

A meeting of the Cranston Zoning Board of Review was called to order in Cranston City Hall Council Chambers by Chairperson Christopher E. Buonanno on **Wednesday October 11, 2023 at 6:34 pm.** Also present were Joy Montanaro, Dean Perdikakis, Paula McFarland, Carlos Zambrano, 1st alternate Craig Norcliffe, and 3rd alternate Frank Corrao III

The following matters were heard before the Board:

OLD BUSINESS

PLATTING BOARD OF APPEALS:

APPEAL OF THE DECISION OF THE CITY OF CRANSTON PLAN COMMISSION DATED JUNE 6, 2023 DENYING MASTER PLAN APPROVAL TO THE CITY OF CRANSTON ZONING BOARD OF REVIEW SITTING AS THE PLATTING BOARD OF REVIEW PURSUANT TO §45-23-66 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED AND SECTION XI ENTITLED “APPEALS” OF THE CITY OF CRANSTON’S SUBDIVISION AND LAND DEVELOPMENT REGULATIONS FOR NATICK AVE SOLAR ARRAY, 0 NATICK AVENUE, A.P. 22, LOTS 108 & 119

On a motion made by Mr. Perdikakis, and seconded by Mr. Corrao, the Board unanimously voted to **Deny** the appeal and to **uphold the decision** of the plan commission. The Board also voted to deny all claims for attorney fees. A full written decision was recorded and is incorporated herein

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**OWNER: RONALD ROSSI
APPLICANT: NATICK SOLAR, LLC F/K/A
Southern Sky Renewable Energy RI-Natick Ave-Cranston RI
RE: APPEAL OF THE DECISION OF THE CITY OF CRANSTON PLAN COMMISSION DATED JUNE 6, 2023 DENYING MASTER PLAN FOR NATICK AVENUE SOLAR ARRAY 0 NATICK AVENUE A.P. 22, LOTS 108 & 119
DECISION OF THE PLATTING BOARD FROM HEARING DATED OCTOBER 11, 2023**

On February 7, 2023, March 20, 2023, April 19, 2023, June 6, 2023, the City Plan Commission held extensive hearings on the remanded matter of the Master Plan application for the Natick Avenue Solar Project. At the June 6, 2023, the Plan Commission voted 5-3 to Deny Master Plan approval and the written Decision was recorded on June 23, 2023 and the Appellant filed a timely appeal to the Platting Board.

Natick Solar submitted a Memorandum in support of its appeal, the City of Cranston Plan Commission submitted separate Memorandum in opposition to the Appeal and Natick Solar filed a supplemental memorandum in response. This Board was supplied with the record and all briefs for review prior to the Hearing. Oral arguments were heard on September 13, 2023 and the attorneys for the parties gave lengthy oral presentations to the Board. There were additional comments from an attorney representing some of the abutters.

In reviewing an appeal from the Plan Commission, this Board may not substitute its judgment for that of the Plan Commission but must consider the issue based upon the findings and the record of the Board. See RIGL § 45-23-70 and Section XI, Article B of the Cranston’s Subdivision and Land Development Regulations. This Board may not reverse a decision of the Plan Commission except upon a finding of (1) Prejudicial Procedural Error; (2) Clear Error or (3) Lack of Support by the weight of the evidence in the record.

The Appellant made two main arguments on why the decision of the Plan Commission should be reversed or remanded and those arguments are incorporated herein. The main arguments are that the Commission committed clear error in concluding that the application was inconsistent with the Comprehensive Plan and that the application and proposed development contained potential significant negative environmental impacts. The City, in its brief and at oral argument, contended that there is evidence in the record to support both findings of fact and conclusions of law that the application was inconsistent with the Comprehensive Plan and that the application and proposed development contained potential significant negative environmental impacts

