

Minutes of a Regular Meeting of the Verona Board of Adjustment on Thursday October 8, 2015 beginning at 8:00 P.M. in the Verona Community Center, 880 Bloomfield Avenue, Verona, New Jersey.

Roll Call:

Present: Daniel McGinley, Chairman, John Denton, Vice Chairman, Larry Lundy, Louis Russo, Sean Sullivan, Michael Zichelli, Pat Liska, Alt#1, Coleen D'Alessandro, Alt#2

Also present: Robert Gaccione, Esq. & Thomas Jacobsen, Construction Code Official.

Absent: Edward Conlon

Secretary read the notice of Open Public Meetings law and called attendance.

Mr. McGinley, Chairman called meeting to order at 8:05 PM. He leads the Pledge of Allegiance. He then explains to the Applicants that the Board can grant variances, but the burden is on the Applicant to prove special reason or any undue hardship. Mr. McGinley states the Applicants shall offer sworn testimony on their application and the Board will rule based on the evidence presented. He reports the variance, if granted, will be memorialized at the next monthly meeting.

Application:

**Case 2015-12: Gerard M. Barone, 2 Brookdale Court
Block 27.01 Lot 7**

Mr. Gaccione offered proof of service was in order.

Gerard Michael Barone and Maria Barone, homeowners, were sworn in.

Mr. Barone explained that they were there for a proposed one story addition and new detached one car garage. The variances he needs are for front and rear setbacks for the addition and side and rear yard setbacks for accessory structure. He explained his property is by a school parking lot and behind his house are commercial properties on Bloomfield Avenue and they are set up from his house. He has no real neighbors next his house. The house was his parents' house that he purchased with his wife from his parents and he has been in the house for over 40 years. They are looking to expand with an addition on the side of the house for a dining room and also put up a garage for storage space. Currently he has a shed on the property. The addition is also a small one that is smaller than the deck currently on the house. He also added that the house as it stands today does not conform to zoning.

Mr. Russo asked if the siding was going to match the rest of the house. Mr. Barone stated that they would match the house.

Mr. Denton expressed that he had no issues with the project with the location of the property and having no house next door to it. Mr. Sullivan also stated he had no issues with the application for similar reasons. Mr. Zichelli stated it was a good plan. Mr. McGinley said this was an ideal application based on the property location with non-typical commercial and Board of Education properties boarding the typical Zoning Board issues don't really apply.

Public Comments: None

Mr. McGinley reminded that the board was looking at 4 variances for this application. He also questioned the Board if there were any conditions that were needed if granted. Mr. Lundy stated there were no conditions but to make sure the applicant when applying for new construction

make sure that everything matches the existing house like the siding, which the owner stated in testimony that he would do.

Mr. Zichelli motioned case 2015-12 be granted; Mr. Russo seconded the motion. All votes aye. Application granted.

Application:

**Case 2015-11: Ariane Duarte – ARIMAC, 706 Bloomfield Avenue
Block 79 Lot 14**

Catherine Donadio, Cipriano & Donadio, attorney for applicant, Ariane Bar and Kitchen.

Mr. Gaccione offered proof of service was in order after questioning the list and the check offs on the list being for who served or cards received back.

Ariane Duarte, business owner, Ariane Bar and Kitchen at 706 Bloomfield Avenue was sworn in.

Mrs. Duarte started with some history on herself and business. She stated she was 3rd generation living in Verona. Her grandparents moved to Verona in 1930's and her parents were raised in Verona. Her mother still resides in Verona. She was raised in Verona and now lives and has raised her children in Verona as well. She explained for 9 years prior to moving business to Verona she had a successful business in Montclair. When the opportunity to move her business to Verona came a year ago she was excited to move to the town she grew up in. In the year they have been in Verona she feels the business has been very successful.

Mrs. Duarte continued by the explaining the reason they are before the board is because the location not only has space inside but a little space outside as well. They would like to utilize the outside space to help with flow inside. They could use it for people waiting or for people who want to extend time there by having people sit and wait or by serving them coffee outside. They want to call the area a waiting or lounge area. They have many people that walk over with families or date night or just for drink or quick bite to eat and this would give the opportunity to get a few more people in. This would be a seasonal space used for maybe 45 days out of the year. This would be for the ease of in and out of reservations and people overextending stay for time of year when outside can be utilized.

Mr. McGinley stated that this is a (d) variance. He questioned Ms. Donadio if she had witnesses to present testimony to the Board. Ms. Donadio replied that yes they have the architect, planner and the owner's husband on hand to testify as needed.

