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Angel Taveras
Mayor

Zoning Board of Review

January 28, 2013

RESOLUTION NO. 9697

Iconoclast, LLC
John Jensen, Member
530 South Madison Avenue, Suite 14
Pasadena, CA 91101

Mr. Alex Tomasso
1608 Breakers West Boulevard
West Palm Beach, FL 33411

Gentlemen:

At a meeting of the Zoning Board of Review (the "Board") held on July 23, 2012, the following Resolution was adopted:

WHEREAS, Alex Tomasso, the applicant (the "Applicant") and Iconoclast, the owner of real property identified as Lot 536 on the Tax Assessor's Plat 35, also known as 62-68 Dike Street (bounded by Troy St. & Agnes St.), and being located in an Industrial M-1 Zone in the City of Providence, Rhode Island, filed an application seeking a Special Use Permit for relief from Section 703.2 pursuant to Sections 707 and 707.1 of the Zoning Ordinance (the "Ordinance") for insufficient parking, to continue the existing daytime use of manufacturing and non-manufacturing uses, and for relief for a proposed nighttime use by the conversion of interior manufacturing space to an after-hours entertainment venue and art gallery, without alcohol. Forty-two (42) parking spaces are required for the daytime uses; however, the building covers the entire lot; therefore, no on-site space is available for parking. The entertainment venue requires one hundred twenty (120) parking spaces and no parking is available per the Ordinance definition, although 74 parking spaces would be provided by means of leases in non-contiguous off-site parking lots. The lot in question contains approximately 12,381 square feet of land area; and

WHEREAS, on Monday, June 11, 2012, the members of the Board, having individually, on or prior to that date made a site inspection of the Property and also of the surrounding properties in the neighborhood, took notice of the recommendation submitted by the Department of Planning and Development (the "DPD") dated June 11, 2012, the DPD recommending that the requested relief be denied, "Given the unique operation hours and the amount of vehicular traffic that it [the proposal] would generate, it is unclear how the use should be operated and regulated given the hazards it presents. In the absence of a mechanism to control the effects of an after-hours club, the DPD cannot recommend approval of this request. However, the DPD is open to reconsidering the applicant's request under a revised ordinance"; and

WHEREAS, the Board held a public hearing on this application as set forth by the Ordinance on Monday, June 11, 2012 and the Applicant was represented by Attorney Andrew Teitz. Mr. Teitz submitted aerial photos of the Property within the neighborhood (Applicant's Exhibit A), and an additional aerial photo taken closer to the Property and showing with a blue dot the subject building (Applicant's Exhibit B). Mr. Teitz stated that the Property is located in an industrial area and zoned M-1 and that the uses already existing at the Property and the proposed use are all permitted as of right; that the Applicant is seeking relief for parking only under a Special Use Permit, no hardship; that the relief being sought is based on the use of the building being divided into daytime, 7 A.M. to 7 P.M., and nighttime, 7 P.M. to 7 A.M.; that the existing structure is a mill building that was part of a larger complex of mill buildings for industrial manufacturing and the manufacturing died out to some degree; that the Property was purchased ten (10) years ago by Mr. Jensen and his wife through their company, and they have been working on the building to rehab it since 2002; that the building has no parking because it occupies almost the entire lot, and there is a loading dock and egress for the upper floors that cannot be blocked with cars; that the building contains 28,368 square feet of floor area and that the standard rule of thumb would be one-hundred square feet per employee for manufacturing, which would result in 284 employees in the building when it was used for manufacturing; that previous zoning regulations required only one parking space for every eight (8) employees and

the result would be a required 35 parking spaces, so the Property is grandfathered for that many spaces; that based on the current uses in the building, there is a need of forty-two (42) parking spaces for the daytime uses, and that relief of only seven (7) parking spaces are needed; that the occupant load for the art gallery and club, which is proposed for the afterhours use, would be four hundred eighty (480) people, although the fire department could decide to require a maximum of less people, and that would require one (1) parking space per four (4) people, which would be 120 parking spaces that is required; that the Applicant has obtained agreements with neighboring property owners to lease parking spaces, up to seventy-four (74); thereby, resulting in a shortfall of forty-six (46) spaces, which would not be subject to liens, and because the leases will not be forever, the Applicant requires the relief sought; that the Applicant already has its license as stated in Applicant's Exhibit C; that the subject building has a fully operational sprinkler system; and that letters of intent from neighboring property owners, Applicant's Exhibit D, indicate their willingness to provide off-street parking leases for the club; and

