

**MINUTES OF PUBLIC HEARING
HELD BY THE ZONING BOARD OF APPEALS
LINCOLN CENTER HEARING ROOM
JANUARY 25, 2012**

MEMBERS PRESENT: James Stevenson, Chair
Albert Gionet, Vice Chair
Robert Haley, Secretary
Edward Slegeski

ALTERNATES PRESENT: Sandra Stough (sitting)

ABSENT: Donna Roberto
Armando Darna
Michael Stebe

ALSO PRESENT: James Davis, Zoning Enforcement Officer
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chair opened the Public Hearing at 7:00 p.m. The Secretary read the legal notice for the application when the call was made.

RISHIMA & PRIYAL, LLC – application #2011-152 – request a variance to Article IV Section 7.02.02 and 7.02.03 to change a non-conforming use to allow alcoholic liquor sales in a portion of the premises at 276 Oakland Street, Residence A zone.

Attorney Stephen Penny represented the applicant who purchased the property in December 2006 and is seeking a modification of a condition imposed in March 2009. A portion of the convenience store at this location was converted to a package store at that time and limited to 1,800 square feet. Town staff has interpreted this application to be a variance. Attorney Penny reviewed Article IV Section 7.02.02 and 7.02.03 of the Zoning Regulations.

The applicant would like to expand the package store to occupy the now closed convenience store space. Attorney Penny distributed a copy of the approval previously granted to the applicant for a package store at this location to Board members. The site is located at 276 Oakland Street, on the west side of the street between the Mobil gas station and the Garden Sales commercial nursery. The property is zoned Residence A, which permits three houses per acre. The Town's Plan of Conservation and Development (POCD) shows the area to be suitable for medium to high density residential development, which allows up to ten houses per acre. Much of the land on both sides of Oakland Street has been so developed. Attorney Penny distributed a land use map from the Town's POCD to Board members. The map shows the entire area where this property is located is best suited for medium/high density residential development.

Oakland Street is classified in the Town's POCD as a major arterial roadway. Attorney Penny distributed a copy of the Roadway Classifications Map from the POCD. A major arterial roadway means it is the most heavily trafficked. A study of the Oakland Street corridor prepared by the Town in 2008 reported the daily volume of traffic on the street to be 19,000 vehicles. He distributed a copy of the Town's Oakland Street Corridor Study from 2008 to Board members. The Town plan lists as a long term improvement the widening of Oakland Street to four lanes. Attorney Penny distributed a copy of that particular page of the POCD.

Attorney Penny explained the applicant's property has been used commercially as a convenience store with a beer license for enough years to qualify as a legal non-conforming use. Variances to expand that use were granted in 1958, 1964, and 1968. If this application is approved, the existing package store will be enlarged by 1,264 square feet, for a total of 3,064 square feet. A 735 square foot Laundromat is planned for the balance of the square footage but has not yet been built out due to the risk of the high costs associated with investing in the required equipment in a bad economy. The present square footage of the building would not be enlarged; nor would the exterior of the building be altered. Since purchasing the property in 2006, the applicant renovated the exterior of the building, including providing separate entrances for each use, which was a condition of the 2009 variance approval.

Attorney Penny explained the current Residence A zone district classification is clearly outdated and inconsistent with the POCD and the reality of the area. The applicant's property has been a commercial business for decades, as have the properties immediately to the north and south. A major arterial roadway does not lend itself to low density residential development, which is the primary permitted use in a Residence A zone. The package store use is not legal non-conforming because it no longer belongs in the area but because of a misplaced zone district classification. He said the use itself is perfectly appropriate for the location.

Attorney Penny explained that the applicant did apply for a zone change to Neighborhood Business in November of 2007. The Planning and Zoning Commission denied that request and directed Planning Department staff to conduct a corridor study to determine what the impact of such a rezoning might be. After the study was presented to the Planning and Zoning Commission a neighborhood meeting was held. At the meeting residents said they did not favor a zone change because they were concerned about what might be developed on some of the large, open parcels of land in the area. The residents did express support for the continuance of the existing businesses and for the applicant's quest to obtain a package store permit. The applicant returned to the Zoning Board of Appeals in March, 2009 and was granted a variance for a package store, which was limited to 1,800 square feet.