Mr. Donadio started testimony with the architect, Kurt Schmitt.

Kurt Schmitt, Architect for the project, was sworn in.

Mr. Zichelli stated that Mr. Schmitt had appeared before the Board enough times to be accepted as an expert in architecture without needing his credentials. Mr. McGinley stated that the Board did accept Mr. Schmitt as expert in architecture if everyone was okay. Mr. Gaccione questioned that Mr. Schmitt was licensed in New Jersey and he stated he is and has been since 1985. Mr. Sullivan questioned that he had not lost that license since last time he had appeared before the board. Mr. Schmitt stated that he had not lost his license. He was accepted and could proceed.

Mr. Schmitt started by explaining the drawing he was showing was prepared for 706 Bloomfield Avenue that was in the packets to the Board dated September 15, 2015 with A-1 on it. This drawing consists of site of the property, an enlarged area of proposed outdoor seating area, zoning map, some details, and site and build-up table. Mr. Schmitt explained that the property is located on Bloomfield Avenue between Fairview Avenue and Orchard Street. The current building is right on the front property line and takes up about 60 percent of the property. There is an empty space in rear that is fenced in with gravel. On the drawing in the lower left show they are proposing to add in that empty space 34 outdoor seats in a lounge area. This would not be an area for outdoor dining. The area would have paver patio area in center with seats and small cocktail tables with landscaping on the inside and outside of a fence. There is also a fire wall feature to rear end of area need rear fence and property line. This a masonry structure about 4 feet tall with a gas flame not for cooking purposes for ambiance to add to the relaxing feel for the outdoor space. Another feature of the outdoor space is a pizza oven proposed for making light snacks not full meals. Currently on the property there is a stock fence behind the other fence around this area. That fence is going to be removed and enhanced with evergreens and trees along the residential property immediately behind the rear of the property. Mr. Schmitt explained that there are 3 variances they are looking for. The restaurant is in the TC zone where restaurants are uses allowed and outdoor seating is accessory use that is allowed with requirements that need to be met. They meet all conditions for outdoor seating except for the pizza oven and preparation of food. That is the use variance. They are also seeking variance for the seating. Restaurants are limited to 100 seats and currently they have 108; the previous restaurant had 130. With the success they are looking to add 34 seats making the total 142 seats for the restaurant. The third variance is for parking for those additional 34 seats which require 17 more spaces or 1 space for every 2 seats. Mr. Schmitt noted that they are providing a rear buffer area that does meet ordinance and was discussed with Mr. Helb, Township Engineer.

Mr. Zichelli questioned the planter and buffer area for the residents behind. He was concerned with the noise that might come from people eating dinner outside along with chitchatting and noises from plates and drinks. Mrs. Duarte explained that dinner would not be served outside. It is more of a lounge area where serve flat breads and things of that nature. The kitchen would not handle serving outside meals it is maxed out already with inside service. Mr. Zichelli questioned the buffer plantings and there adequacy for buffering noises. Ms. Donadio explained they had spoken to the landscapers as to what they planned on doing and make sure it is in with suggestions made by the environmental lead and it will be a barrier for both sound and aesthetics.

Mr. McGinley questioned if the patio would ADA accessible and meet all requirements for such. Mr. Schmitt said that yes it would be accessible and that there is a direct connection to the building. There are a few internal steps that are preexisting. The current ADA access is on the side of the building facing a parking lot. They will be ADA compliant.

Mr. McGinley also questioned about the pizza oven and the Verona Health Department comments that address it and more specifically that there is nothing to protect food from environment and the lack of hand wash sink for chef. Mr. Schmitt said that it is not shown and that they will speak with the Health department to see what they can do to comply.

Mr. Denton brought up the concerns about live or piped in music for the outdoor seating that was in Mr. Jacobsen's letter. Mrs. Duarte stated that there would be music and that they are aware of the curfew. They don't play loud music in the restaurant and would do the same outside just for ambiance.

Mr. Denton questioned the lighting proposed for the area. Mr. Schmitt explained that proposed was low level lighting not to extend higher than the fence. They had not picked the light fixture yet but it would one foot candle required by ordinance and that the lighting would be submitted to Mr. Helb for review.

Mr. Liska questioned if there were plans for heating units to be brought out on the patio like propane heaters or there such. Mrs. Duarte stated she had no plans for that. Ms. Donadio explained that the patio was only going to be available for patrons during warmer months or when weather conditions allow for it.