In its decision, the Plan Commission found that the applicant’s proposal contradicted and was inconsistent with the comprehensive plan citing Land Use Principal 4 & 9– To protect and stabilize existing residential neighborhoods by basing Land use decisions on neighborhoods needs and quality of life; Land Use 1 – Preserve the rural quality and critical resources of Western Cranston; Land Use 1.3 –

preserve existing farm land and open space and Land Use 13 Preserve scenic Landscape. The Motions were led by Commission Frias and Lanphear, both attorneys who have practiced for 30+ years, each of whom enumerated their reasons on the record. The record contained testimony and evidence which supports the decision to deny this project based upon its inconsistency with the Comprehensive Plan. Some of the testimony cited by the City in its memorandum was testimony by Mr. Sweeney, a Real Estate Expert, that living near a solar installation has been found to decrease property values. There was also testimony by John Carter, a Landscape Architect expert, who indicated that the buffer plan would not be able to shield the installation from the neighbors. There was also testimony from Paige Bronk, an expert in Planning and Land Use, that a solar installation has never been considered a form of Land Banking and finally extensive testimony from neighboring abutters about the about the installation of the pipeline on the property, the drastic clear cutting of trees along Natick Road and the amount of blasting needed for the project. The latter supported the portion of the motion concerning negative environmental impacts of the project. The entirety of the testimony both from experts and the neighbors contained ample evidence within the record which formed the basis for the Plan Commission's motion to deny. The Motion to deny was based upon the fact that they could not make all the required finding necessary to approve the application and this was supported by evidence in the record. As such, there was no Clear Error or Lack of Support by the weight of the evidence in the record to support a reversal of the Plan Commission decision on this issue.

Next, the Appellant contends that the decision of the Plan Commission lacks substantial justification in its decision and therefore it is entitled to reimbursement of 1.5 million dollars in fees and expenses. While its brief essentially concentrates on the instant remanded matter, the applicant failed to address the travel of this lengthy matter. At the hearing however, the applicant did acknowledge that the Plan Commission (with 7 different members) granted approval in 2019 and that it was the 3 year delay by the Superior Court in issuing its decision that was the sole reason for the initial delay. Natick also acknowledged that it moved forward with hearings, experts and approvals through the Preliminary and Final Plan stage at its own risk and was well aware of said risks. The results of the Preliminary and Final Plan decisions were voided by the Master Plan remand by Judge Vogel and not by any action of the City of Cranston or the Plan Commission. Additionally, the need for a complete re-hearing for the Master Plan had solely to do with the fact that there were new members and not any decision or action by the City of Cranston or the Plan Commission. Finally, the decision to approve this project in 2019 was a close 5-4 vote with reasoning given by members both for and against the project, each of which were substantially justified by commissioners when they voted in 2019. Similarly, Commissioners Frias and Lamphear gave a lengthy and substantial justification of their reasoning to deny the application citing expert and factual testimony in the record and three additional commission members joined in this motion.

Based upon the forgoing reasoning which were entered into the record and upon a Motion by Perdikakis, Dean and seconded by Correa, Frank, the Platting Board unanimously voted 5-0 (Montanaro, Buonanno and Norcliffe also in favor) to uphold the decision of the Plan Commission and to deny the appeal Natick Solar, LLC and also to deny the request for attorney and expert fees requested by the appellant under the RI Equal Access to Justice Act.

OLD BUSINESS

Ward 6

DOMAIN REALTY, LLC (OWN/APP) has applied to the Board to construct a new free-standing sign within the required setbacks from the street(s) and within the area required as to not impede corner visibility; and to waive the required Development Review Process for the site at **846 Oaklawn Avenue**, A.P. 15, lot 361; area 15,490 s.f. zoned C3. Applicant seeks relief per 17.92.010- Variances; Sections 17.20.100(A)- Corner Visibility; 17.72.010- Signs; 17.84, et seq- Development Plan Review. Application filed 7/06/2023. Joseph P. Carnevale, Esq.

On a motion made by Mr. Perdikakis and seconded by Mr. Zambrano, this matter was unanimously voted on to be continued to the November 8, 2023 meeting.

