



BOROUGH OF SOUTH RIVER
ZONING BOARD OF ADJUSTMENTS
REGULAR MEETING MINUTES

Tuesday, April 26, 2022 – 7:30 p.m.

Location: 61 Main Street, the Criminal Justice Center

Public Announcement – Open Public Meetings Act

The meeting was called to order by Chairman Bodak at 7:00 pm followed by the Pledge of Allegiance. He recited the following announcement, *“In compliance with Chapter 231 of Public Laws of 1975, adequate notice of this meeting was given by way of Annual Notice filed with the Borough Clerk, the Home News Tribune, The Sentinel and posted and posted in the window of Borough of South River Municipal Building. Be further advised that the Zoning Board of Adjustments for the Borough of South River will hold its regular meeting on (4th Tuesday of every month), at 7:00 p.m. at the Criminal Justice Center, 61 Main Street, 2nd Level. Meetings are open to the public.”* The Zoning Board of Adjustments may take formal action at this meeting.

Roll Call

Present: Robert Bodak, Ruell Brown, Michael Clancy, John Frost, Nick Giannakopoulos (AL 7:10 pm), Jeremiah O’Grady, Edward Trygar, Richard Rocha (A1), Sandra Adelino (A2)

Absent:

Also Present: James Kinneally, Attorney; Bruce Koch, Engineer; Todd Bletcher, Borough Planner; Arthur Londensky, Borough Administrator

Flag Salute

Chairman Bodak called the meeting to order and led the salute to the flag.

Approval Of The Minutes – March 22, 2022

The motion to approve Meeting Minutes dated *March 22, 2022* as presented was first moved by Mr. Trygar, seconded by Ms. Adelino, all in favor by voice vote.

Abstain: Brown, Clancy, Giannakopoulos

Motion carries

Resolution

File ZB–2021–013, Grego

33 Whitehead Avenue Block: 299 Lot: 10

The motion to adopt Resolution for *File ZB–2021–013, Grego* was first moved by Mr. Trygar, seconded by Ms. Adelino

Roll Call Vote with Eligibility:

Ayes: O’Grady, Trygar, Rocha, Adelino, Bodak

Abstain: Brown, Clancy, Frost, Giannakopoulos

Motion carries

Completeness Hearings – None



Public Hearing

File ZB-2021-014, Ria Mar

25 & 27 Whitehead Avenue Block: 299 Lots: 6, 7, 8.01, 9 & 16

Application to for bulk and use variances to reduce catering and construct 17 residential units in B-1 and R-75 zones

Mr. Frost recused himself from the application and stepped down from the dais.

James Clarkin, Esq. represented the applicant. Mr. Clarkin provided background information for the site. Ria Mar is proposing to repurpose the business; have less catering/food service and increase residential. Ria Mar currently has three existing residential units. Mr. Clarkin explained the proposed application. They propose 341 seats which includes 72 at the bar, 120 seats in smaller banquet room. The reduction of seats, reduces the parking demand and traffic. Application will include a lot consolidation with 27 Whitehead Avenue. This is a private re-development, which will improve the community.

Rui Baptista, Applicant

Mr. Baptista introduced and was sworn in. He provided his credentials and was accepted by this Board. Mr. Baptista manages the restaurant's operations. Mr. Baptista's family has owned the restaurant since 1987. Mr. Baptista described the proposed application; he would like to downsize the business and increase housing in the community. He explained how the site currently works and his proposed application. Events will be reduced from 4 to 1 at a time. Mr. Baptista stated that he is currently under contract to purchase 27 Whitehead Avenue currently owned by Joseph Hyland. Mr. Baptista described the proposed design for the banquet hall. There will be two additions and renovations. Mr. Baptista unsuccessfully tried to purchase property turn into parking. With the Sandy storm, substantial amount of land has been taken over by the State, forming the Blue Acres area. The State refuses sell the Blue Acre land for parking or recreational. Mr. Baptista opined the parking will improve with this application. He reported that there has not been any flooding issue at Ria Mar; restaurant sits high, therefore they have not experienced flooding issues. His parking lot was used as a staging area during the aftermath of the Sandy Storm; residents were allowed to park in his lot during this time. Per Mr. Baptista, any tenant who needs a parking spot will be assigned one, up to two spaces; not everyone owns a car. The floor was open to the Board for questions. Parking spaces will not be automatically assigned to units; assigned upon request. This can be a condition to the application which will run with the land. Chairman Bodak questioned how they determined the number of units; Mr. Baptista responded they initially wanted 18 units, but based on amenities, it was lowered to 14 units. Mr. Baptista described the proposed building façade, apartment design and amenities proposed. There will be electric recharge stations for vehicles and bikes. A park will be considered for children. Mr. Clarkin stated that this application has reduced the parking demand. Mr. Baptista stated that if the opportunity arises to include a park, he is willing to do so.

