

Bound Brook Board of Adjustment
Regular Meeting March 2, 1995

Mr. Sam Todaro, appointed as alternate #2 for the Board of Adjustment, was sworn in by Mr. Rodgers.
Mr. Schindelar welcomed him and remarked that we now have a full Board.

The regular meeting of the Board of Adjustment was called to order at 8:00 p.m. by Chairman Schindelar in the Municipal Chambers, 230 Hamilton Street, Bound Brook, New Jersey.

It was opened with a reading of the "Open Public Meetings Law" statement.

Roll call was taken. The following members were present: L. Strain, T. Gaglia, E. Gabrielski, P. Birmer, R. Woldin, W. Tuck, S. Tadaro, D. Schindelar, and K. Krauser.
Also present were Michael Rodgers, Board Attorney & Scarlett Doyle, Board Planner.

Mr. Schindelar led those present in a prayer. This was followed by a salute to our flag.

Tonight's agenda includes:

Appeal by Bound Brook Architectural Review Board for an interpretation of the sign ordinance.

Deutsch Family site plan.

The Spanish American Sports Club. Their attorney has requested that this be held over to the May meeting.

Mr. Schindelar asked if anyone in the audience wished to make a statement unrelated to tonight's agenda.
There were none.

Mr. Schindelar, again, welcomed Mr. Todaro to the Board. He hoped that this would be the first of many meetings in which he'd participate.

The minutes of the January meeting were presented for approval.
Mr. Strain made a motion to accept, seconded by Mr. Woldin.
All were in favor, so moved.

Appeal of the Architectural Review Board concerning the sign ordinance. They would like an interpretation of the Bound Brook SID sign ordinance as it applies to new signage on Bill's II Restaurant.

The location is the Voorhees Building, 307 East Main St.
The Architectural Review Board did not approve Bill's sign, because it did not comply with sections 21-10.5,g11-1 and 21-10.5,g6-15 of the Bound Brook SID Sign Ordinance. Bill's II did not seek an appeal through the Planning Board to consider this sign. The sign was erected, without proper ruling, on the east wall of the Voorhees Building.

Dr. James Winters, Vice-Chairman of the Architectural Review Board represented the Board, since Chairman Segundo Armas, could not attend the meeting. He distributed copies of the ordinance to the members. Also distributed was Architectural Review Board Resolution 94-009, dated October 5, 1994.

Mr. Schindelar mentioned that the Building Inspector, Mr. Gupko, issued a building permit for the sign. The Review Board is asking for an interpretation to see if the permit should have been issued. That is the reason for Mr. Gupko's presence tonight.

Mr. Gabrielski asked if the owner of the building should be present.

Mr. Rodgers said that Mrs. Pournaras should have a statement indicating that she may speak for the owners.

Mr. Schindelar did not think it was necessary. The applicant is the Review Board, which disagrees with the Building Inspector's issuance of the permit.

Mr. Winters was asked to describe the Architectural Review Board and it's duties. He said it was a branch committee of the DMC, whose function is to manage the Bound Brook Historic Main Street Program. They counsel SID applicants in their attempts to upgrade their properties and advertise their businesses. They are dedicated to insure that all changes and additions are in accordance with the agreed upon colors and qualities. They are bound to regulate the sign ordinance.

The ARB is requesting this interpretation, because Mrs. Pournaras erected the sign after the request had been rejected by them. Dr. Winters believes that the permit was issued in error, because Mr. Gupko mistakenly thought the building in question was a corner lot. It is not a corner lot. There is no entrance on that side.

Mr. Schindelar asked if the ARB has the power to review and approve or deny requests.

He was told that, according to the ordinance, "... Once the ARB has negotiated with the applicant a conforming sign, the construction official will make the second decision for approval and grant the sign permit ..."

Mr. Schindelar summed up what he read: The Building Inspector directs the applicant to make an appeal to the ARB. After negotiation, the applicant goes back to the Building Inspector. Based on the negotiations, he does what he chooses.

According to Mr. Schindelar, there has been enough litigation concerning review boards to realize that they do not have the power to reject, but act in an advisory capacity only.

The ARB advised the Building Inspector. He made the final decision. It is now up to this Board to either uphold the decision or come to some decision about what should be done in compliance.

Mr. Schindelar was told that the building is in the B2 zone. Bill's II has three signs: one over the door, a small one on the side and a large one on the side.