Mr. Sullivan questioned if patio umbrellas would be used. Mrs. Duarte said no that they were hoping whatever planters and trees they would have would be enough of a buffer. The feel she wanted to be more chic then like lounge atmosphere thank dining.

Mr. Jacobsen questioned how late they intended to keep the patio open; as late as the restaurant or a specific time. Mrs. Duarte stated that she would like everyone out by 10:00. She respects her neighbors and would not want people out there beyond midnight and she would be happy to come to an agreement on a time if needed. Mr. Lundy asked what he hours of operation were for the restaurant. Mrs. Duarte sated that it is 4:00 pm to 1:30 am for last call but most nights they are finished by midnight. Mr. Jacobsen asked if the hours of operation for the patio could be a condition. He also asked if the music would follow the same times. Mrs. D'Alessandro questioned the music time to follow the noise ordinance for the town which is 10:00 pm.

Mr. Jacobsen questioned food preparation outside and what type of foods would be served. Mrs. Duarte said with the pizza oven just some flat breads something small to eat while waiting, no foods that would require knife and fork for eating.

Mr. Russo questioned about smoking in the patio area. Mrs. Duarte stated that if there was going to be food then there would be no smoking in the area.

Public Questions for owner Arian Duarte or Kurt Schmitt, Architect: None

At this time Ms. Donadio called on their planner to testify.

J. Michael Petry, professional planner, was sworn in.

Mr. Lundy put on record that the Board accepts Mr. Petry as an expert witness. Mr. McGinley added the Board would accept him as a professional planner and professional engineer.

Mr. Petry explained the property is in the Town Center zone and has been utilized as bars and restaurants for a long time. The application is to expand the facility to allow for 34 outdoor seats which would be a seasonal use. The use of a restaurant is allowed in the Town Center zone with a maximum of 100 seats and the applicant currently has 108 seats. The previous restaurant and bar facility had 120 seats. There will be supplemental landscaping to create a buffer between the property and adjacent properties. On the architect's drawings and on the board with photos showing the area for the proposed outdoor space, a fence and pillars have already been constructed. The board showing photos of the space were marked as Exhibit A-1 10-8-15. These photos were taken by Mr. Petry from the gate area that comes from a sidewalk along the side of the restaurant into the open rear are and also from building showing the adjacent residence. This area historically and still to date is gravel area not paved. He explained that outdoor seating is a permitted accessory use within the zone subject specific regulations to follow. The town ordinance has 10 specific conditions listed for outdoor seating ranging from

percentage of overall seating in relation to the restaurant, to buffer areas to fences and heights of fences to lighting to outdoor cooking facilities. One condition not met is the outdoor cooking area with the proposed pizza oven. Other variances also consist of the expansion of a non-conforming use the existing restaurant exceeds 100 seats and the additional seats also trigger additional parking spaces needed. Mr. Petry had exhibit A-2 10-8-15 marked into evidence; this being an aerial photograph with the zoning information and lot lines from the township tax map superimposed on it. The photo shows the applicant's property in the TC (town center zone) which abuts an R-70 zone to the rear. Mr. Petry referenced the Master Plan and it specifically singles out restaurant uses and the town center zone goal to protect the downtown area with retail and business developments. Previously the property was dominated by its bar component with pub type food and tables around a large central bar. The current owner changed and now has a smaller bar along one side area and the focus is more on the restaurant and a nice restaurant. The focus is more on the food and serving food and not drinks. The outdoor seating is seasonal in nature and figure maybe 45 to 50 days a year for the use. The owner is not planning on serving meals outside only small plates of appetizer type food like flat breads that can be handled by hand. Look for the area to serve as a lounge in the nicer weather and those times of year when busier and when people staying hanging around longer. After being in business for a year they understand more of what is needed to be successful restaurant in the area and their goals parallel the Master Plan. The aesthetics and design are complimentary to the neighborhood and the agreement to implement the recommendations of the Environmental Commission or a subcommittee that this board established to review the landscaping is a condition that the applicant would be willing to accept. Mr. Petry explained this was a less dense seating than would be allowed by ordinance which allows up to 40 % of seating outside and they are only proposing about 20 % be outside. The applicant is not looking to maximum to the allowable seats but to just have an overflow area where they can serve dessert or finger foods while people wait or after dinner time to relax.

