

Town of Lenox
Zoning Board of Appeals
December 2 2020 7:00 p.m. via Zoom

Members Present: Robert Fuster Jr (RFJ); Shawn Leary Considine (SLC); Ned Douglas (ND); Al Harper (AH); Kimberly Duval (KD)

Staff: Gwen Miller, Town Planner; Jessica Cote, Land Use Assistant

RFJ opened the meeting at 7:01pm.

1. 22 Walker Street – Variance Application

- Gayle Garret representing the petitioner, the Rothbards. Petitioners are requesting a variance for an accessory use on the first floor of 22 Walker Street which is in the “C” commercial district. Per the Lenox ZBL residential units are allowed within the “C” district. The petitioner would like to have an apartment on the first floor of this one-story building.
- GG stated that nothing will change on the front facade of the building. It is unique building as many buildings in the area have residences on the second stories however 22 Walker Street is a one-story building.
- The Rothbards would like to permanently move to Lenox to maintain their store at 22 Walker Street and would like to add an apartment to this location so that they are able to live and work in the same location. The Rothbards are finding it difficult to staff their business while living in New Jersey.
- Residential is allowed in a commercial district on the second floor however this building is a one=story building therefore the Rothbards are seeking a variance.
- The Board established that the petitioner is not requesting an ADU but a dwelling unit within the “C” district, as ADUs are not allowed in the “C” district.
- AH asked how the petitioner uses the parking in the rear and Mr. Rothbard stated that there is a curb cut already to the left of the building in order to park in the rear.
- The Board asked if it would be burdensome to add a second floor to the building to create a dwelling unit. Mr. Rothbard replied that structurally a second story can not be added to this building. Initially the Rothbard called an engineer and todays code would require substantial construction for \$100,000 due to current building codes.
- Public Comment:
 - i. Bernie Plishtin, 31 Schermerhorn Park – is in favor of supporting this petition.
- ND moves to grant the Variance. SLC seconds. Board discussed the petition and voted 5-0 to grant the Variance.

2. 56 Cliffwood Street – Special Permit Application

- Lori Robbins, representing the applicant, presented the application for the demolition of a detached garage and construction of a new garage in a location that less nonconforming. This property is nonconforming like many properties on Cliffwood Street.
- Questions arose about how old the garage is and attorney Robbins submitted for the record a letter from David Lane who has lived on Cliffwood Street for 72 years and remembers the garage being built in the 1960s when Mr. Pendegrast. Therefore, from this testimony from the neighbor this structure does not fall under the demolition delay for buildings over 75 years old.
- The Historical Commission informed the ZBA about possible demolition delay by-law issues with this property via correspondence to the ZBA. The ZBA discussed the fact that the ZBA has no jurisdiction over the Demolition Delay bylaw and suggested to the applicant that they would need to be in contact with the Historical Commission to resolve any conflict.
- The new garage will be less nonconforming on the property. Current side yard setback 10.2 feet but the new garage will be 10.5 feet from the side yard setback.
- Three pieces of correspondence were submitted into the record.
- AH moves to grant the Special Permit. KD seconds. Board discussed the petition and voted 5-0 to grant the Special Permit.

3. 70 Kemble Street – Special Permit Application

- Lori Robbins, representing Shakespeare & Co, SP for an outdoor venue presented to the Board. LR presented the history of the property including previous Special Permits and Variance granted to previous owners (National Music Foundation) of which one SP granted outdoor performances on the property however that SP prohibited advertised and ticketed outdoor performances.
- There is a current Special Permit that allows outdoor performances for student products in a Rose Print theater granted in 2002.
- This Special Permit application is for an outdoor venue that is a ticketed and advertising in a location that is currently occupied by dilapidated deteriorated buildings that have been ordered to be demolished.
- Performances would take place in a new proposed outdoor theater space measuring 100' by 140' with a seating capacity of 543 seats. They would not have concurrent performances both indoor and outdoor. Performances would be seasonally from Memorial Day to Columbus Day and would conclude by 9pm with no outdoor lighting or amplified music. Performance would have microphones.
- RFjr asked if there would be any stage lighting. Allyn Burrows responded that these performances would take place during daylight hours and would not require lighting.
- Ken Warner, Chairman of the Board at Shakespeare & Co., spoke to the impact to Shakespeare & Co if this Special Permit was granted. Shakespeare & Co needed to close for the 2020 season due to COVID-19. Shakespeare & Co needed to make changes to survive during the COVID-19 pandemic and they believe that having outdoor performances will help them survive the long-term.

- Allyn Burrows, Artistic Director, speak to the history of Shakespeare & Co and the relationship with the community. Allyn showed photos of the property and where this new outdoor performance space would be located.
- Adam Davis, spoke to the history of the buildings to be demolished and that Shakespeare & Co has been in contact with the Historical Commission in regards to the year built for the buildings to be demolished.
- The Historical Commission informed the ZBA about possible demolition delay by-law issues with this property via correspondence to the ZBA. The ZBA discussed the fact that the ZBA has no jurisdiction over the Demolition Delay bylaw and suggested to the applicant that they would need to be in contact with the Historical Commission to resolve any conflict.
- All pieces of correspondence were in favor of the petition and were submitted into the record.
- Public Comment:
 - Lucy Kennedy, 35 Trucker Street – asked if Shakespeare & Co is still looking to bring a developer in to the property? Ken Warner stated that they are not moving forward with bringing a developer to the property at this time.
 - Steve Gilbert, 101 Old Stockbridge Road – asked if Shakespeare & Co wanted more outdoor venues would they need to come back before the ZBA. The answer is yes.
 - Bernie Plishtin, 31 Schermerhorn Park – in favor of outdoor venue.
 - Olga Weiss, West Street – hopes that Shakespeare & co can see their dream come true but the Historical Commission still needs to review their demolition request investigation.
- AH moves to grant the Special Permit. SLC seconds. Board discussed the petition and voted 5-0 to grant the Variance.

4. 439 Pittsfield Road – Special Permit Application

- Andrew Hochberg, attorney for the petitioner presented the application for the Special Permit for retail cannabis establishment. There was a question from the Board in regards to the traffic flow within the establishment. Jonathan Capano stated that during the license process with the Cannabis Control Commission there is a step called “Architectural Review” in which the CCC reviews building permits, zoning permits, security plans, etc. and also includes an inspection of the interior. During that inspection the CCC may request changes to the interior of the building and how the interior is laid out therefore changing the traffic flow within the establishment.
- Steve Savaria, Fuss & O’Neill, presented a traffic study for this location of this proposed retail cannabis establishment. Proposed reuse of the existing retail space in this building will not generate any significant increase in traffic activity. Fuss & O’Neill estimated traffic generated for former uses within the building and estimated traffic to be generated by proposed uses of the site including the dispensary use as well as the new permitted Dogs Unleashed establishment at

this site. The conclusion was that the proposed site will generate slightly more vehicle trips during the AM and PM commuting peak times but over the course of entire 24 hours period it will generate slightly fewer total trips for the use.

- There is currently excess available parking on the site per the parking requirements in the Lenox Zoning Bylaw.
- Eric Taylor, owner of the location was asked if the location is fully leased. Mr. Taylor stated with the addition of the dispensary the location is fully leased.
- After discussion, the Board determined that they do not need a site visit.
- AH moves to continue the hearing. SLC seconds. All in favor 5-0. The hearing is continued until December 16, 2021 at 7:00pm via Zoom.

RFjr closed the public hearing at 9:55pm.