Mr. Schindelar asked about G15.1, which states ".... that the Planning Board shall have jurisdiction over all appeals or variances requested...". He questioned the correctness of this. Mr. Rodgers agreed and wondered if it was legal.

Mr. John Sabatino of the ARB introduced himself to the Board. He stated that they originally sent their request for review to the Planning Board. They, in turn, sent them to the Board of Adjustment.

Mrs Pournaras explained that when someone wanted to open a business, they could go to the Planning Board and get a sign approval at the same time.

Mr. Schindelar remarked that this is a situation in which the applicant (ARB) believes there is non-compliance with the ordinance. The Building Inspector feels there is compliance.

Mr. Rodgers mentioned that the ordinance seems to say it belongs before the Planning Board. He does not believe the ordinance has the power to put it before the Planning Board. It probably should be here.

Mr. Rodgers read from the (4) Issuance of sign permit. "Once the ARB has negotiated with the applicant, a conforming sign, the construction official will make the second decision for approval and grant the sign permit...

"Upon receipt of such design review approval, the applicant shall submit the application to the construction official for a sign permit."

It seems to say that the ARB at least has to give an opinion before the Building Inspector would rule. Did that happen here?

Mr. Gupko said he submitted the application to the ARB. Upon receipt of the denial, he sat with the applicant and reviewed the ordinance. Some provisions contradicted each other.

Mr. Gabrielski asked why the application was rejected.

A copy of the rejection letter was attached to the packet submitted by the ARB.

The sign was rejected because:

g6-15: "Number of signs... one (1) sign for each entrance

g11-1: "A business is permitted one wall sign for each entrance open to the public..."

Mr. Rodgers said that anyone who objects to an action of a Building Inspector can come in & appeal it, even if they don't mention all the items.

Mr. Schindelar said that an interpretation is needed. The Voorhees building is a corner lot, because it corners on Maiden Lane and on Main Street. The question is whether the east wall can be considered on a corner. The Board must decide if this is a corner lot as the ordinance intended.

Does the empty corner lot, which is tied to the building by agreements and previous approvals of the Board have a bearing on it?

Mr. Rodgers wanted to know which ordinance is violated by the sign. Dr. Winters said G11.1 & G16.

The ordinance permits one sign per entrance. There is no entrance on the east wall below the sign.

Mr. Rodgers asked if it is the intent of the ordinance that the sign be on the same wall as the entrance.

Discussion followed.

Mr. Pournaras said she went to great pains to make a nice sign. What is the objection?

Mr. Schindelar remarked that the Historical Society believes she does not comply with two ordinances.

Dr. Winters mentioned that G15 calls for one sign per wall. There are two signs on the east wall.

Mr. Schindelar read G6(15) "A business is permitted one (1) sign for each entrance open to the public, whether a wall sign or projecting sign provided, however, that signs shall be limited to one (1) on each wall with a maximum of four (4) signs per business per building."

If there are four signs, it would be assumed that it would be cornered all around. This business has three walls: front, side & rear. Could it be considered that three walls would allow three signs?

Mr. Rodgers asked if it was the intent of the ordinance that a sign must be on the same wall as the entrance?

Dr. Winters believed that this is so.

Mr. Schindelar mentioned that the ordinance does not define a corner lot. He didn't know if it made a difference.

Mr. Schindelar said that we are trying to analyze an ordinance at a meeting. He suggested that we hear the testimony. Members should review the testimony and go to the site and look at it. It would give us a better handle on the matter when we attempt to vote.

Mr. Rodgers posed a number of questions:

What Board has jurisdiction to hear an appeal of an action involving a sign ordinance?

Does the Construction Official have the authority to ignore a rejection by the Architectural Review Board?

Mrs. Pournaras said the Borough Attorney said that the Building Inspector has the final say.

Mr. Rodgers noted that on page 7 - "...Upon design approval, it is taken to Building Inspector..." To his mind, this is not clear.

Mr. Gupko said he has jurisdiction on the size of a sign, not the color, etc., which is up to the ARB. The sign is not in excess of the ordinance. He based his decision on the assumption that this building was on a corner lot.

Mr. Rodgers continued his questions.

This is a corner building. Is there any distinction between which side is on the corner? The ordinance really doesn't deal with corner buildings in the B2 district. Therefore, we can eliminate this question of a corner building. He mentioned D4, buildings on corner lots. There is no entrance below the sign. He couldn't find any mention of allowing a sign without an entrance below it.

Is the intent of the ordinance that the sign be on the same side as the entrance to the building?