NEW BUSINESS

Ward 1

SUSAN P SPARKS & MATTHEW P ALDRED JT. (OWN) and DAVID SISSON ARCHITECTURE (APP) have applied to demolish an existing garage and construct a new garage with a rooftop deck connected to the existing single-family dwelling at **15 Taft Street**, A.P. 2, lot 2820, area 3,467 s.f, zoned A6. Applicant seeks relief per 17.92.010- Variances; Sections 17.20.120- Schedule of Intensity Regulations. 17.88.100- Substandard lots of record. Application filed 8/04/2023. No Attorney.

On a motion made by Ms. McFarland and seconded by Mr. Zambrano, the Board unanimously voted to **approve** the application as submitted.

The Board made their decision based on the following findings of facts:

Findings of Fact:

- The applicant has requested specific relief from the zoning ordinance in their application, namely: *17.20.120 – Schedule of Intensity Regulations*
- This application is sought for the construction of an attached garage featuring a roof-top deck and entryway into the home through the basement, where a detached garage currently stands.
- A pre-existing garage is currently located within front and side yard setbacks, and the proposed garage does not further encroach on the public right-of-way, or the adjacent parcel, any more than the existing garage.
 - The subject parcel and its neighboring parcels were platted and developed prior to the existence of the zoning code; the nature of this pre-existing non-conformity is the primary trigger for the requested relief from the zoning code.
- The proposed garage is similar in size to the existing garage and is only slightly larger in width and length, only further extending towards the side and center of the lot. The exception to this is the addition of a roof-top porch, for which planning staff have no concerns.
- The neighboring homes located on Taft Street are of the same size, dimension, and character of the subject parcel. Most of which are substandard lots of record, contain detached garages, attached garages, or other on-site amenities such as pools and patio areas within the front yard setback.
- There was testimony about the project and there was no opposition to the project.

In this case, the Board voted to accept the staff finding of fact and applying the facts above to the standard for a variance, the Board further finds that the application involves a hardship that is not due to a physical or economic disability of the applicant, that the hardship does not result primarily from the desire of the applicant to realize greater financial gain, will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the comprehensive plan, and is the least relief necessary. In granting a variance the Applicant met the requirements of the Zoning Code and relief per Section 17.92.010 Variance; Section 17.20.120 - Schedule of Intensity Regulations, Sections 17.60.010- - Accessory uses.

Ward 4

101 COMSTOCK 24, LLC. (OWN) and JOHN B. CANNING III (APP) have filed an application to operate a motor vehicle repair and service establishment (light) at **101 Comstock Parkway, Suite 24**, A.P. 36, lot 64-24, area 1.827 ac, zoned M2. Applicant seeks permission per 17.92.020- Special Use Permit. Application filed 9/05/2023. Robert D. Murray, Esq.

On a motion made by Mr. Perdikakis and seconded by Mr Corrao, the Board voted 4-1 to **approve** the application as submitted. Ms. Montanaro voted nay on this matter.

The Board made their decision based on the following findings of facts:

Findings of Fact:

