

**MUNICIPAL LAND USE BOARD MINUTES
BOROUGH OF EMERSON
APRIL 6, 2017**

This meeting of the Emerson Land Use Board was held in the Municipal Building. Chairman Schwinder opened the meeting at 8:09 PM. In compliance with the Open Public Meeting Act, the Clerk has notified The Record and The Ridgewood News of this meeting and notice has been posted in the Municipal Building.

Pledge of Allegiance

Roll Call:

Robert Adams	Present
Thomas Callagee	Absent
Michael DeOrio	Late
Gary Goursky	Present
Louis Lamatina, Mayor	Present
Evan Kutzin	Present
Steven Malone	Present
Doug McKendry	Absent
Norman Rieger	Present
Thomas Sudano	Absent
Gerry Falotico, Councilman	Present
Gary Schwinder, Chairman	Present
Christopher Martin, LUB Attorney	Present
Gary Ascolese, MLUB Engineer	Present
Bridgette Bogart, Borough Planner	Present
Michael Sartori, CCO/Zoning	Present
Perry Solimando, DPW Interim Super.	Not Requested
Robert Hoffmann, Borough Admin.	Not Requested
Marie Shust, Interim Secretary	Present

Mr. Schwinder then asked if there were any comments on the minutes of March 23rd meeting, hearing none he asked for a motion to approve, which was offered by Councilman Falotico. All present voted aye to accept the minutes.

Mr. Schwinder then asked if there was any correspondence, there was none.

Mr. Schwinder then asked for the vouchers received, which Ms. Shust read to the Board.

Vouchers		6-Apr-17		
3/27/2017	17-00453	Boswell	19 Broad St.	\$ 237.00
3/27/2017	17-00453	Boswell	147 Chestnut St. (Rich's)	\$ 304.00
3/24/2017	17-00446	Shust	LUB meeting 3/23	\$ 150.00
		Morrison		
3/30/2017	17-00471	Mahoney	Legal - 17 Ackerman	\$ 84.00
				\$775.00

Mr. Schwinder asked for a motion to approve the vouchers, which was made by Mr. Malone, seconded by Mr. Rieger, all were in favor.

**APPLICATION: Rich's Auto Body, 39-41 Chestnut St, Block 405, Lot 1
Use variance**

Mr. Schwinder asked the representatives for Rich's Auto to approach and present their case. Mr. Martin accepted the credentials of Jeffrey C. Mason, Counsellor at Law, 155 Polifly Rd. Hackensack, NJ 07601. Mr. Mason presented the proof of notice to Mr. Martin, which after being accepted were passed to Ms. Shust for the files.

Mr. Mason asked Mr. John C. Cote, PE, LEED AP at Langan Engineering, 300 Kimball Dr, Parsippany, NJ 07054 to make his presentation. Mr. Martin accepted the credentials of Mr. Cote, who attended Stevens Inst., is licensed (20758) and Board qualified in many municipalities.

Mr. Cote stated that Rich's Auto was located in Block 405, Lot 1 (39-41 Chestnut St.) in an IM, on a dead end street, which terminates at the railroad tracks. The building is 6,104 sq.ft with no alterations planned, only an adapted re-use designation is requested.

Several street photographs were introduced as Exhibit A1 packet.

Mr. Martin asked for the correct name of the owner of the business – Mr. Mason replied Rich Turtigian, dba Rich's Automotive Auto Body Specialists, 50 Chestnut St, Emerson, NJ, with an auxiliary location at 39-41 Chesnutt St.

Mr. Cote explained that photo EB 101 dated 10/9/15 and CS 101 dated 1/20/17 show the existing property. The building is currently used for auto repairs and storage (no painting). The application requests a use variance to permit auto repairs and operate an auto rental business. All auto painting is done at 50 Chestnut. An aerial overview (Exhibit A-2) shows the fence line around the property and the areas where cars in process are stored/parked.

Mr. Martin asked when the photos were taken. MR. Cote replied that all pictures were taken within the last week, some the day prior.

Mr. Schwinder inquired about the white house with the cyclone fencing and was told by Mr. Cote that the structure was not a part of the application.

Mr. Schwinder asked about the gate area to the south and east and was told by Mr. Mason that it was a separate lot, different owner and business.

Mr. Cote stated that the property under review would also be used for auto storage, not as public parking. The location is in the IM Zone, separated from the residential zone by the railroad tracks to the west. Mr. Cote then introduced Exhibit A-3 parking calculations, showing the required parking spaces to be 20.

Mr. Cote referred to the March 7, 2017 comments of Ms. Brigitte Bogart of Bogart Planning. Currently there are spaces for 6 cars in front of the building.

Mr. Schwinder asked if they were parallel or perpendicular, and was advised they were perpendicular.