WHEREAS, Nancy Melucci, Secretary for Happy Beats, Inc., testified that the Applicant operated an after-hours club for the past ten (10) years located one block from the Property from 2 A.M. to 6 A.M. in the morning and sometimes 12 A.M. to 6 A.M. on Saturday and Sunday mornings; that the lease at the previous location expired and the Applicant wishes to continue at the Property; that the parking areas previously used by the Applicant's previous club would be used for the new location; that several neighbors are in support of the Applicant's request for parking relief; that the new club would operate twice a week, Saturday morning and Sunday morning; that no complaints have been issued against the Applicant at its previous location; and that the Applicant would provide valet parking; and

WHEREAS, Ramzi Loqa, Code Consultant, testified as to the calculations he made to determine the number of parking spaces required for the daytime and nighttime uses and Mr. Loqa went on to describe the floor layout of the building and how he determined the occupancy load for the club and the number of parking spaces required; that the building is sprinklered and he submitted a plan showing the layout of the building's interior showing all the new sprinklers that were installed, Applicant's Exhibit E; that the owners are in the process of installing a new fire alarm system in full compliance, because the Applicant would not receive approval until an approved fire alarm system tied to the municipality is installed first; and that the proposal for the club works, because the only issue is the parking; and

WHEREAS, Bill Wise, who operates a valet company, testified that he handles the valet service for [Club] Fete at 103 Dike Street, which has a capacity of nine hundred (900) people; that that venue uses a sixty (60) car parking lot and he has never had an issue with capacity for that venue to date; that that club has satellite parking lots that have never been used; that there have not been any traffic jams related to that venue and he would be operating the valet service for the proposed venue; and that based upon his experience in the neighborhood in the early hours of the morning, he does not anticipate any problems with traffic, if the Board were to approve this request; and

WHEREAS, Thomas O. Sweeney, who was recognized by the Board as an expert in real estate matters, submitted his written report to the Board, Applicant's Exhibit F; Mr. Sweeney stated that he was familiar with the Property and the neighborhood; that he was familiar with the proposed use; that with respect to the special use permit for the daytime parking, there was no indication at all as far as the daytime parking relief from the Department of Planning and Development; that the proposed special use permit is set forth specifically in the Ordinance and that there are no specific conditions set forth in the authorization of the special use permit; that granting the special use permit for forty-two (42) parking spaces would not substantially injure the use or enjoyment of the surrounding properties because the building is located on a lot which is entirely covered by the building and no on-site parking is available; that the proposal would not devalue neighboring properties because the Property, having historically been used as a multi-tenant property with no on-site parking available, has always relied on on-street and off-site parking to meet the needs of its tenants, so there would be no different or negative effect on the use and enjoyment of the surrounding properties nor would it be detrimental to the health and welfare of the community; that with respect to the nighttime parking, the special use permit is specifically set forth in the Ordinance and there are no conditions set forth for the authorization

of the nighttime parking; and that the special use permit for the nighttime parking for one-hundred twenty (120) spaces, based on the proposed leasing of seventy-four (74) spaces would not substantially injure the use and enjoyment of the surrounding properties because the Applicant currently or up until very recently operated a very similar type venue not far from the Property without causing any issues in the neighborhood and that it would not have an effect upon the values of the surrounding properties; that the granting of the special use permit for the nighttime uses at 120 spaces, with the leasing of 74 spaces, would not be detrimental or injurious to the general health or welfare of the community because the Applicant has already run a very similar venue in the area which has not had a negative impact because the proposed valet parking and 74 spaces will service the new venue; and

