

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
APRIL 19, 2023

Members Present: Farrell, Wright, Christ, Summers
Presence Noted: Raymond Reich, Building Commissioner
Michael O'Shea
Kate Straub, Planning and Zoning Coordinator

Council Members Present: Jeanne Gallagher, Ward 3 Council Member
Christina Morris, At-Large Council Member

Mr. Farrell opened the April 19, 2023 meeting of the Board of Zoning and Building Appeals at 7:00 p.m. Mr. Farrell said that they received a lot of information, including meeting minutes and plans for the new office building.

Law Director O'Shea offered the public in attendance a copy of the meeting minutes of the March 20, 2023 Design and Construction Board of Review where the project was denied final approval. He said that this is not a public hearing, so there will not be an opportunity for the public to speak at the podium.

1. SEAN KENNEDY – 19933 LAKE RD. – APPEAL HEARING – To appeal the decision of the Design and Construction Board of Review for the New Office Building at 19933 Lake Rd. for Sean Kennedy – Final approval was denied on March 20, 2023. (Section 1125.11(d)(4)). Attorney Michael O'Donnell is present on behalf of Sean Kennedy and Technology Recovery Group, along with Julie Trott, Architect with Vocon and Bobbie Krueger of the Krueger Group.

Mr. Farrell said that there are only 4 Board members to hear this tonight, as opposed to 5 members, so the applicant will need 3 out of 4 votes in the affirmative. He said that they are not discussing any of the other variances that were granted. This project has been discussed in many Planning Commission and Design Board meetings, as well as this BZA, and this is a permitted use of the property based on zoning.

Mr. Farrell swore the parties in. Attorney O'Donnell said that they are here to appeal the March 20, 2023 decision of the Design and Construction Board of Review denying Sean Kennedy approval to build an office building at 19933 Lake Rd. He asked that the letter he sent to the City on March 30, 2023 explains the grounds for the appeal and he asked that the letter be incorporated into the record. He said that they went back and forth a number of rounds with the Design Board and the ultimate issue the members centered around was the north elevation on Lake Rd., which was referred to as a glass feature wall that protrudes out from building a distance of 18". He said that there is a very similar identical glass feature wall on the west side of the property that there was never any discussion about and the Design Board did not express an issue with that wall. The Design Board said they wanted the feature wall to retract inward to the south, behind the brick setting of the building rather than protrude to the north on Lake Rd. and in front of the brick setting of the building. He explained that the desire of the Design Board regarding the glass feature wall was ultimately requested to have the glass feature wall protrude out to the north as originally drawn, but would only go up 2 stories, making it 35' tall. It would not go the full additional 10' all of the way to the 45' variance height which had already been granted by this Board. He said that it was in the

January Design Board meeting that the Board said that they were “98% there” and they just had to get this figured out. So, in their view this is the decision of the Board that they are here to appeal.

Mr. Farrell said that this Board had all of the minutes from those meetings and they took note of the Design Board’s remarks before they granted all of the variances. He agrees that from reading the minutes of their March 20, 2023 meeting, the last statement that was made by the Design Board was, “They all agree that they think it’s good that the applicant got their variances. They just want the middle front of the building on Lake Rd. to maintain the architectural vocabulary of the neighborhood. They would like them to lower the middle of the top of the front wall.”

Mr. Farrell said that he is not sure what else they can ask them because they went through all of this the last time when they discussed the variances. Ms. Summers asked if they at any time considered removing the top piece. Mr. O’Donnell said that it was discussed as a compromise with the Design Board but the owner ultimately decided that if you do that, then the building loses its symmetry. He said that as cars go by from the west to the east, the symmetry is one of the aspects that is important to the owner. Ms. Summers said that she agrees with Mr. O’Donnell that she thinks it will look strange if they do that. She asked what the Design Board meant by, “Architectural Vocabulary” because she is sure it can’t be found in any dictionary. Ms. Trott said that she thinks they were looking for height consistency and Mr. O’Donnell said that they used Bearden’s, which is a one-story building, as an example of how this design wouldn’t fit. In the March 21st Planning Commission meeting, Chairman Bishop addressed that, saying that it is one-story tall today but they could be at a meeting here next week with Bearden’s who could want a three story building. Ms. Summers said that simply taking that small portion off of the top will not bring the whole building down. She just wanted to get an idea of what they are really talking about here and she thinks she understands. Regarding the Design Board wanting them to bring the glass portion inward of the brick portions, still makes them 3 floors tall. Mr. O’Donnell said that they also lose important interior square footage.

Mr. Farrell said that throughout the minutes, he thinks the Design Board was comfortable with the way they designed it with 2-stories of brick and the third story stepping back. They seem to be comfortable with all of that but it came down to this one element. Mr. Wright said that he agrees with the comment about the vocabulary because he is from the architectural profession. If the front elevation were to come down to the 2-story level, then he would want to see the west elevation come down as well, so that the vocabulary is symmetrical. He didn’t read anything about why they did not suggest maintaining a symmetry if they wanted that front element to come down. Ms. Trott said that they cannot lower the western glass feature area because that is where the egress stairs are located, per Building Code. So it must extend up to the third floor. Mr. Wright said that point further solidifies the need to have this front elevation reflect that same height as the western elevation.

