

**BOROUGH OF LAKE COMO
1740 MAIN STREET
LAKE COMO, NJ 07719**

**PLANNING BOARD AGENDA
*2nd AMENDMENT***

**AUGUST 14, 2023
REGULAR MEETING**

**7:00 PM
LAKE COMO**

I. CALL TO ORDER

II. SUNSHINE LAW:

THE NOTICE REQUIREMENTS OF R.S. 10:4-18 OPEN PUBLIC MEETINGS ACT HAVE BEEN SATISFIED BY THE PUBLICATION OF THE REQUIRED ADVERTISEMENT IN THE COAST STAR ON FEBRUARY 2, 2023, AND BY POSTING IT ON THE BULLETIN BOARD IN BOROUGH HALL. A COPY OF THE SAID NOTICE HAS BEEN FILED WITH THE BOROUGH CLERK AND SENT TO THE COAST STAR. NOTICE OF THE MEETING WILL ALSO BE POSTED ON OUR WEBSITE. ALL MEETINGS ARE OPEN TO THE PUBLIC.

**** FLAG SALUTE ****

III. ROLL CALL

**IV. MEMORIALIZATION OF RESOLUTION NO. 2023-06
ZERO'S ENT. T/A BAR ANTICIPATION
703-707 SIXTEENTH AVENUE
BLK - 22 LOT - 22, 23 & 24**

**V. REQUEST TO CARRY VARIANCE APPLICATION
BYRNE, MEGAN & RICCIARDI, MICHAEL
718 BURTON PLACE
BLK - 28 LOT - 6.01**

VI. UPDATES & CONTINUED PLANNING & ZONING DISCUSSIONS

- 1. INFORMAL HEARINGS**
- 2. DIGITAL MEETINGS (NO PAPER, NO PICK UP BOX)**
- 3. REDEVELOPMENT COMMITTEE JOE CAVALUZZI & ALAN HILLA
(WILL UPDATE AS NEEDED)**

VII. FUTURE MEETING DISCUSSIONS

**PLANNING BOARD APPLICATION AND ESCROW FEES, STONES IN DRIVEWAYS,
GRADING PLAN**

VIII. MINUTES TO BE APPROVED

**MINUTES TO BE APPROVED AS TYPEWRITTEN REVIEWED AND
E-MAILED.**

IX. MOTION TO ADJOURN

THE NEXT REGULAR MEETING OF THE LAKE COMO PLANNING BOARD WILL BE HELD ON MONDAY, SEPTEMBER 11, 2023 AT 7:00 PM IN THE MEETING ROOM. ALL MEETINGS ARE OPEN TO THE PUBLIC.

TIMOTHY B. MIDDLETON, ESQ

ATTORNEY AT LAW
VALLEY PARK PROFESSIONAL CENTER
2517 HIGHWAY 35
BUILDING K - SUITE 101
MANASQUAN, NEW JERSEY 08736
(732) 223.8171 | (732) 223.9893
Middletonlaw2517@gmail.com

August 14, 2023

VIA E-Mail

Viveca Graham, Planning Board Secretary
Lake Como Municipal Complex
1740 Main Street
Lake Como, New Jersey 07719

**RE: Byrne & Ricciardi
718 Burton Place, Lake Como
BLOCK 28 LOT 6.01 Formally 6 & 7**

Dear Ms. Graham;

As per your conversation with my office, due to the passing of our Architect's mother, this letter will confirm our request to have the application in the above referenced matter carried to the September 11th, 2023, date.

Thank you for your time.