Mr. Denton questioned if they removed the pizza oven would the applicant be in compliance. Mr. Petry explained that they would be in compliance for outdoor seating but still need (d) (2) variance for expansion on non-conforming use and for parking spaces.

Mr. Petry continued explaining that the owner of the business negotiated a written lease with the adjacent property owner to park on that property which offset the burden of the parking variance as there are 16 to 17 spaces available. In the past there was never an agreement like this between the properties that guaranteed parking spaces available. This agreement can be made a condition of this approval so that if they were to lose the lease for parking they would lose the outdoor seating area. Mr. Petry believed the benefits of the proposed application outweighed the detriments and enhanced the purposes of the Master Plan set forth for the town and the Town Center area. The proposed would take the back area and landscape it and make it more aesthetically pleasing. The fact that the restaurant already had fewer seats than previous establishment and now adding back tables the parking was already there for that establishment and with new agreement would solidify that there would be parking for it and without the written agreement the use would go away. The use itself would be seasonal for maybe 45 to 50 days out of the year.

Mr. Russo questioned about refuse and accommodations for refuse for the outside area. Mr. Petry explained that outside the outdoor seating area fence was a large refuse area and it would accommodate the additional garbage and such created.

Mr. McGinley questioned about one of Jim Helb's comments in his letter about off-street loading. Mr. Jacobsen stated that was a "Boiler plate" comment in all his letters. Mr. Petry explained this facility does not have off-street loading and could not accommodate it.

Public Questions for Mr. Petry Planner:

John Galiffe, 12 Rockland Terrace

Mr. Galiffe questioned the proposed parking if signed deal or not. Mr. Petry stated it was signed. He also questioned if that parking was already used for restaurant parking. Mr. Petry stated yes but in the past it was verbal and now it would be a signed lease that would guarantee the parking spaces for the restaurant and suggested that agreement be tied to the outdoor seating. Mr. Galiffe stated that the parking at Firestone was always used for the restaurant so wondered if it was included in the original parking calculated for the inside seats. Mrs. Duarte stated that the parking in the past was not always guaranteed and that cars for Firestone would block parking spaces and with this agreement they were guaranteed all the spaces in the front and on the side would be open for their use. Mr. Galiffe also questioned the number of days of the year that the outside would be used, as he believed it would be more like 90 days not 45 or 50 if you look at June, July and August. Mr. Petry said if you assumed packed every night yes but practically when peak time and do not see that for week days like Tuesdays and Wednesdays and only for over flow purposes. You have to look at weather as well as peak times and it just wouldn't happen that it would be that many days.

Mr. Denton deferred to the applicant to expand more on the times and uses. Mrs. Duarte stated that the restaurant is open six days a week, being closed on Tuesdays. Sundays the restaurant closes at 9:00 pm with more of an early crowd around 4 and gone by 9 pm. Weekends, Friday and Saturday nights are the nights people go out and stay out little bit later. She expanded that if they are slow there is no reason get a staff on and pay for staff and staff the outside if they are not going to fill the inside seats. She also said they are taking into consideration not only rainy or bad weather days but also the extremely hot days; people will not want to sit outside but rather be in the air conditioning to sit. She believed it was fair to say 45 days and that could not determine a max based on "not being mother nature".

Mr. Gaccione asked for clarification if it was to be used for only over flow purposes. Mrs. Duarte stated yes but said for if you are waiting for a table or after finished eating to stay for a little bit or a drink; use as nice place to wait or sit while waiting instead of by the hostess stand.

Ms. Donadio called one last witness Michael Duarte, the owner's husband.

Michael Duarte was sworn in.

Mr. Duarte stated they are concerned citizens of the town and that they want to be successful and also be successful with something that is beneficial for the town. He explained they are not in to have something that is going to be loud, abusive or destructive for the town. The name of the restaurant, Ariane's Kitchen and Bar shows that they are restaurant first and that is how they classify and think of themselves. He explained they are not a bar where people come to hang out like in the past. They as a restaurant are closed on the earlier side not later like before. What they do outside will reflect the inside. They want to keep it landscaped and beautiful and keep it pleasing for the neighborhood. By keeping it pleasing to neighbors it benefits them as well. They do not want to complaints. They want to stay low key so people keep coming and do not want to disturb the neighbors around all not just the one.