WHEREAS, Sabrina Matos, Councilwoman of Ward 15, the City Council Ward in which the Property is located, testified that the proposal is not what is compatible with the neighborhood and the rehabilitation of the neighborhood that is ongoing; that some businesses have given the area a bad reputation and she believes the proposed night club would contribute to a negative reputation for the neighborhood; that parking is a significant issue in the area and with increased on-street parking, fire trucks would not be able to get by; that another club is trying to start operating in the area and the neighborhood is going to oppose it; that if the nighttime parking relief is allowed, all the improvements that have occurred in the area will be harmed; that the City of Providence has an overnight on-street parking ban; and that there is a church in the immediate area, and with questionable businesses coming in, churchgoers might not feel safe; and

WHEREAS, representing 50 Agnes, LLC was Attorney John Mancini who stated that his client owns 50 Agnes Street, which is directly adjacent to the Property; that he questioned the validity of the Applicant and the public notice because the application is in the name of Iconoclast, LLC and Alex Tomasso but the relief is being sought for Happy Beats, LLC, or Happy Beat Corporation; that the owner of 50 Agnes Street should be a co-applicant on the application because it shares a common wall and that the properties are thereby connected to each other; that the proposed use is not consistent with the use of the neighboring building; that his client is in the process of renovating his building and is utilizing it for live/work space; that the proposal is not consistent with the on-going renovation and current use of the building as a live/work facility; that it is certainly not appropriate to have a nightclub that will be open on a Saturday or Sunday morning between midnight to 6 A.M. next door to a residential type building and that noise does travel between the buildings; that his client has concerns related to safety, whereby, the doors of the entrance between the proposed nightclub and his client's building are adjacent to each other and that club patrons might use the wrong building and be confused as to the proper entrance; and that the proposal is not consistent with the rehabilitation occurring in the Olneyville area and would have a negative impact on the health, welfare and safety of the surrounding area; and

WHEREAS, Mr. Mancini presented the Board with a report, Opponent's Exhibit 2, prepared by Michael Desmond, traffic engineer and licensed within the State of Rhode Island, and Mr. Desmond's qualifications, Opponent's Exhibit 3. Mr. Desmond testified that in his opinion, drivers in the area may be distracted when they are surveying the area for parking spaces when they are arriving to attend events at the development; that because there are seventy-four (74) parking spaces proposed for use by the proposed club in noncontiguous off-site lots, a significant number of pedestrians will be added to the traffic mix in the area causing a potential hazard, especially late at night, and that patrons of the club area coming to this site at midnight or later, even though it is a non-alcohol club, are likely coming from other clubs where alcohol was served and there is the possibility that they are impaired drivers that will pose a threat to the safety of the neighborhood; that adding a significant volume of traffic into the area, on top of the traffic already generated by the existing club and other nighttime uses in the area will increase traffic, clog the streets and be detrimental to the health and welfare of the neighborhood; and Mr. Desmond further testified that he relied on Mr. Coyle's survey of the area and on Mr. Coyle's findings during the evening hours and did not conduct his own survey, in terms of traffic generated by other existing venues during the time of night when the proposed venue would be operating; and

WHEREAS, William E. Coyle, who was recognized by the Board as an expert in real estate matters, submitted his written report and testified that he agreed with the opinions made by Mr. Desmond; that he personally observed the traffic from 11:30 P.M. to 12:30 A.M. on a recent Friday night and that he observed very few on street parking spaces and that there was increased congestion on the streets and, in his opinion, the addition of another nightclub would increase the traffic problems; that his opinion was that the proposal would be injurious to the health and safety and negatively impact the property values within the neighborhood; that the proposal is inconsistent with the general characteristics of the area and its Comprehensive Plan; and that having the proposed use being next door to live/work spaces would depress the rental amounts for the units because tenants would be getting less value and therefore would want to pay less for their spaces; and