Ms. Bogart questioned Mr. Turtigian's practice of tandem truck parking at the end of the street, since businesses on private property cannot block the right of way. Mr. Cote mentioned that the dead-end street does pose some problems.

Mr. Cote stated there is no parking in front of an egress and the public is only allowed to park in the spaces in front of the building. Employees are responsible for taking customer's cars to the rear of the building for service.

Mr. Martin wanted to know if there was on street parking. Mr. Bogart pointed out there were no parking related signs posted, whether they were non-existent, damaged and not replaced would have to be researched.

Mr. Schwinder inquired as to whether employees parked in front of the building and was told by Mr. Cote that the front was reserved for customer parking/drop-off.

Mr. Ascolese stated that NJ State Title 39 prohibits parking and standing within an area of an intersection, and that several parking spaces that the applicant planned to use were illegal spaces base on their proximity to the intersection.

Mr. Ascolese also inquired how the roadway was defined. Mr. Cote stated that the front parking along the building is 26' 9" to the curb line. Mr. Ascolese suggested that drop curbs be employed to show separation between travel lanes and parking.

Mr. Cote stated he would like to meet with Mr. Ascolese to reconfigure the parking per his letter of March 6, (ED-2) item #3.

Mr. Schwinder inquired as to whether storage spaces could be used for customer parking as an option.

Mr. Martin inquired as to whether only one ADA parking spot was required to which both Ms. Bogart and Mr. Ascolese replied yes. Mr. Kutzin wanted to know if the parking would be striped. Mr. Cote replied it was not in the proposal, but could be done.

Mr. Kutzin asked Ms. Bogart about the maintenance of the striping since it was encroaching on a right of way. Mr. Cote stated that it would be similar to a retail area on a public right of way, which is maintained by the municipality.

Mr. Martin inquired as to the width of the street. Mr. Cote replied 26 feet to the other side.

Mr. Schwinder inquired as to the dangers of perpendicular parking and backing out onto the thoroughfare. Mr. Cote replied there could be signs of no head-in parking which would eliminate that problem.

Mr. Schwinder asked about parking east of Bland. Mr. Ascolese replied there was parking on the south side of the street. He also stated that at 44 Chestnut, Westwood Auto had no street parking, but there are always cars/trucks parked in front.

Ms. Bogart said that striping and curbing would be the property owner's responsibility. Mr. Martin inquired as to purpose of the drop curbing. Mr. Ascolese replied as delineation between public thoroughfare and private property. Mr. Cote replied it would be a curb line, not an actual curb.

Mr. Schwinder suggested that a reduction of the size of the off-street auto storage area could free-up some much-needed off-street customer parking.

Mr. Mason then asked Mr. Turtigian to comment on his business operating procedures.

Mr. Turtigian stated this location was in support of his location at 50 Chestnut Street which is an auto body/auto paint shop. The subject location is used for auto repairs and storage of vehicles.

Mr. Mason asked how many employees, to which Mr. Turtigian replied there are 6 employees who park off site. He said he has a verbal agreement with Kuiken Brothers for employees to park on their property. Mr. Schwinder mentioned concern over a verbal agreement for parking spaces and suggested Rich's Auto speak with Kuiken Brothers to work out a written agreement.

Mr. Turtigian then explained that customers pull up to the front of the building and enter the office area, for processing. The autos are taken by employees to the back area of the building. No customers are allowed through the gates into the back area, for safety reasons.

Mr. Schwinder asked about the auto rental operation and was told it was a Rent-A –Wreck franchise. Rental cars would be stored on the site.

Mr. Schwinder asked about body and fender work and was told by Mr. Turtigian that minor repairs were done at 39-41 Chestnut, but the majority of the work was done at 50 Chestnut. Mr. Turtigian explained that painting is defined as auto body work, and must be performed at the other location.

Mr. Schwinder asked if Rich's Auto Body did any towing, and was informed that they were a registered police towing company. Mr. Schwinder then mentioned that being an official towing did not necessarily mean the shop would do the work, Mr. Turtigian replied that it was up to the car owner to make that decision, that in this instance they might only be a storage area until the customer decided.

The applicant questioned about trash removal. Mr. Turtigian replied there would be no additional trash generated and that currently he had trash removal and recyclables removed twice a week.

Mr. Schwinder asked about hours of business. Mr. Turtigian replied that there is phone availability 24/7, and standard hours during the week.

Mayor Lamatina inquired as to the large area striped in yellow on the west side of Bland (#12) and was told by Mr. Ascolese that these were no parking zones, in particular the areas at the intersection.

Mr. Ascolese also stated there were no signs, of no parking or a dead end street designation. He will bring this matter before the DPW.

Ms. Bogart inquired as the parking at the dead end of Chestnut St. and was told by Mr. Turtigian that it was used for overnight truck parking.