Questions from the Board: Mr. Trygar asked about the dedicated parking for the resident; Mr. Baptista responded that one, up to two spaces will be assigned per unit if requested; everyone does not own a car. All leases will receive up to two parking spaces if requested and listed in the lease. Parking spaces will be assigned upon request up to 2 spaces. Per Mr. Clarkin, if the parking condition is in the resolution, the condition will run with the land; Mr. Kinneally agreed. Chairman Bodak asked if the original Shacks Hall had parking; per Mr. Baptista, there was no parking provided, the current parking lot was a wooded area. Their parking lot has not experienced any flooding issues. Mr. Baptista explained how they calculated the number of units.

Brent Papi, Engineer was introduced and sworn in. Mr. Papi has testified before this Board and was accepted as a professional. Mr. Papi marked in *Exhibit A1, Colorized Existing Conditions Plan, Sheet 3 of 12*; previously submitted with the application. He addressed the exhibit, described surrounding area and existing condition of the site. Mr. Papi marked in *Exhibit A2, Ariel Image*; he described the surrounding properties.



Mr. Papi marked in *Exhibit A3, Colored Rendering of Site*; he explained current site and proposed application. Applicant proposes a total of 17 units: 13 two bedrooms, 3 one bedroom and 1 four bedrooms, which includes 3 existing units. Mr. Papi explained the current and proposed parking and EV access. He described the building coverage, isle width, tree replacement and landscaping. He described the proposed landscaping. Mr. Papi's testimony included variance requests. Applicant is willing to provide additional screening by planting landscaping to property owners of Lots 11–15 if they so desire. Mr. Papi explained the drainage for the site. He and Mr. Clarkin addressed the CME report dated March 31, 2022; Mr. Koch is satisfied with testimony. The floor was open for questions from the Board. Mr. Trygar asked if he knew the depth of the lots on Armstrong Ave.; per Mr. Papi, they are approximately 111'. Mr. Trygar asked about the height of building; Architect will testify to building height. Mr. Trygar inquired about the shadow the building will cast on the houses on Armstrong Street; shadow calculations were not performed. Mr. Trygar inquired about the parking; Mr. Papi explained how the parking is calculated. Mr. Clarkin explained how the parking spaces will be distributed; there was continued discussions regarding the parking availability. Chairman Bodak inquired about the sprinkler system.