WHEREAS, Raymond Dettore, Chairman of the Board of the Center for Individualized Training and Education, a school for multiple disabled children which is located on Bough Street, testified that fifteen (15) to twenty-five (25) children attend that school; that the people that would frequent the proposed club would park on the street and in the school's parking lot; that the school allows [Club] Fete to park employees' cars on its property and overflow of handicapped parking only; that the school is concerned that the late night crowd will have alcohol with them, even though the proposal would not serve alcohol and that the bottles and containers will be thrown about the area and onto the school's property and there is also the potential for vandalism; that nowhere in the letter issued by the Board of Licenses does it say that the proposal would be operating two (2) nights a week and that the license is a 24 hours a day, 7 days a week license; that the children of the school start arriving early in the morning either by bus, private vehicles, or taxis and that the school cannot afford to have broken bottles in the area; and that the school objects to the application; and

WHEREAS, Ben Burbank, a property owner at 244 Oak Street, 69 Troy Street and 33 Magnolia Street testified that he and others are trying to create 36 live/work units next door and there is concern about property values and safety for the tenants; that there are substantial drugs, booze and violence in the area, which have been a recurring problem; that fire trucks may not be able to get by in the streets; and that there are bottles in the streets; and

WHEREAS, Shawn Oehler, project manager for 244 Oak Street, testified that there are problems with vandalism, spray paint, bottles, intoxicated people, robberies, and that the crowds that come out are not conducive to the neighborhood or the vision of the community and that the new establishment will continue to hamper any positive image that people are trying to project; and that the daytime uses are compatible with creative spaces for artists, musicians and legitimate businesses; and

WHEREAS, Michael McMoughlin, property manager at 50 Agnes Street, testified that when a club came into the neighborhood the area started to get dirty again, and bottles and cans and parking became a problem; that his fear was that another club in the area is just going to be more of a problem for residents who are trying to develop the neighborhood; and that the building occupants cannot find parking spaces near the building to load and unload their equipment and materials because the streets are already full with cars; and

WHEREAS, Alexandra Dennik, a tenant at 50 Agnes Street, testified that the tenants at that location have tried to keep the building up because it is their investment; and that there have been incidents related to club type patrons including one time when she was walking on the sidewalk and a car came onto the sidewalk and tried to run her down; and

WHEREAS, Zane Claverie, a tenant at 50 Agnes Street, testified that that building abuts the Property and that the sound that the proposal may generate will impair his sound sensitive work; and

WHEREAS, James Sine, testified that there is broken glass around the area and that he was prepared to move into 50 Agnes Street, but will not because of the litter and messiness that results from the club activity already in the area and the potential for it to get worse if the relief is granted; and

WHEREAS, a letter in support of this request was submitted by Representative Anastasia Williams, who represents the area where the Property is located; and

WHEREAS, based upon the issues raised by Mr. Mancini to determine if the application is defective due to the failure to include 50 Agnes St, LLC as part of the application because of the common wall, and further because of the questions raised about the entities named on the application, on motion by Mr. Wolf, seconded by Mr. Strother, the Board voted unanimously (5-0) to continue the matter until July 23, 2012, in order for Mr. Teitz and Mr. Mancini to prepare memorandums in light of the issues that have been raised concerning the abutting wall; and

WHEREAS, the Board held a second public hearing on this application as set forth by the Ordinance on Monday, June 11, 2012, and the Board found, based upon the memorandums of the Applicant and the Opponent that the application was properly filed; and

WHEREAS, at the request of the City and over objection by the Applicant, on motion made by Mr. Martinez, seconded by Mr. Strother, the Board voted unanimously to reopen the meeting so that the Commissioner of Public Safety and the area Lieutenant could testify in the instant matter, with Members York, Wolf and Greenfield participating in this discussion and deliberation; and

WHEREAS, Steven M. Pare, Commissioner of Public Safety for the City of Providence, testified as to his strong objection to the nighttime special use permit because of inadequate parking plans; that he is in charge of EMS, emergency management, emergency medical services, rescues and fire apparatus; that a business as proposed, not having proper off-street parking, is going to cause congestion; that people will park both legally and illegally on the street; and that fire apparatus will not be able to get through; and

