existing businesses should not be impacted by construction if the Borough is getting into more development on the Main Street.

Mr. Shrek offered that there were items that would need to be addressed in the resolution and compliance

letter including bonding and preconstruction meetings where these kinds of details are addressed.

Mr. Shrek clarified statements he made earlier regarding participation of recused members. He acknowledged Mr. Cohen's responsibility to advise the Board as to the law and let them know what his opinion is. Mr. Cohen apologized for offending anyone, explained the reasoning behind his advice and thanked Mr. Schrek.

Mr. Vella responded to a question from Ms. Thomas about numbering the parking spots in response to a comment about stickers for vehicles made by Mr. Flynn during his testimony. He testified that each unit would be "designated a spot." She shared that on street parking is a major concern since the tenants will likely park in the closest spot they can find. She suggested that Mr. Vella figure out how to ensure those tenants park in those spots. Mr. Vella shared that the assigned parking would be in the lease and that he planned to maintain this with towing/cameras. He assured her that workers would not take up spots either and that placement of the container would be discussed with Mr. Gara and Mr. Schrek. He testified that he would try to move quickly. He related that he never stopped anyone from parking in his lot to get pizza.

Ms. Thomas asked whether he understood the Board's point of view and concerns. She advised that they need to impose conditions so that the project does not negatively impact businesses and they need to make sure tenants are parking in the lot. Addressing Mr. Cohen, she asserted that there would have to be a resolution condition showing what the applicant agreed to. A discussion ensued on conditioning the resolution with respect to tenant parking. Mr. Vella reiterated that he would move "as quickly as possible."

Mr. Cohen offered that he did not recall any testimony on enhanced proofs under the Medici criteria. Mr. Sullivan advised that it had been provided.

Mr. Brown asked Mr. Shrek whether the Fire Department reviewed the plan with respect to sprinklers. Mr. Gara advised that this falls under the purview of the Fire Sub code Official in his office. He advised that it was also reviewed by the Police and Environmental Committee, sans comment.

Mr. Sullivan proffered a closing statement.

Mr. Cohen provided an extensive legal analysis given the complexity of the matter. He reiterated his belief that both variances are D1 for reasons as previously enumerated and reviewed the criteria for same. As for the First Avenue property, Mr. Cohen spoke about the relevance of having a nonconforming (more industrial) use there previously as opposed to the proposed use which he offered may be more like the uses that are currently permitted. Speaking to the negative criteria, he suggested that the Board look at the effects of the proposal on the Zoning Ordinance, Master Plan and surrounding properties as well as any affects that the prior use had on surrounding properties. Mr. Cohen read from the zoning ordinance and suggested the Board consider whether the proposed use would more negatively affect the zone than the previous existing non conforming use. He reminded that the residential component on the second floor is permitted and can accommodate three conforming units. He clarified that the D1 on the First Avenue site is for the downstairs component only.

Mr. Cohen reviewed the parking requirements and relief being sought in connection with same; given concessions made by the applicant during testimony with respect to moving the Super's parking into the garage. Mr. Schrek asked whether the Board had any judgment as to the practicality of the offsite spaces. Mr. Cohen explained that while the ordinance permits parking on other properties, it does not say anything about proximity. Mr. Cohen read from the ordinance again. He asserted that once the applicant provides in conformance with the ordinance, practicality cannot be considered.

Mr. Cohen suggested that the Board first consider the D1 for Lot 15 and then the D1 for the parking.

Ms. Thomas asked whether they could condition the parking. Mr. Cohen explained that they could require a lease provision and could request assigned spaces. Mr. Cohen reminded that variances go with the land; not the owner. Ms. Thomas expressed her concerns about this. Mr. Cohen indicated that they could not make the presence of a Super a condition. Ms. Thomas asked whether they could still condition one spot for that building in the garage. Mr. Cohen advised that the commercial space is required to have three spots. Further discussion ensued about conditioning the parking.

Mr. Cunningham asked whether the properties could be sold separately. Mr. Cohen advised that there had to be deed restriction subject to approval by the Borough Attorney. The structure of the vote was discussed. Mr. Cohen explained the effect that a denial of the D variances would have on the entirety of the application. He suggested that the Board consider the D1 variances for both lots and then the balance of the proposal.