- The Applicant has requested specific relief in their Application, namely:
 - 17.92.020 – Special Use Permits
 - 17.20.030 – Schedule of Uses
- In accordance with the Special Use Permit requirements (Section 17.92.020), the Applicant shall comply with the following standards:
 - The proposed use will substantially conform to the scale and context of the surrounding developments;
 - It shall be compatible with its surroundings;
 - It shall not be injurious, obnoxious, or offensive to the neighborhood;
 - It shall not hinder the future development of the City;
 - It shall promote the general welfare of the City; and
 - It shall be in conformance with the purposes and intent of the Comprehensive Plan.
- The Board found this Application in consideration with the use's compatibility with the surrounding area that the proposed use does not impose undue nuisances beyond any other by-right use on this site and the surrounding area.
 - The property is located in the M-2 zoning district, (General Industry) and is surrounded by long-standing industrial uses in an established industrial park.
 - The property is currently commercial condominiums and provides twenty-six (26) spaces for various heavy commercial and industrial uses.
- The Future Land Use Map (FLUM) designates the subject property as "*Industrial*."
 - Per the Comprehensive Plan, M-1 and M-2 are appropriate zoning classifications for Industrial land designation.
 - Staff finds that the Application is directly consistent with the Future Land Use Map designation.
- The Comprehensive Plan outlines goals, policies, and concepts pertaining to industrial (re)development which Staff find support this Application, specifically:
 - Land-Use Goal 4: Ensure that sufficient land is properly zoned and provided with adequate infrastructure to provide for the City's future industrial development needs.
 - Land-Use Policy 4.2: Protect the capacity and integrity of roads, sewers and water systems serving the Howard and *Western Cranston Industrial Parks*, in order to preserve these areas as resources for long-term industrial development.
 - Economic Development Goal 3: Add to the City's taxable property base by constructing industrial and commercial structures which are properly designed and sited in keeping with environmental, planning and design considerations.
 - Economic Development Policy 3.1: Strengthen the standards for industrially zoned land to prevent the erosion of the City's supply of land suitable for these purposes.
 - Western Industrial Development, (pg. 26) makes a recommendation for promoting economic development in the industrial area west of I-295 to "Strengthen the zoning regulations governing M-1 and M-2 districts to ensure that industrial areas are not fragmented by incompatible uses."
- The Board found that there was ample parking and the applicant spoke about his business.
- There was no other testimony either for or against the project.

In this case, the Board voted to accept the staff finding of fact and applying the facts and testimony at the hearing to above to the standard for a variance, the Board further finds that the applicant satisfied the requirements for granting a special use permit for the proposed use. Therefore the relief per Section 17.92.020 Special Use Permit is granted

Ward 4

JAMES A. BACCA & KRISTINA K. BACCA, TRUSTEES (OWN) and JAMES A. BACCA (APP) are seeking a variance to allow a garage addition to be constructed within a front setback on a corner lot at **70 Ellen Lane**, A.P. 25, lot 394; area 20,189 s.f; zoned A-20. Applicant seeks relief per 17.92.010- Variances; Sections 17.20.120- Schedule of Intensity Regulations. Application filed 9/13/2023. Robert D. Murray, Esq.

On a motion made by Mr. Norcliffe and seconded by Mr. Perdikakis, the Board unanimously voted to **approve** the application as submitted.

The Board made their decision based on the following findings of facts:

- The applicant has requested specific relief from the zoning ordinance in their application, namely: *17.20.120 – Schedule of Intensity Regulations & 17.60.010 B – Accessory Uses*
- This application is sought for the construction of an attached two-car garage which extends 7' into the front yard setback where the subject parcel fronts on Ellen Lane.
 - A thirty foot (30') front yard setback is the minimum requirement for a front yard setback, the applicants' proposal would yield a twenty-three foot (23') front yard setback.
- Total lot coverage will be increased from 9.5% to 13%, remaining under the maximum lot coverage permitted in the A20 zoning district, which is 20%.
- The proposed additional living space does not yield any additional dwelling units.
- The proposed garage does not appear to have the potential to create any new hazards or nuisances which could hinder the quality of life for or safety of neighboring residents.
- The applicant spoke about the addition and how he minimized the relief needed
- There was no other testimony either for or against the project

In this case, the Board voted to accept the staff finding of fact and applying the facts above to the standard for a variance, the Board further finds that the application involves a hardship that is not due to a physical or economic disability of the applicant, that the hardship does not result primarily from the desire of the applicant to realize greater financial gain, will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the comprehensive plan, and is the least relief necessary. In granting a variance the Applicant met the requirements of the Zoning Code and relief per Section 17.92.010 Variance; Section 17.20.120 - Schedule of Intensity Regulations

Stanley Pikul
Secretary, Zoning & Platting Boards

The meeting was adjourned at 9:40 PM