Dr. Winters was adamant: No entrance, no sign. The only sign they object to is the sign on the side of the building. The sign went up contrary to the code.

Mr. Gupko said that there are two entrances open to the public. He considered this business to be a corner business, allowing a sign on each wall.

Mrs. Doyle mentioned G5. She believed that there is an exemption for directional signs, example "Parking for customers only". Also, in defence of the ordinance, it is for the SID district. In the future, should there be a RD zone in SID, this ordinance would not have to be modified. It has already been well thought out and can stand on its own. There will, however, be some cases which will not be applicable.

Mr. Rodgers continued his questions. Is it a corner lot? Assuming that it is agreed that the sign must be under an entrance, does the fact that it's considered a corner lot, alter that stipulation? Would you then be allowed to have a sign, even though there's no entrance?

Mr. Gupko mentioned D4. He said there is no requirement that a sign be placed over an entrance.

Mr. Rodgers quoted G11. "A business is permitted one wall sign for each entrance open to the public..."

Further down: "Either the horizontal or vertical dimension of any sign shall not exceed two feet". Is that an issue?

Mr. Sabatino said it was. The sign is four feet.

Mr. Gupko said this section did not apply.

Mr. Rodgers wanted to know where it said that it could be 4 ft.

Mr. Rodgers continued with G11(1): "The display surface area of wall signs on any one (1) wall shall not exceed one (1) square foot for each linear foot of frontage..."
Discussion followed.

Mr. Rodgers said we're applying the ordinance for the B1 zone in a B2 zone.

Mr. Schindelar questioned whether we can take the standards of a ordinance from one zone and apply it to another zone.

Mrs. Pournaras said we should not have two standards or ordinances for one small town.

Mr. Schindelar quoted G16: "Whenever the requirements of this subsection are at variance with the requirements of any other ordinances, the highest or most restrictive standards shall apply."

Mr. Rodgers suggested that he write a letter to all members listing all the issues. He would include his opinions. Members would then be prepared for next month's meeting.

Mr. Schindelar agreed that Mr. Rodgers identify the questions. He suggested that members look at the sign, read the ordinance and come prepared next month.

Mr. Bruno spoke from the floor. He felt that the Board should consider a narrow interpretation in this case, to prevent violence or destruction of the ordinance or the ARB.

Mr. Schindelar noted that the ARB is appealing an action of the Building Inspector. Any citizen can do this.

The job of the Board is to interpret this ordinance in light of the appeal of taxpayers or agents of the town.

Mr. Schindelar decided to poll the Board. Should we deal with only the two items in question or should we deal with the whole ordinance?

Dr. Winters mentioned that the application was made on Sept. 21st. It was reviewed and denied at the next meeting, Oct. 5th. (They meet every other Wed.) The resolution was sent directly after the meeting. The Nov. 4th letter to Mr. Gupko was a follow-up to the resolution.

Mrs. Pournaras received her permit on Nov. 7th.

Mr. Strain said we should not interpret the whole ordinance. However, there are three critical issues. G11 & G15 are important. Also, we must consider and deal with Mr. Gupko's impression that this is a corner lot. If it's a corner lot, does the ordinance apply? Do we agree with the ARB concerning size, etc.?

Mr. Gabrielski does not want to deal with the whole ordinance. He felt that G2, Issuance of a permit, is an important issue.

G2 directs the applicant to get input and negotiate with the ARB. After an agreement is reached, the applicant should then go to the Building Inspector with an approved proposal. This part was missed. Mr. Gupko said he based his decision on a corner lot. Mr. Gabrielski mentioned "a conforming sign". He felt the proper procedure was not followed. There should have been mediation. This was not done. She did it too fast. She should have known better.

Mr. Gupko did not feel bound by the ARB. He felt they would review the appearance of the sign only - not the location or size. Otherwise, they would be the interpreters of the ordinance.

Mr. Strain made a motion to adjourn this hearing until next month, seconded by Mr. Woldin. All were in favor, so moved.

Deutsch Family Associates - site plan review - subject to parking variance

This application originally came before the Board as a non-conforming use. The applicant & Building Inspector have sat down and taken the non-conforming use out of the appeal. They are here for a site plan review subject to a parking variance.

Mr. Stuart Liebman, an attorney, represented the applicant. He said that they have resolved a number of issues since they were last here. Now, they would like a site plan review. They propose to use the property as it exists now. They propose to pave and improve the parking area. There would be the same number of parking spaces. They are proceeding with building permits. The demolition is completed. The building is gutted and is ready for rebuilding. They are requesting a waiver from the site plan ordinance. They cannot increase the number of parking spaces. However, the use would be less intense than a restaurant and boardinghouse would require.