WHEREAS, Lieutenant Dean Isabelle, Providence Police Department, Commander of District 5, which encompasses the area in which the club is located, testified that on Thursday, Friday and Saturday evenings, the parking is at critical mass for street parking; that adding another venue would create a serious public safety issue as far as access for public safety vehicles to get in and out of that location; and that the Police Department strenuously objects to the request;

NOW, THEREFORE, after consideration of the application, the testimony of the witnesses, and of the entire record presented to the Board, including the site inspection of the Property and of the area surrounding the Property made by the Board, and the supporting documentation, and after carefully considering such information, on motion made by Mr. Wolf, seconded by Mr. Varin, the Board voted unanimously (5-0) to approve the requested special use permit for seven (7) parking spaces, recognizing that the Property is legal nonconforming for thirty-five (35) parking spaces, for the daytime uses for manufacturing and non-manufacturing uses allowed in an M-1 zone between the hours of 7 A.M. and 7 P.M., with Members York, Greenfield and Martinez participating in such discussion and deliberation; and on motion by Mr. Varin, seconded by Mr. Wolf, the Board voted unanimously to deny the request for special use permit for parking relief for the nighttime entertainment venue between the hours of 7 P.M. and 7 A.M., with Members York, Greenfield and Martinez participating in such discussion and deliberation; and

The Board hereby makes the following findings of fact and conclusions of law:

1. The Board finds that the Zoning Ordinance in effect at the time the Applicant filed its application for special use permit specifically allowed the use of a nightclub in the Industrial M-1 Zone and at the Property, per Section 303-Use Code 58. The Board is not required to act on the proposed use, and hereby makes findings of fact related only to the request for parking modifications as defined at Sections 707 and 707.1 of the Ordinance;

2. As regards the request for a special use permit related to both the daytime uses and the nighttime uses, pursuant to Section 902.4(B)(1) of the Ordinance, the Board finds that the proposed special use permit as set forth specifically in the Ordinance and that there are no conditions set forth therein for the authorization of such special use permit. Section 707 explicitly allows the Board to grant by special use permit modification of "any requirements" in Article VII "where the conditions or circumstances provide substantial reasons to justify such action." The Ordinance requires that "the recommendation of the Traffic Engineer shall be requested in each case but such recommendation shall be advisory only." First, the Board takes notice that the position of Traffic Engineer for the City is currently vacant, and although the City Engineer is temporarily carrying out the duties of said position, his opinion, even if requested, would be only lay testimony. Second, any recommendation would be advisory only, and not binding on the Board. Third, the Board finds that it has received no evidence indicating that the daytime uses have created any disturbances during that period;
3. As regards the request for a special use permit related to the daytime uses, pursuant to Section 902.4(B)(2), the Board finds that granting the special use permit will not substantially injure the use and enjoyment of nor significantly devalue neighboring property. The Board bases this finding on its own inspection and knowledge of the neighborhood, and finds that the existing daytime uses have existed for many years without provision for on-site parking and that granting the daytime special use permit will not have any actual impact on the neighboring property because it will merely be a continuation of existing uses and practices. The Board notes that no testimony was submitted in opposition to the granting of the special use permit for the daytime uses;
4. Pursuant to Section 902.4(B)(3), the Board finds that granting the special use permit for the daytime uses will not be detrimental or injurious to the general health or welfare of the community for the reasons stated in paragraph 3 above. Rather, the Board finds that the granting of the special use permit will benefit the public health and well being, by encouraging the rehabilitation of the Property;
5. Pursuant to Section 902.4(B)(2), the Board finds that granting the special use permit for the nighttime uses will substantially injure the use and enjoyment of and significantly devalue neighboring property. The Board bases this finding on its own inspection and knowledge of the neighborhood, and on the credible testimony of several witnesses, including Councilwoman Matos, Commissioner Pare, Lt. Isabelle, Mr. Burbank, and Mr. McMoughlin that late night parking would create traffic congestion, increase nighttime noise, and would discourage residential type occupants that provide safety and stability to the neighborhood from continuing to reside in the neighborhood. The Board notes the expert testimony of Mr. Sweeney that granting the nighttime special use permit would not substantially injure the use and enjoyment or significantly devalue neighboring property because the Applicant has operated a similar type venue in a nearby area and has not had any problems and has offered valet services and off-site parking but finds that that conclusion does not address the particulars of this proposal in that the proposed nightclub would be located on Dike Street on which another nightclub is already located and the combined amount of parking would make it very difficult for emergency vehicles to pass down the street and that the subject building shares a common wall with a building that is being developed as live/work space and that there is other live/workspace development in the immediate area;
6. Pursuant to Section 902.4(B)(3), the Board finds that granting the special use permit for the nighttime uses will be detrimental or injurious to the general health or welfare of the community and bases this finding on the reasons stated above in paragraph 5; in addition, the Board relies on the testimony of Councilwoman Matos that parking and traffic congestion in and around Dike Street is a problem for the community because Dike Street is a narrow street and if cars are parked on it, emergency vehicles will have difficulty passing through. The Board also bases this finding on the