Mr. Christ said that he is not a registered architect, but the Design Board raised a question of color of the metal, which is black now, and asked if they looked at any other colors or opinions. He said that he thinks that is a very subjective item and probably shouldn't be in front of this Board. Since it was raised, he would like a response. Attorney O'Donnell that if they look through the Design Board minutes, they will see that there were just two members of that Board except at the final meeting, where they were just voting on Final Approval, a third member had just been appointed to the Board. They thought they were at this final meeting to discuss the last 10 feet of the glass feature wall and he did bring up the question of color. At that point they were of the opinion that this was too far down the road and the Board had never suggested that at any prior meeting. Mr. Christ said that by putting the feature wall back and lowering it, is defeating the whole purpose of that piece, which he sees as creating a very good interplay along the street. They often see in residential projects that there is "too much house" all in a line on a street, which is one of the big negatives. Having interplay with stepping back and forward with recesses, he sees as a positive. He said the fact that it goes up, it ties the roof in that is set back and if it doesn't do that, there is a disconnect which bothers him. Attorney O'Donnell said that the symmetry and square footage that includes some meeting space which adds to the beauty of the building, were all reasons for wanting to maintain the glass feature wall as presented.

Ms. Trott said that Attorney O'Donnell summarized it correctly and to help offset the size of the building, they have used the insets and outsets of the design to try to break down proportions and provide that variety on the streetscape. Their desire was for some variation across the elevation, which helps break down the scale of the building.

Mr. Farrell said that they are here to look at what the Design Board did. Mr. Christ said he will read off what their responsibilities are and this Board is not trying to overstep what they do. This is an appeal to this Board, so they are reviewing their procedures in a way. Mr. Christ read each of the powers and duties of the Design Board contained in Chapter 1125.07(c) aloud. He said he does not believe they raised any negative issues regarding Building mass and the only thing regarding scale was the height of the center piece on the Lake Rd. elevation. The relationship to nearby buildings and pedestrian walkways was kind of stated from the opposite side in that this is a legal use of the building and he is minimizing that part of it. The only thing regarding the view of the building is what he stated relating to the fact that the building would not work as well without the symmetry of the front feature wall. The Board and the applicants agreed with Mr. Christ's assessment. Regarding windows, Mr. Christ said he does not think that the Design Board objected to those. In his opinion, this feature wall works in a positive manner. Regarding exterior detail in relationships in item C., Mr. Christ said that this might be the largest part they are looking at here. They have obviously stated that they want the front reduced and the various reasons for that. He does not believe that a porch is any part of this aside from the recessed third floor, which they had no objection to. They didn't even seem to object to the overhang on the third floor. Regarding roof shape, the main roof and the setback roofs were not part of the Design Board's conversation regarding objection. Regarding the glass feature wall, this Board discussed the fact that this is a functioning, working piece. Regarding item E., Mr. Christ said that the only thing he recalls is the request to consider other colors at the very last meeting, which didn't

seem to be echoed by anyone else. It was made by one person who suggested the color change but was not completely familiar with the previous decisions and discussions and it was not considered by the other two members. They also did not object to the compatibility of the exterior materials. He said that it is his opinion that this enhances the pedestrian's visual appearance of this building and feels that it is a positive. Mr. Farrell said that at some point during the discussions in the Design Board's meetings, they were looking for a design element on that side of the building that evoked an entrance to the building, even though it is not an entrance, he believes that is the element that the architect came up with. Mr. Christ said that he does not believe there was reference to anything they haven't already covered in this conversation. This Board received and reviewed all minutes of the Design Board relating to this project.

Mr. Farrell said he has no comments in disagreement to anything Mr. Christ stated. He thinks the Design Board did their duty and in some ways, this one item is more of a subjective item, it is a small part of the 45' height that they have already approved so he does not see a need to change their decision.

Mr. O'Donnell said he would like to add for the record that Rocky River Codified Ordinance 1127.27(c) which states that the Design and Construction Board of Review shall not attempt to prescribe the style of the architecture as long as the architecture, style and design under consideration meet the standards set forth in the Development Code. He said he feels that is one of the ways that the Design Board miss stepped because they were trying to substitute their style for the owner's style, which is inappropriate per this provision of the Code. Further, in relation to the Duties and powers of the Board of Zoning and Building Appeals, the Code also sets forth those powers. The Code gives the BZA the power to grant variances, which was done in this case, and also to review decisions from the Design Board. It is their position that if the decision of the Design Board is not reversed, then the Design Board would have turned the Code on its head. The BZA would have granted the property owner a variance to go up to 45' and the Design Board will in essence, have reviewed the BZA's decision to not permit this to go to 45' and that is not what the Code allows. This BZA can review the Design Board's decision but the Design Board is not permitted to review the BZA's decisions. For that reason as well, they submit that the Design Board overstepped and exceeded their authority.

Mr. Christ said that he wants to be sure that for the record, the statement from Attorney O'Donnell should be incorporated into his comments as he read thru the Design Board's duties and responsibilities. The Board members agreed with that. Mr. Farrell said that when they discussed the height variance, they were looking at all parts of the design and they approved all of it. They did not take away any part of the height.
The meeting adjourned at 7:40 pm.

Mr. Christ moved to uphold the appeal of the final decision of the Design and Construction Board of Review for a new office building for 19933 Lake Rd. for Sean Kennedy on March 20, 2023. He said that the applicant has indicated their grounds and rationale for the appeal.

An affirmative vote **will uphold the appeal** of the Design Board's Decision. Mr. Christ seconded.

4 Ayes – 0 Nays
Passed

Patrick Farrell, Vice Chairman

Richard Christ, Secretary

Date: _____