Very truly yours,



Timothy B. Middleton

TBM:jb
CC: Client

APPLICANT: ZERO ENTERPRISES, INC.
ATTORNEY: GREGORY VELLA, ESQ.
APPLICATION NO. 2023-06
BLOCK 22, LOT 22
PROPERTY: 707 16TH AVENUE

LAKE COMO PLANNING BOARD

**RESOLUTION OF THE PLANNING BOARD
OF THE BOROUGH OF LAKE COMO,
COUNTY OF MONMOUTH AND STATE OF NEW JERSEY**

WHEREAS, Zero Enterprises, Inc., is the owners of the property located at 707 16th Avenue, Block 22, Lot 22 in the Borough of Lake Como, County of Monmouth, and State of New Jersey, hereinafter referred to as the “Applicants”, and have filed an application with the Planning Board of the Borough of Lake Como, hereinafter referred to as the “Board;” and

WHEREAS, The Applicants have applied for approval of the expansion of the existing two-story building and associated accessory structures. The Applicant is proposing a 557 square foot front building addition encompassing the front of the first and second floors of the main building, including internal remodeling, a 1,556 square foot outdoor deck enclosure and a new 1090 square foot gazebo to replace the existing 416 square foot gazebo bar. The existing use and proposed additions are conforming for the zone, but other existing conditions are not conforming; and the property lacks required property, nor has the Applicant been in compliance with prior Board resolutions concerning parking,

WHEREAS, the Applicant appeared before the Board on numerous occasions on this application going back more than three years ago and then continuing on several dates, including July 10, 2023. The 2023 hearings were noticed because of the delay of several years. All appropriate notice was given, and the Board has jurisdiction to hear the application; and

WHEREAS, the Board having given due consideration to the exhibits submitted into evidence, and testimony presented at the meeting and does hereby makes the following findings of fact and conclusion of law:

1. The Applicant property is on the southern side of 16th Street to the west of Green Street. This is the Borough's general business zone. The property consists of a two-story building used as a tavern/restaurant and other accessory structures occupying virtually the entire parcel. The business is known as Bar Anticipation.

2. The application process began with the filing of the zoning application in August 2018. The first appearance before the Board was in the winter of 2020, prior to Covid. New notice was provided before the hearings resumed in 2022.

3. The following exhibits were marked into evidence,

A-1 Final site plan, prepared by Reme and Associates dated December 17, 2017, and revised July 21, 2021

A-2 Architectural plans prepared by George Sincox dated November 6, 2019

A-3 Mounted color exhibit prepared by Marc Reme

A-4 Construction, permit, and zoning approval from Mark Fessler

4. The proposed addition expanding the front of the building increases the size of the building by 557 square feet and increases the parking obligation by nine spaces. Testimony provided by the Applicant is that the gazebo will be on the same concrete pad as the existing structure in the rear of the property and the rear bar will be enclosed, but that neither will increase capacity to the site or parking obligations. However, based on prior resolutions the Applicant is obligated to provide 89 off-street parking spaces on a lot on the west side of the train tracks, in the Borough of Belmar. The offsite lot has not provided the required 89 spaces as the lot is frequently in use by a demolition business owned by a principal in Zero Enterprises. Arguably, the gazebo renovation and enclosure of the rear bar do not change the parking requirements on the property, but the proposed improvement to the main building does, thus requiring variance relief.

5. The Applicant proposes adding 21 spaces to the front parking lot and improving drainage so that the puddles that currently are forming are eliminated. In addition, the Applicant has proposed that the lot on the west side of the tracks, within nine months of the application being approved, will be linked to the Applicant by deed, so they are owned by identical parties, Zero Enterprises, Inc.

In addition, appropriate deed restrictions will be put into place in both deeds, so that the offsite property cannot be sold independently of the 16th Avenue property. In addition, within nine months, the Applicant will ensure that the property is appropriately paved and lined to provide the 89 spaces and signage will be provided on both sides to indicate that the lot is to be used for Bar A parking exclusively and going forward the 89 parking spaces will always be available to bar patrons.

6. At the July 10, 2023, hearing testimony was provided by Mark Reme, a licensed engineer in the State of New Jersey, with an office in Allentown, New Jersey, Reme and Associates. Mr. Reme addressed the issues raised in the Board Engineer's May 8, 2023, letter concerning the gazebo, the rear bar enclosure, the on-site parking lot addition, drainage, and landscaping.