Mr. Cohen outlined the potential conditions of approval such as parking. He clarified that the eight (8) spaces on lot 2 would be used for residents of that lot as well as the residential tenants on Lot 15 with spots being designated accordingly (in addition to the three (3) spaces within the building on Lot 15. He added that the deed for Lot 2 would have an easement/requirement that whomever buys the property would be subject to parking rights for Lot 15 [designated spaces] on Lot 2.

As to the D1 variance, Mr. Cohen explained that the building on First Avenue would be restricted to the proposed use and if someone wanted to change the use from a construction office/warehouse they would have to return to the Board unless converting to a permitted use in the zone. Mr. Cunningham expressed concerns over the potential length of time the project would take to complete. Calling it an exception, Mr. Vella offered that this project was not a typical example of his work as he was working around an existing tenant while rehabilitating the property. He related that the work on the Lot 15 building should go rapidly.

Ms. Thomas asked about supply issues. Mr. Vella testified that he would not start the job until all equipment is on site and that it would be clean/neat.

As to the parking for loading on First Avenue, Mr. Cohen advised the Board that they could not consider converting the spaces from 1 hour parking to 15/20 minutes in their deliberations because this might not receive approval from the County or the governing body and as such, might not come to fruition.

Ms. Thomas polled the Board for questions. Further discussion ensued on how to structure the vote. Mr. Cohen suggested that an affirmative motion would entail granting of both D1 variances (one for the use on Lot 15 and the other for two principal uses on Lot 2, together with corresponding bulk variances relative to Block 15 as well as preexisting bulk conditions to the extent identified [on the record and in Mr. Schrek's May 18 review letter]. He added that it should also include a condition relative to the deed restriction/permanent easement and language regarding the assigned parking spaces with three (3) spots to be used for parking relative to the commercial facility.

None of the Board members dissented when asked by the Chair whether they were ready to vote.

Mr. Cohen phrased a motion for the grant of two (2) D1 variances, the first being a use variance on Lot 15 for limited use of a contractors business composed of an office and warehousing with loading and unloading within the building and the second variance on Lot 2 for having two principal uses on a single lot [that being a parking lot for a residential development on Lot 15], together with bulk variances for minimum lot area, rear yard setbacks and lot width on Lot 15, maximum impervious coverage and lot width on Lot 2 and a parking variance for eight spots where 9 are required (for the residential development only).

Mr. Cohen acknowledged comments from Mr. Sullivan adding a density variance and from Ms. Thomas about a

provision linking the two properties together. Mr. Cohen added that the approval would include provisions for designated parking spaces for a total of five residential units as well as the Site Plan (as submitted) and a final determination on lighting [for Lot 2] to be made by Mr. Schrek.

Motion by Mr. Delacruz, **seconded** by Ms. Sherwin to approve the application with conditions as discussed and set forth herein.

ROLL CALL:

AYE: Ms. Thomas, Mr. Cunningham, Mr. Delacruz, Ms. Sherwin, Mr. Decicco, Ms. Windrem

NAY: Mr. Brown

ABSTAIN:

Ms. Goetsch returned to the dais at 10:26.

Someone from the audience remarked that that this is the kind of development "which is why the town doesn't move forward."

DISCUSSION/MISCELLANEOUS

- **Area in Need of Redevelopment Study (Raritan Crossing)**

There was an extensive discussion about when a public hearing on the matter would occur and the timing of the receipt of the preliminary report from Ms. Knowles. The Board resolved to discuss the report. Mr. Cohen affirmed that he would take care of the notifications for the public hearing.

- **Area in Need of Redevelopment Study ("Zeus")**

Mr. Schrek advised that the Council formed a subcommittee on this matter the previous evening. Ms. Thomas clarified that this is the area on Route 206 and the strip mall. Mr. Cohen offered to notify Susan Rubright.

- **La Grange Street**

Mr. Schrek provided historical perspective on the project as it relates to the street vacation aspect in particular.

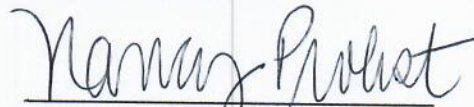
PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

Motion by Ms. Sherwin, seconded by Mr. Delacruz and unanimously carried to adjourn at approximately 10:39.

Respectfully submitted,



Nancy Probst, Board Secretary

APPROVED

7/28/21