Joseph Hyland, Architect was introduced and sworn in. Mr. Hyland has testified before this Board in the past and was accepted as a professional. He provided the history of his home, located at 27 Whitehead Avenue and Ria Mar. The two lots were connected in the early 1900s. Mr. Hyland marked in *Exhibit A4, Front Exterior* and described the proposed building design. He stated that a shadow will not cast on the existing homes; they are not adding a floor, only a gabled roof and the third floor is pushed back. Mr. Hyland marked in *Exhibit A5, View along Augusta Street* and described the proposed materials of exterior. He addressed the floor plans previously submitted with the application. He described the interior materials for both the apartments and restaurant. He described the apartment units, sizes and common area. Residential security will be provided in common areas. Mr. Hyland explained how they measured the potential height of the building. There was continued discussion regarding the parking. Residential units require less parking than restaurant; the proposed deficit is reduced from 82 to 66 spaces. The floor was open to questions from the Board. Mr. Clancy asked about residential security; Mr. Clarkin responded that the site will have security and cameras; the applicant is working on details. Mr. Hyland explained where the banquet hall will be located and pointed out the fire and emergency exists. Mr. Trygar asked what the height of building; Mr. Hyland was not sure. Mr. Trygar commented that he measured the building based on the plans, looks to be approximately 40'; Mr. Hyland measured it to be approximately 38' to the ridge of the roof. Mr. Hyland does not have shadow casting calculations. Mr. Trygar brought issue regarding the parking; Mr. Clarkin explained that their proposal will reduce the parking deficit from 82 to 66 spaces. Applicant opines that the parking lot will rarely be full; Mr. Clarkin asked that this Board to look at the overall picture. In reference to the shadow situation, Ms. Adelino stated that there is a 3–4 story building across the street and the shadow is not an issue; it is a two story building. Mailboxes will be provided for the residents. Chairman Bodak asked what kind of generator will be installed to make sure there will be noise reduction; it will be natural gas sitting on top of a concrete deck. Per Mr. Clarkin, the applicant will agree to perform generator testing Monday through Friday, 10 am – 4 pm. Mr. Clarkin stated that they will have to follow Borough noise guidelines. Ms. Adelino asked about the batteries installed on Southside Ave., are the residents there having a noise issue? Mr. Koch replied that there has been complaints about the transformers; he is not aware how the ventilation works. Mr. Giannakopoulos inquired about the parking; per Mr. Clarkin, a large portion of the banquet room will be reduced; they propose seating from 190 to 120, reducing the parking deficit. 27 Whitehead Avenue will remain as a residential family home that will be rented out; parking from his dwelling is included in their calculations. Construction will be completed in phases, taking approximately 2 years. The restaurant will remain open during this time.

Veena Sawant, Planner was introduced and sworn in. Ms. Sawant has testified before this Board in the past and was accepted as a professional. Ms. Sawant reviewed the Master Plan and reexamination, zoning ordinance and additional documents in reference to this application. She went over the existing and proposed



variances and addressed Mr. Bletcher's report. Ms. Sawant addressed the parking variance; it is an existing non-conforming variance. She went over what is proposed and required for parking, number of floors, impervious coverage to 92%, and the elimination of 1' candle, this is an existing non-conformance issue that will remain the same. Ms. Sawant addressed the proposed landscaping and tree replacement. Ms. Sawant opined that this application is consistent with the Master Plan and provided reasons. She addressed the Strategic Recovery Planning Report. Ms. Sawant provided proofs to justify the variance requests. Ms. Sawant studied architecture in India and explained how the shadow from the building will be produced; the sun rises on the east, sets on the west; residential properties are lined up on the north of the building. The shadow will cast over Whitehead Avenue or the parking lot; very little shadowing will cast on the residential homes. Ms. Sawant addressed the impervious coverage and landscaping. She explained the C2 analysis and if granted, it will not be a detriment to the community. Per Mr. Clarkin, the applicant will comply with the Bignell Report dated April 21, 2022. Ms. Sawant provided testimony for the D1 and D2 variances. Questions from the Board was taken at this time. Mr. Clancy pointed out that parking taken up by the residents will reduce banquet hall parking in the lot, moving them to street parking. Mr. Trygar stated that there is no Whitehead Avenue Improvement District. Ms. Sawant responded that there is no district, however it is mentioned in the Master Plan to improve the corridor. There was discussion higher density in the area; Ms. Sawant explained it can be found in the Master Plan. In reference to the shadows, Mr. Trygar stated that their exhibits show shadows cast on the building. Ms. Sawant's response was that if a shadow is cast long, it would be on the north side of the property onto Whitehead Avenue and parking lot; if it casts over the dwellings it would not be 35' deep. He did some research on shadow how far the shadow can cast over the properties; 45' high building will cast a 60' shadow. He expressed his concern that the homes will be engulfed by the shadow during the winter. Per Ms. Sawant, if a shadow is cast, it will cast north on Whitehead Avenue, not affecting the residents. Towns with high-rises require shadow testimony; it is not required in South River. Mr. Clarkin addressed Mr. Trygar's comments on density. Mr. Clarkin stated that homes in the area are older and tend to be placed closer to the front of the lot, leaving a deeper rear yard. Per Mr. Papi, the back yards are approximately 70' deep. Mr. Trygar asked if there were any statistics for Uber rides in South River; no. Mr. Brown asked what the process would be if neighbor would like trees; they can speak directly to Mr. Baptista and he will go knocking on doors. Questions were taken only for the Planner's testimony at this time. Chairman Bodak had question regarding building height, 38'-40' will we need to amend variance; they are not seeking variance; it is measured to the means and they are within the 35'. Mr. Bletcher explained how they measure the building height. The applicant is requesting a variance for the number of floors. Mr. Brown inquired about the EV spaces, required 25, requesting 18; can we grant request. Mr. Kinneally stated that this is a State requirement; per Mr. Bletcher, the State stature is not clear. If we grant and State requires the additional EV spaces, they would have to return for site plan amendment; Mr. Clarkin agreed. If neighbors are interested in planting, they can reach out to Mr. Baptista. Chairman Bodak inquired about the Shade Tree contribution; Mr. Clarkin agreed to meet requirement.