7. As part of the Applicant's presentation, the attorney for the Applicant, Greg Vella, Esq., requested that the Board approve the project with the conditions that the building permits for the work on the main building, not be issued until such time as the offsite parking lot was perfected and all issues resolved. The rationale offered was that the gazebo and enclosed rear bar did not increase the parking requirements, while the work to the front building did increase parking obligations. After some discussion on the record with the Board, the Applicant's proposal was refined as follows:

- A. The ownership of the offsite parking and the main lot and location of Bar A would be combined by deed in identical common ownership. Proof of same would be provided to the Board Attorney.
- B. A deed restriction will prevent the sale of the offsite parking lot without approval of the Board. Other vehicles may use the lot only if the 89 spaces for Bar A are still protected.
- C. The offsite lot will be modified, paved and striped if necessary to provide for the 89 parking spaces for Bar A use only, as previously required by resolutions of this Board. This work will be done within nine months of the approval of this resolution. Appropriate signage on the Lake Como property owned by the Applicant and on the offsite lot will be provided to direct patrons of the bar to this lot and must be approved by the Board Engineer.

- D. However, building permits will be granted for the parking lot revisions, outdoor deck enclosure and the new gazebo. No building permits will be approved by the Borough for the main building until such time as the parking lot to the west of the train tracks is open for patron use, and the parking lot will be operation with signage, and striping for all 89 spaces.
- E. The Applicant is representing that the 89 spaces will be operation and available one hundred percent of the time, without exception.

WHEREAS, the Board finds that the application with the enclosure of the rear bar, the restoration/rebuilding of the gazebo, and the two-story expansion of the front of the building, along with the addition of 21 parking spaces on site with drainage improvements to the parking lot, will not be a detriment to the Borough's zoning and master plan, if the prior obligation of 89 parking spaces off site are met by the Applicant, with the linkage of the lot via common ownership and deed restrictions, along with the lining and striping of the lot to provide the 89 spaces,

According to the following conditions:

1. The Applicant has to pay all application, fees, escrows, and taxes which are due or may become due to the municipality.
2. The Applicant shall submit to the bar engineer any and all plans required, including but not limited to recharge system for the front parking lot signage for parking, including, but not limited to the lot on the west side of the train tracks, any, and all plans required by the Borough Engineer for the improvements necessary for the 89 spaces required by this resolution.
3. Prior to the retaining of any building permits, deed restrictions shall be approved by the Board Attorney, as at forth in this resolution. In addition, deeds for both properties must be supplied to the Board Engineer, showing identical ownership of both properties. Deeds must be executed and recorded prior to the obtaining of a building permit for work on the front building.
4. Development of this property must be consistent with the testimony and evidence provided to the Board.

5. Compliance with any and all other state county and municipal rules and regulations not otherwise set forth herein, but which may be applicable, including any, and all permits or approvals required for the project or any other conditions intentionally or unintentionally, not set forth in this memorialization, but which are fully part of the record of the hearing of this matter.

RESOLUTION 2023-06

MOVED BY:

SECONDED BY:

ADOPTED BY THE FOLLOWING VOTES:

AYES:

NAYS:

ABSTAIN:

The above resolution was approved by the Planning Board of the Borough of Lake Como at its regular meeting on the 10th day of July, 2023. I do hereby certify that the foregoing is a true and correct copy of Planning Board Resolution No. 2023-06.

CHAIRMAN, JOE CAVALUZZI

*Borough of Lake Como, NJ
Tuesday, September 6, 2022*

Chapter 17. Development Regulations

§ 17-10.6. Nonconforming Buildings and Uses.