This is a minor site plan. They did not give notice. They are treating the parking lot as a design waiver. It is existing today.

Mr. Rodgers said he believed this is a new application. They came here for something else last time. He asked if they filed an application. He did not have a copy.

Mr. Schindelar said this is being represented as a continuation of the original application and modification of the original application.

Mr. Rodgers thought it had to be noticed.

Mrs. Doyle said they can't amend an application unless there was a site plan. She would like to see what they had before, that they want to amend. They said they had a pre-existing condition and that is good. She asked if they had a plan showing what's requested.

They could proceed with the upper floors, while awaiting confirmation on the first floor.

Mrs. Doyle said that when she mentioned "design waiver", she was referring to the number of stalls. She is not prepared to say that the applicant conforms with respect to the distance off the property. It's not very clear. She'll have to look at the ordinance.

Mr. Liebman said it's a pre-existing condition. This is an existing parking lot. They want to continue as is.

Mr. Schindelar wanted to know what the applicant is requesting. He wanted to know how many parking stalls are required.

Mr. Liebman said that 1 1/2 per unit is required. However, they reduced the living space of each unit to studio apartments (1 person). Including the ground floor, there would be 15. In the past, there were 17 without the ground floor. There are 11 existing parking stalls.

Mr. Rodgers mentioned a procedural question. If the Board grants site plan approval, is the Board approving 15 apartment units? Nothing before this Board gives any indication of what the building will be used for. Nothing on the application describes the use. Nothing on the site plan describes the use. Nothing shows the number of units. In theory, we could approve a site plan, and they could install 40 units. He asked Mrs. Doyle if the site plan is complete enough.

Mrs. Doyle expressed her sympathy concerning the applicant and hoped he be successful. He has a perfectly legal use. He is conforming. This is a permitted use. She didn't know why he has come before this Board.

Mr. Gupko remarked that this Board was familiar with the property, because of the applicant's earlier appearance.

Discussion followed.

She felt the appeal was before the wrong Board.

Mr. Rodgers said she was technically correct.

Mr. Schindelar stated that we wouldn't be doing the applicant any favor by acting on it.

Mr. Rodgers read from the statute: The Board of Adjustment must give site plan review in connection with a use variance application.

There never was a use variance application. Therefore, the Board does not have jurisdiction.

Mr. Schindelar remarked that if the applicant is comfortable in taking the results of the Board's decision and willing to take the risk, it would expedite the process.

Mr. Rodgers stated that the most conservative approach is to not vote on it. If the Board interprets the ordinance and decides it has the power to rule on it, then it can.

Mr. Gupko said that he's allowed to issue a temporary construction permit to reconstruct the interior.

Mr. Rodgers said that because it is in the flood zone, it should be handled by the Planning Board. The Planning Board will have to give the variance. He read from the ordinance. It may have to be noticed.

Mrs. Doyle said they'd have to get DEP approval. The two upper floors to be renovated are not issues for this Board.

Mr. Rodgers noted that they will need a variance from the flood plane. Don't they need site plan approval?

Mr. Schindelar asked Mr. Gupko if he had a set of plans for the three floors to be renovated. Mr. Gupko did not.

Mr. Schindelar said that all he has is the applicant's word that he'll use the building in conformity with the zoning ordinance.

Mr. Rodgers stated that this building is in the R5 zone, which includes up to four units. This application is for 15 units. He asked Mr. Gupko where in the ordinance does 15 units in R5 zone appear. It does not.

Mr. Rodgers concluded that a variance is needed.

Mr. Schindelar told Mr. Liebman that a use variance is required. They would have to submit a complete application with site plan. Notice to the public is required. He should use the check list provided. It also requires a completeness review.

He suggested that Mr. Liebman meet with Mrs. Doyle.

Mr. Gabrielski reminded the applicant to pay attention to drainage, etc.

Mr. Gaglia made a motion to table the hearing until next month, seconded by Mr. Gabrielski.

All were in favor, so moved.

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Mr. Strain made a motion to approve, seconded by Mr. Birmer.

All were in favor, so moved.

Mr. Strain made a motion to adjourn, seconded by Mr. Gaglia.

All were in favor, so moved.

There being no further business, the meeting was adjourned at 11:19 p.m.

Respectfully Submitted,

Kathleen M. Lynch - Recording Secretary