In the following June, the Zoning Board of Approvals approved an application from the owner of the Mobil station to create a full convenience store by lifting some severe restrictions that were attached to the initial approval of the retail store on that site, specifically imposed for the protection of the pre-existing grocery on this applicant's property. At the time, this applicant's attorney wrote expressing concerns that lifting of the restrictions would likely put his store out of business since the Mobil site would have the benefit of one stop shopping for gas and groceries. The applicant's convenience store has since gone out of business, and the applicant is requesting that the now closed convenience store space be used to expand his successful package store.

Attorney Penny said strict application of the Zoning Regulations will produce undue hardship. While the area is zoned Residence A, it clearly has multi-family and business uses on this heavily traveled street. The package store use is compatible with this neighborhood's character and is consistent with the Town's POCD concept of providing nearby business services of this type in neighborhoods such as this. He said the hardship is unique because the original longstanding non-conforming grocery store beer permit use was altered in 2009 to the only package store use in the area. Finally, the character of the neighborhood would not change because the property has been used for alcohol sales related uses for decades and is located on a major arterial roadway of other commercial uses.

In response to a question from Mr. Gionet, Attorney Penny said parking is available on both sides of the store. There is no parking in front of the roadway.

In response to a question from Mr. Gionet, Attorney Penny said the cost of the Laundromat means a large investment. His client is unsure of making that investment in this economy.

Mr. Slegeski said the store was approved for a maximum of 1,800 square feet in 2009. Now, the applicant is requesting 3,064 square feet. The study provided to the Board calls for a four lane road there. He asked if a Laundromat will ever be located there or if the applicant will want an expansion of the package store to the entire building.

Attorney Penny responded that he did not think so. The convenience store portion of the building currently has coolers that can be put to use in the package store. The applicant only has to remove one wall, which will require only a small investment. The applicant is making this request because of the convenience store that opened in the Mobil building.

Chairman Stevenson asked any member of the public wishing to speak in favor of or in opposition to this application to come forward at this time.

Mr. Charles King, 299 Oakland Street, is the former owner of Peros Fruitstand. The applicant purchased the convenience store as a thriving business. He then eliminated three-quarters of the merchandise and cut the hours in half. Now he says he cannot make it with the convenience store. Mr. King said the convenience store failed because he cut the products and hours. Mr. King thought the applicant will never build the Laundromat. There are five package stores within one mile of this store; there is no reason to expand the business. He said the applicant has made no attempt to rent the building out. Mr. King believes the applicant will be back in a couple of years asking to expand the package store and saying opening a Laundromat is too expensive.

Attorney Penny said it is difficult to know what brings about successful businesses. The applicant's struggles could be due to the recession/depression or personalities. Despite the large number of multi-family housing in the area, there are not enough to support two convenience stores. It typically takes 4,000 housing units to support one strip mall. The package store has operated successfully and his client wants to enlarge it to offer more choices.

Ms. Marie King, 299 Oakland Street, works in the area and sees past customers who miss the convenience store. She believed if the applicant offered more, such as produce and vegetables, he could have made a successful business.

Ms. Bertotti said no development is proposed and there is no sight impact with approval of this application. The Town's Traffic Engineer reviewed this application and has no comments or concerns. There are posters for beer in the windows of the entire building, including the areas where the Laundromat will be. She suggests the sign display be limited to the portion of the building where the liquor store is located.

In response to a question from Mr. Haley, Mr. Davis explained the change in use does not change the parking calculation. He has never seen the parking lot full. The requirement is one space for every 250 square feet. He said the package store signs need to be limited to the business proper.

The public hearing portion of the meeting was closed at 7:35 p.m.

I certify these minutes were adopted on the following date:

February 22, 2012
Date

James Stevenson, Chair

NOTICE: THE CASSETTE TAPE RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.

OFFICIAL TAPE NO: 541

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