[Ord. No. 90-535; Ord. No. 99-662; Ord. No. 2010-842]

- a. **Existence and Continuance.** At the date of adoption of this chapter, any lot, building or structure which has been and is still being used for a purpose which does not conform to the requirements of the particular zone where the lot, building or structure is situated and which use is lawful and properly licensed, if required, and is not prohibited by any other existing ordinance of the Borough or any statute of the State of New Jersey or the United States of America, the use may be continued, subject to other provisions contained in this section and any change of title or possession shall not affect the continuance of such existing use. The existing use may be continued as aforesaid, provided further however, that:
1. No nonconforming lot shall be further reduced in size.
 2. No nonconforming building shall be enlarged, extended or increased, unless such enlargement would tend to reduce the degree of non-conformance.
 3. No nonconforming use may be expanded.
 4. No structural alterations or changes shall be made to any building, accessory building, garage or structure containing a nonconforming use.
 5. No structural alterations shall be made in any building or structure containing a nonconforming use, to change such a building or structure to another or an additional nonconforming use.
 6. No building shall be constructed upon a conforming lot which lot contains a nonconforming building or use.
- b. **Revision and Change of Use.**
1. No nonconforming use of a lot, building or structure shall, if once changed into a conforming use, be changed back to a nonconforming use.
 2. A nonconforming use shall not be changed to, substituted by or replaced by another nonconforming use.
- c. **Abandonment.** A nonconforming use shall be adjudged abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of a tenant or owner. Such use shall not thereafter be reinstated and the structure shall not be reoccupied, except in conformance with this chapter.
- The provisions of this subsection shall refer to the actual use and to the use indicated by the form and construction of the building or structure.
- d. **Unsafe Buildings.** Nothing in this section shall be construed so as to prevent the strengthening or restoration to a safe and lawful condition of any part of a building or structure declared to be unsafe or unlawful by the Building Official, Chief of the Fire Department or other duly authorized Borough official.

- e. **Change of Location.** No nonconforming use of any portion of a lot, building or structure may be moved to any other part or parcel of land upon which the same was conducted at the time of the adoption of this chapter.
- f. **Restoration.** If any nonconforming building or structure shall be partially destroyed or damaged by reason of windstorm, fire, explosion or other act of God or the public enemy, repairs and restoration of such nonconforming building or structure shall take place within one year from the date of such destruction and damage. Complete restoration must be achieved within one year of commencement of repairs or restoration. Otherwise such resumption and continuance of the nonconforming usage shall not be permitted.
- g. **Alteration.** Upon application to the Board after notice to property owners and residents within two hundred (200) feet of the affected property, as provided by the Municipal Land Use Law of the State of New Jersey, a nonconforming building structure may be altered (but not enlarged or extended) during its life, to an extent not exceeding in aggregate 10% of the recorded true value, as appraised in the records of the tax assessor of the Borough, unless the building is changed to a building conforming to the requirements of this chapter.
- h. **Construction Approved Prior to Chapter.** Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit and the ground story framework of which, including the second tier of beams, shall have been completed within six (6) months of the date of the permit and which entire building shall be completed according to such plans as filed within one year from the date of adoption of this chapter.
- i. **District Changes.** Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any non-conforming uses existing therein or created thereby.
- j. **Lots and Structures.**
 - 1. Whenever title to two or more contiguous lots is held by the same owner, and one or more of said individual vacant lot (lots) should, by reason of exceptional shallowness, topographical conditions, substandard area or yard space or similar measurements, not conform with the minimum lot area and dimension requirements for the zone in which it is located, even if the said lot (lots) is part of a subdivision which has not been developed for 10 years, the contiguous lot (lots) of said owner shall be considered as a single lot.
 - 2. Any existing lot on which a building or structure is located and which lot does not meet the minimum lot size, or a structure which violates any yard requirements, may have additions to the principal building and/or construction of an accessory building without an appeal for variance relief provided: (a) the existing use(s) on the lot are conforming to the permitted use(s) stipulated in this chapter for the lot in question; (b) the permitted building coverage is not exceeded; (c) the accessory building and/or addition do not violate any other requirements of this chapter such as, but not limited to, height, setback and parking; (d) the property owner has filed a zoning permit application with the Building Department which the zoning reviewer has determined meets the requirements in this chapter; (e) the property owner files for an informal hearing to the Lake Como Planning Board accompanied by a check in the amount of one hundred twenty-five (\$125) dollars made payable to the Borough of Lake Como.