Public Comments:

John Galiffe, 12 Rockland Terrace

Mr. Galiffe stated he has been in Verona 54 years and has seen multiple owners at the establishment. When the current owners took over and moved in they spoke. Originally the plans were for a small herb garden in the back for people to sit and smoke and now the plans have changed. He believed that 34 seats outside just for waiting seemed excessive. He said he was not against everything they are proposing but the main issue they have is with the pizza oven. Mr. Galiffe presented the board with an article from NorthernNewjersey.com about pizza wood burning stoves and wood burning stoves in particular and the environmental hazards from them. This was marked as exhibit O-1 10-8-15. Mr. Galiffe referred a picture on Mr. Petry's board, the one on the bottom left shows their bedroom window. He stated from those windows to the property line is about 25 feet. He had concerns about the smoke and fumes from the pizza oven. He also stated he felt that a reasonable time for the patio to be cleared would be 10 pm. He also discouraged any events outside like use of TV's for sporting events and such. He stated again he was not against everything just would like to see modifications to what they proposed that addressed their concerns.

Public closed.

Ms. Donadio summarizes that after hearing from the applicant all the witnesses that the variances they are seeking could only enhance the restaurant and the neighborhood. She stated that they would do all they could to comply with whatever the environmental suggested, the town and certainly board suggestions.

Mr. Gaccione clarified for the board that the parking agreement was for one year and it can be terminated after that year. He also said that it was for Wednesday through Monday during the hours of 5 pm through 2 am. He also stated it is not clear what would happen at the end of one year.

Ms. Donadio clarified that the lease was for a year and that if no objections from either party 30 days prior to the end of the year then the lease continues for another year.

Mr. Jacobsen questioned how would be enforced if the lease was ended that the outdoor seating would have to stop. Both Mr. Sullivan and Mr. Denton agreed it would most likely be obvious if the agreement ended between and yet outdoor seating still would continue. Mr. Jacobsen asked if the applicant would then need to come back before the board if the lease ended and they wanted to continue outdoor seating but need the parking again. Mr. Denton stated that yes they would have to come back before the board.

Mr. Zichelli again stated his concern with the the easement and the buffer landscape and making sure it is a good buffer for sound and such and making sure it is dense enough to protect the neighbors.

Mrs. D'Alessandro questioned if the pizza wood burning oven would smell any different than a wood burning stove. Mrs. Duarte said no difference. She questioned how that would be different from smelling any other wood burning fireplace outside and cause hazard. Mr. Schmitt added that the pizza oven is a prefabricated unit that would be dressed up with some stone work and stands about four and half feet tall. Above that stands a flue extended about two feet above. Mr. Galiffe added that the smell once in a while of wood burning fireplace is not the same as for 90 days straight.

Mr. Denton and Mrs. Duarte had a discussion about the pizza wood burning oven and whether they wanted to leave it on the application or leave off and revisit it with a separate application

and maybe come back with expert witnesses for the oven itself that could give expert testimony on it and the smoke and smells it would produce and the difference if wood burning or gas.

Mrs. Duarte asked for the opportunity to look further into the wood burning oven and options they have and also the opportunity to talk to the neighbors further and come back with experts and information and plan for the oven. Mr. Denton gave the date for the following month being November 12, 2015 and Ms. Donadio asked if they could have a little more time and be given the next meeting date. The following date for the regular meeting is December 10th 2015. Mr. Denton stated that they would be adjourned to the meeting on December 10th and that all other testimony was done but the architect would be there and testimony would be limited to the pizza oven only. Mr. McGinley stated all in agreement that would be adjourned to December 10th with no further notice being needed and with everyone back and at the point of board deliberations only except on any new items presented there would be opportunity for public comment. Mr. Jacobsen also suggested a revised landscape plan be submitted for the December meeting as well.

Mr. Gaccione had two items for the applicant first to check if they waived all time constraints for the board to make their decision. Ms. Donadio agreed they did. His second item was that it was up to the applicant to submit a revised landscape plan.

Application adjourned to December 10th 2015.

Minutes:

Minutes from the July 2015 regular meeting. All votes aye, minutes approved.

Resolutions:

Case 2015-09 Bevilacqua, 67 Park Avenue; Mr. Sullivan motioned approval; Mr. Zichelli seconded. All votes aye. Resolution approved and memorialized.

Case 2015-10 Caporrimo, 48 Floyd Road; Mr. Sullivan motioned approval; Mr. Zichelli seconded. All votes aye. Resolution approved and memorialized

Meeting was adjourned at 10:25 PM.

Respectfully submitted
Kelly Lawrence
Board of Adjustments Secretary