Mr. Keith S. Ottes, PE, PP, CFM, Senior Project Manager, Langan Engineering, 2700 Kelly Road, Suite 20, Warrington, PA 18976 came before the Board. His credentials were accepted by Mr. Martin, N J licensed planner in 2000, however, no license is required in Pennsylvania for Planners. A licensed Engineer in NJ and PA, graduated Rutgers and Villa Nova.

Mr. Mason asked if Mr. Ottes had reviewed the plans, and was told he had and a C-1 variance is requested for setbacks and improved car parking, and adapted re-use of an existing business.

Mr. Mason asked Mr. Ottes what the application would facilitate.

Mr. Ottes replied that the variance of adapted re-use would allow the applicant to increase his business.

Mr. Mason asked if the site was suitable to which Mr. Ottes replied, yes. Mr. Mason inquired how the property was suitable and was told it was on a dead end street, fenced in on three sides, and the railroad tracks to the west.

Mr. Schwinder asked if there was car storage east of the applicant's property fence, and building and other structures. Mr. Ottes replied it was his understanding that one structure was residential, which is in IM Zone with existing non-conformity.

Mr. Mason wondered if the change would be inconsistent with the present use. Mr. Ottes replied that the business is similar to other business in the area.

Mr. Schwinder asked Ms. Bogart for her input. Ms. Bogart confirmed that the C-1 variance is necessary, and that if the municipality vacated some of the right of way so it could become a part of the subject property, some of the problems facing the applicant would be reduced.

Mr. Ottes replied that the suggestion would improve conditions.

Mr. Schwinder wanted to know how that would impact other business in the area. Mr. Schwinder also wanted to know if the applicant could reduce some of the street parking.

Mr. Ascolese suggested vacating a section of Chesnut Ave. on the north side, which would possibly help area order.

Mayor Lamatina wanted to know to whom and how the 75 feet would be vacated.

Mr. Ascolese replied 50% would go to each side of Chestnut St. Ms. Bogart mentioned that this would have to go before the Mayor and Counsel. Mr. Malone wanted to know how it would affect Bland St.

Mr. Ascolese thought it was an area to explore and reduce blocking businesses in the area. The mayor wanted to know about emergency access. Ms. Bogart replied that it would have to be designated with the vacating of the property.

Mr. Schwinder suggested the planner and applicant meet to see if client is interested, but the plan would have to be approved by the Mayor and Counsel.

Mr. Mason replied that they would look into it.

Mr. Schwinder wanted to know if there would be any modification to the existing structure to which Mr. Mason replied there were no plans for alterations to the structure.

Mr. Schwinder thanked Mr. Ottes, and Mr. Mason, and asked for a motion to open the floor to the public, which was made by Mr. Goursky, second by Mr. Falotico.

Mr. Robert Petrow, owner of 21, 33 & 50 Chestnut Street approached. He thanked the Mayor and Counsel for removing his property of 33 Chestnut from the redevelopment zone. He stated that he is the landlord for the property of 50 Chestnut for which the applicant is past due in his rent, and has no lease. Mr. Petrow stated that he is interested in investigating the possibility of redeveloping his property and possibly buying 39-41 to include in the redevelopment.

Mr. Petrow stated that he had done some OPRA research and found that the auto repair application had been denied in 2014. There were no records of fire inspections on file, C/O was not on file and the enlarged overhead door that was installed was done without a permit. He wanted to know how so much work could be done without proper paperwork. Mr. Martin advised Mr. Petrow that these matters were not relevant to the plan presented.

Mr. Petrow continued with his complaints of past violations and reported a fire that happened several years ago that was not reported.

Mr. Martin asked Mr. Mason if he satisfied that the taxes had been paid.

Mr. Petrow continued asking how these illegal operations could continue. He mentioned that he would appear before the Mayor and Counsel at the next meeting to address these conditions. He also stated that there was a used car operation being run out of the location.

Mr. Schwinder asked Mr. Turtigian if a used car dealership was in operation on the site. Mr. Turtigian replied that he had a used car dealership license, but all the cars that were available to sell were done through another dealer. No cars were sold out of his lot.

Mr. Schwinder also asked Mr. Turtigian about the condition of the property, the clutter, and inquired about Mr. Petrow's complaint of building alterations.

Mr. Turtigian replied that the area was cluttered and that he had received a summons from the building department for installing a larger loading door on the front of the building.

Mr. Goursky asked Mr. Petrow, the landlord, if he was nullifying the lease, to which Mr. Petrow replied he was obtaining a vacate order.

Mr. Schwinder then asked Mr. Sartori, from the Construction Building Dept. to approach the podium. He asked Mr. Sartori about the violation at 39-41 Chestnut. Mr. Sartori said he received a complaint about 2 weeks prior, visited the site and issued a notice of violation for the overhead door.