Per Mr. Koch, the applicant has agreed to comply with his report. His concern was the sanitary sewer report; he spoke with Mr. Papi, either a manual study or flow meter on the manhole will be completed. Mr. Bletcher just had a question regarding the building coverage; it will be reduced to 34.1%, therefore they will not be seeking relief. Mr. Bletcher clarified the items the application is seeking relief from. Mr. Bletcher clarified the variances requested from the applicant. He also stated that the Borough does not have an ordinance stating you cannot cast a shadow on their property; they are not required to provide testimony. Per Mr. Bletcher, applicant is required to provide side yard setback of 5', the new addition of the building complies. They are also required to include a buffer between the B1 and R75; B1 needs a 10' buffer if abutting to R75; applicant has a 5.45' depth buffer, therefore seeking relief. Chairman Bodak inquired about the 14' demarcation flood line; was this adopted? Per Mr. Koch the additional 2' is in an ordinance. *Arthur Londensky*, Borough Administrator and Zoning Officer, was sworn in. He explained who is affected by this ordinance and commented on the flood plan on this property. Mr. Bletcher clarified the two separate codes and its requirements. There was continued discussion on the existing and current variances requested. Mr.



Bletcher clarified the side yard setback requirement. Mr. Trygar stated that it is his understanding each application is to be reviewed separately and distantly on its own; Mr. Kinneally responded that we are to review all applications as presented but we have to take into consideration their prior history of the property.

Chairman Bodak opened the floor to the public.

Gus Nikolaou, 48 Augusta Street

Mr. Nikolaou was sworn. He is in support of the project.

Agnieszka Kozłowska, 183 Willet Avenue

Ms. Kozłowska was sworn. She owns properties located at 56 and 58 Augusta Street. She likes the project and the applicant, however, she is not in support of the project. She opined that the project would be a hardship to the community and not to the restaurant. *Ms. Kozłowska* expressed her concerns that the project would reduce the value of homes, parking issues will continue to be a problem and for the increase of traffic. She expressed her concerns for the fire and loading zone; cars are always parked in this zone. Mr. Baptista responded to *Ms. Kozłowska's* concerns for this area; no parking, no loading zone signage is already installed in the area. She expressed her concerns for residents' privacy. The units will overlook the back yards of homes on Armstrong Avenue; she asked if windows and balconies could be eliminated from the units facing Armstrong Avenue. Per Mr. Bletcher there is no ordinance stating buildings cannot have windows or balconies. *Ms. Kozłowska* inquired about the parking; she counted what was shown on the plans; it was not the same count shown in application. Construction phases has not been scheduled. Per Mr. Baptista, parking issue will be reduced during construction; the banquet rooms will be closed and only the three existing apartments will be occupied. She asked if he approached surrounding properties to purchase their properties for parking; they spoke with two residents to purchase and both refused. Mr. Baptista explained the process in attempting to purchasing property from the state, who also refused to sell. She asked if we can street permit parking on their streets; Mr. Kinneally responded that she would have to address the Mayor and Council for this request; this Board does not have jurisdiction to do so. *Ms. Kozłowska* asked if the Gold Star construction along with Ria Mar construction will interrupt traffic in the community; this Board cannot address this issue. *Ms. Kozłowska* has a petition signed by residents; per Mr. Kinneally, this Board cannot accept petitions; this Board can only hear residents' opinion present for the hearing.