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testimony of Commissioner Pare and Lt. Isabelle who testified that permitting nighttime parking at this volume would create a public safety hazard.

It is therefore,

RESOLVED: That the Zoning Board of Review does hereby **GRANT** the application of Iconoclast, LLC, Owner, a Special Use Permit for relief from Section 703.2 pursuant to Sections 707 and 707.1 of the Zoning Ordinance related to provisions for parking for the daytime uses 7 A.M. to 7 P.M. only. **The Board does hereby DENY the application of Iconoclast, LLC, Owner, and Mr. Alex Tomasso, Applicant, relief from Section 703.2 and Sections 707 and 707.1 of the Zoning Ordinance for relief from the provisions for parking for the proposed nighttime use 7 P.M. to 7 A.M.**

The relief granted herein for the daytime use of the building only, must be realized in accordance with the specifications and plans presented by the Applicant and made a part of this record. A copy of said specifications and plans are hereby made a part of this Resolution and must be filed with the Department of Inspection and Standards by the Applicant or its representative.

By Order of the Zoning Board of Review.


MYRTH YORK
CHAIR

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ATTENTION: SECTION 906 UNDER THE ZONING ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL USE PERMIT GRANTED BY THE BOARD SHALL EXPIRE SIX MONTHS AFTER THE DATE OF THE FILING OF THE RESOLUTION IN THE OFFICE OF THE BOARD UNLESS THE APPLICANT SHALL, WITHIN THE SIX MONTHS, OBTAIN A LEGAL BUILDING PERMIT AND PROCEED WITH CONSTRUCTION; OR OBTAIN A LEGAL BUILDING PERMIT AND A CERTIFICATE OF OCCUPANCY WHEN NO CONSTRUCTION IS REQUIRED.

NOTE: THE ORIGINAL RESOLUTION IS ON FILE IN THE OFFICE OF THE ZONING BOARD OF REVIEW AND MUST BE OBTAINED BY THE OWNER OR HIS/HER/ITS REPRESENTATIVE AND RECORDED IN THE LAND EVIDENCE RECORDS OF THE CITY OF PROVIDENCE BEFORE THE ISSUANCE OF A BUILDING PERMIT. A COPY OF THE RECEIPT ACKNOWLEDGING THAT THE RESOLUTION HAS BEEN RECORDED MUST BE SUBMITTED TO THE OFFICE OF THE ZONING BOARD OF REVIEW AND TO THE DEPARTMENT OF INSPECTION AND STANDARDS BEFORE THE ISSUANCE OF A BUILDING PERMIT.

MOTION TO APPROVE A SPECIAL USE PERMIT MADE BY:
SECONDED BY:
MEMBERS VOTING IN FAVOR OF THE MOTION:

RECEIVED:

Providence
Received for Record
Feb 15, 2013 at 12:48:26P
Document Num: 00059323
John A Murphy
Recorder of Deeds