Mayor Lamatina inquired about the lack of fire inspection. Mr. Sartori replied that he had not been doing fire inspections since 2015, and that this location was not on his list.

Mr. Schwinder wanted to know about a variance in 2014 that was denied. Mr. Mason stated that it had taken some time to gather the information required.

Mr. Turtigian mentioned that he was in negotiation with Mr. Blanco, the owner of 39-41 Chestnut.

Mayor Lamatina wanted to know how the operation was in business without a C/O.

Mr. Schwinder asked Mr. Sartori to research an application for the overhead door. He also wanted to hear Mr. Fullam's findings on the location. Mr. Sartori thought the door was in the name of Blanco, the owner of the building.

Mr. Martin then wanted to know about any safety, violence or danger violations. To which Mr. Sartori replied there were no safety issues on file.

Mayor Lamatina wanted to know if they received a permit after the fact.

Mr. Martin stated that had no bearing on the variance request.

Mayor Lamatina asked if there had been a change in tenancy and if that was the reason there was no C/O, to which he received a no answer.

Mr. Sartori stated that Mr. Turtigian must appear before the Board for a C/O and there were several issues to be addressed.

Mayor Lamatina referred to the Fire issue, to which Mr. Martin stated it had no effect on the application.

Mr. Sartori stated that he would refer the matter to the Fire Dept.

Mr. Schwinder wanted to know if the applicant was paying the annual fees. Mr. Sartori replied there were several levels of fees. Mr. Schwinder directed him to check with the Fire Dept. re inspections and rates.

Mr. Schwinder stated there was an adversarial relationship between the landlord and tenant and wanted to know how Mr. Turtigian would proceed if the Landlord would not renew his lease. Mr. Turtigian replied he would have to downsize.

Mr. Mason requested a continuance of the application so the Planner, Engineer and applicant could review the suggested changes, obtain the necessary applications for permits and the dead end proposal.

Mr. Sartori will review the properties with the Planner and Zoning Board.

Mr. Schwinder wanted to know if everyone agreed.

Ms. Bogart agreed, Mayor Lamatina wanted to know if that meant the area had to be rezoned. Mr. Sartori replied that IM doesn't cover the variance. Ms. Bogart would survey uses, Mayor Lamatina asked for a Fire and Building inspection.

Mr. Schwinder asked if there were any other comments from the public.

Mr. Petrow again approached and reviewed his previous complaints. Mr. Martin assured him that the Board was taking the violations/complaints into consideration. Mr. Schwinder also confirmed that corrective actions had been instituted.

Mr. John Holter of 85 Locust St., approached the podium stated that there was selective enforcement of regulations in regard to parking. He said he had to move his truck, but Rich's trucks could stay on the street overnight.

Mr. Martin stated that that issue would be under the Police Dept. and not the Land Use Board.

Mr. Petrow asked Mr. Holter to tell the story of the fire. Mr. Holter replied that a air compressor breaker at 39 Chestnut had caught on fire, luckily it was put out immediately by the workers.

Mr. Turtigian replied that it was an old breaker box and had since been replaced.

Mayor Lamatina wanted to know if there was a permit issued for the electrical.

Mr. Turtigian replied it was two years ago.

Ms. Donna Simmons, resident on Chestnut St, approached. She said there had been many parking situations, where she could not get out her driveway due to the applicants business, that the fire hydrant had been blocked, and the street going through to Stop and Shop was totally blocked to traffic due to parked cars and trucks. She also stated that workers were under her windows at 7:22 am on Sundays smoking and working.

Mr. Schwinder asked if there were any other comments from the floor, hearing none he asked for a motion to close the floors, which was given by Mr. Goursky, second by Mr. Adams. All were in favor.

Mr. Martin stated that matter would be carried over to April 20 without prejudice, no further notifications were required. Mr. Mason replied additional time may be needed but at this time they would schedule for April 20.

Mr. Schwinder stated that due to the time, the sign committee discussion would be rescheduled at a later date. Mr. Adams said he had questions about the sign committee recommendations, and was told by Mr. Schwinder to address Ms. Bogart and her committee directly, not through the Board. Mr. Schwinder also reminded Ms. Bogart that he wanted some input on the temporary vendor signs that were placed on lawns. Ms. Bogart reiterated that any questions should be directed to her and the sign committee.

Mr. Schwinder asked Mr. Sartori if he had any comments questions about the sign committee proposals. Mr. Sartori said he would get together with Mr. Fullam to review the proposals and make recommendations.

Mr. Schwinder asked for any other comments, to which Councilman Falotico replied he had attended the mandatory class.

Hearing no other comments, Mr. Schwinder asked for a motion to close the meeting which was given by Mayor Lamatina, second by Mr. Falotico.

The meeting was adjourned at 10:35 pm.

Respectfully submitted,
Marie Shust
Interim Board Secretary