Jennifer & Anthony Stisi, 52 Augusta Street, owns 50, 54 Augusta Street

Mr. & Mrs. Stisi were sworn in. Mrs. Stisi has issues with the traffic in the area. She stated that there are trucks parked continuously parking in the fire zone; difficult to make a right hand turn off Augusta Street. They are opposed to the parking variance; it will not improve their situation. Mr. Stisi expressed the concerns for safety issues they are experience due to the amount of traffic and illegal parking in area. Chairman Bodak suggested they bring up these issues to the Mayor and Council; this Board is not authorized to oversee parking and traffic issues. Mr. and Mrs. Stisi are opposed to this application.

Seeing no others, Mr. Giannakopoulos made the motion to close the public portion, seconded by Mr. O'Grady, all in favor by voice vote.

Mr. Clarkin summed their application. Comments from the Board were taken. Mr. Trygar commented that the did not see any traffic and parking studies; he opined the area will be worst. He opined the Planner misinterpreted the Master Plan regarding the higher density. He stated that we are zoning by variance and not by ordinance. Mr. Trygar commented that he did not think the Council and Planning Board want 3.5 story buildings in neighborhood business districts that abut residential zones; if they did they would have changed the ordinance. He opined the town does not want taller buildings and he does not see it as a benefit the neighbors to have a 3.5 story building. Mr. Trygar addressed the shadow overcasting the homes on Armstrong Ave.; he opined that they will not have any sunlight during the winter and will reduce their overall quality of life. Mr. Trygar did not see any improvement to the community; it is only a remodel to the



site. He stated that luxury apartments come with parking; opines it is not a luxury apartments. He did not see reduction in restaurant; more people will be waiting, and it will be worst for the community. Chairman Bodak addressed the issue brought up by resident, having difficulty pulling out of their property; he asked the applicant if they considered one way in/one way out? Mr. Baptista responded that Borough professionals and his team looked at the one way in/out; it all came down to maximizing the parking spaces. It was considered 12 years ago, and this configuration maximizes parking spaces. The entrance/exist would go onto a two way street, engineers would have to address. Mr. Kinneally stated that at this time, the members have to deliberate and vote on the application.

The motion to approve *File ZB-2021-014, Ria Mar* was first moved by Mr. Giannakopoulos based on the fact that the applicant made the effort to increase parking to reduce the issue. Ms. Adelino seconded the motion.

Roll call in favor with comments:

- Brown Voted yes:* believes the revisions will increase the benefits to the community
- O’Grady Voted yes:* he had concerns for the parking, which is a problem throughout the town, however the applicant is making an improvement to his parking situation and would be a benefit
- Giannakopoulos Voted yes:* as stated in his motion to approve
- Rocha Voted yes:* Parking situation is slightly better
- Bodak Voted yes:* He an issue with the parking problems in the area; Mr. Baptista has testified that he is trying to acquire additional property in the area for parking. Chairman Bodak is hoping the State will provide additional information need to include additional parking and a children’s play area. He encourages his professional team to look at ways to consider one way in/one way out.

Opposed with comments:

- Clancy Voted no:* concerned for the parking in area that will spill over to the residential areas
- Trygar Voted no:* based on his reasons he stated before; zoning by variance is bad. This applicant has been before this Board 12 times; if the Borough wanted the changes, the ordinances would be revised. He is not in favor apartments on top of parking lots and reducing the amount of parking, without expert studies. He also opined it would be a big building; Armstrong residents will be looking at this building and will have a lot shade on their property. He opined the building should be smaller.

Abstained: Frost

Motion moved: 5-2

BOARD COMMENTS/ANNOUNCEMENTS

Meeting canceled for May 10, 2022

Adjournment:

The motion to adjourn at 10:30 pm was first moved by Mr. Clancy, seconded by Mr. Brown, all in favor by voice vote.

Respectfully submitted by:

Julie Moy
Zoning Board Recording Secretary

Approved: June 28, 2022