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October 18, 2017

Email: pborghi@redbanknj.org
Pamela Borghi, Clerk
Borough of Red Bank
90 Monmouth Street
Red Bank, NJ 07701

Re: OPRA Request
Applicant: David Popkin
Property Address: 170 Monmouth Street
Red Bank, NJ
Block 36, Lots 8, 23.01 through 23.06

Dear Sir/Madam:

Enclosed please find a completed OPRA request. In addition, kindly provide me with the following documents with regard to the Application filed by David Popkin in connection with its application to the Red Bank Zoning Board of Adjustment for properties designated as Block 36, Lots 8, 23.01, 23.02, 23.03, 23.04, 23.05 and 23.06, commonly known as 170 Monmouth Street, Red Bank, New Jersey within the Borough's BR-1 Zone with Train Station Overlay, for Use Variance Approval (hereinafter "Application").

1. A copy of the CD's, audio tapes and transcripts in connection with any hearings on the Application including but not limited to the hearing on July 20, 2017.
2. A complete copy of all notices, affidavits of publication, affidavits of service, certification of service, certified mailings, and property owner list, provided in connection with the Application.
3. Copy of any and all 18 pieces of Evidence/Exhibits entered in connection with the application at any hearings, as detailed in pages 2-3 of the September 7, 2017 Resolution (copies of the relevant pages are attached hereto for your reference).
4. All agendas and minutes of any hearings on the Application.

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August 15, 2017
Pamela Borghi, Clerk

Please contact my secretary, Jo Ann or Carol, at (732) 212-9930, Ext. 0 to advise of the fee for the tapes and same will be forwarded to you immediately. Also, if any documents can be emailed, please send them to gasiorowskilaw@gmail.com

In addition, once you have completed the OPRA request, kindly advise of the fee and payment will also be forwarded to you for the required amount.

Once again, thank you for your continued courtesies in this matter.

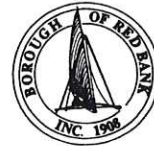
Very truly yours,

R.S. GASIOROWSKI

RSG:jai
Enclosures



BOROUGH OF RED BANK
OPEN PUBLIC RECORDS ACT REQUEST FORM
90 Monmouth Street Red Bank, NJ 07701
PH: 732-530-2740 FAX: 732-530-2757
pborghi@redbanknj.org
Pamela Borghi, Municipal Clerk



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information – Please Print

First Name Roe MI S Last Name Gasicowski
E-mail Address gasicowski@redbanknj.org
Mailing Address 54 Broad St.
City Red Bank State NJ Zip 07701
Telephone 732-212-9930 FAX 732-212-9980
Preferred Delivery: Pick Up ☐ US Mail ☒ On-Site ☐ Inspect ☐ Fax ☐ E-mail ☒
If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.
Signature _____ Date 10/18/17

Payment Information

Maximum Authorization Cost \$ _____
Select Payment Method
Cash ☐ Check ☐ Money Order ☐
Fees: Letter size pages - \$0.05 per page
Legal size pages - \$0.07 per page
Other materials (CD, DVD, etc) – actual cost of material
Delivery: Delivery / postage fees additional depending upon delivery type.
Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Please see attached

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____
Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

In Progress - Open _____
Denied - Closed _____
Filled - Closed _____
Partial - Closed _____

AGENCY USE ONLY

Tracking Information		Final Cost	
Tracking #	_____	Total	_____
Rec'd Date	_____	Deposit	_____
Ready Date	_____	Balance Due	_____
Total Pages	_____	Balance Paid	_____
Records Provided			

Custodian Signature _____

Date _____

SCHEDULE A

TO October 18, 2017 OPRA REQUEST

This OPRA Request applies to the Application filed by David Popkin in connection with its application to the Red Bank Zoning Board of Adjustment for properties designated as Block 36, Lots 8, 23.01, 23.02, 23.03, 23.04, 23.05 and 23.06, commonly known as 170 Monmouth Street, Red Bank, New Jersey within the Borough's BR-1 Zone with Train Station Overlay, for Use Variance Approval (hereinafter "Application").

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4. All agendas and minutes of any hearings on the Application.

EVIDENCE / EXHIBITS

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- *Architectural Plans prepared by Nelson Benavides, Architect, PC, dated June 20, 2017, last revised July 7, 2017, consisting of 13 sheets, introduced into Evidence as A-1;*
- *Development Permit Application, dated June 20, 2017, introduced into Evidence as A-2;*
- *Zoning Denial Letter dated June 22, 2017, introduced into Evidence as A-3;*
- *Disclosure of Ownership, introduced into Evidence as A-4;*
- *Intent to proceed, introduced into Evidence as A-5;*
- *Review Memorandum from the Borough's Director of Planning and Zoning, dated July 7, 2017, revised July 19, 2017, introduced into Evidence as A-6;*
- *13 photographs of the subject property (various angles) taken by the Borough's Zoning Office on or about June 22, 2017 and July 19, 2017, collectively introduced into Evidence as A-7;*
- *Site Plan for the Two River Theatre Application, prepared by InSite Engineering, dated January 26, 2017, consisting of 14 sheets, introduced into Evidence as A-8;*
- *Partial Survey, prepared by unidentified, undated, introduced into Evidence as A-9;*
- *Review Memorandum from the Red Bank Environmental Commission, undated, introduced into Evidence as A-10;*
- *Lease Agreement (Front Street Corporation and 170 Monmouth Street Associates, LP), dated March 21, 1985, introduced into Evidence as A-11;*
- *Lease Estoppel Certificate, signed on or about June 19, 2008 (Front Street Corp and Braha Associates), introduced into Evidence as A-12;*

- *Amendment to Lease (Front Street Corporation and 170 Monmouth Street Associates), signed on or about March 10, 2004, introduced into Evidence as A-13;*
- *Assignment and Assumption of Lease (Braha Associates and JMH Realty, LLC, dated on or about July 8, 2008, introduced into Evidence as A-14;*
- *Site Plan, prepared by Nelson Benavides, Architect "plan review only", sheet G3, dated June 20, 2017, consisting of 2 sheets, introduced into Evidence as A-15;*
- *Review Memorandum from the Borough's Assistant Construction Official / Fire Protection Sub Code Official, dated July 19, 2017, introduced into Evidence as A-16;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

WHEREAS, sworn testimony in support of the Application was presented by the following individuals:

- Nelson Benavides, Architect;
- Edward O'Neill, Planner
- Edward J. McKenna, Jr., Esq., Appearing

WHEREAS, the Borough's Director of Planning and Zoning, Glenn Carter, Professional Planner, was also sworn with regard to any information/testimony he would provide in connection with the subject Application; and

DEPOSITS

The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the documents requested will cost in excess of \$5 to reproduce.

Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):

(To be completed by the Custodian of Records – check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. Response is due to requestor as soon as possible, but no later than seven business days.)

N.J.S.A. 47:1A-1.1

- ☐ Inter-agency or intra-agency advisory, consultative or deliberative material
- ☐ Legislative records
- ☐ Law enforcement records:
 - ☐ Medical examiner photos
 - ☐ Criminal investigatory records (however, N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed)
 - ☐ Victims' records
- ☐ Trade secrets and proprietary commercial or financial information
- ☐ Any record within the attorney-client privilege
- ☐ Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security
- ☐ Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein
- ☐ Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software
- ☐ Information which, if disclosed, would give an advantage to competitors or bidders
- ☐ Information generated by or on behalf of public employers or public employees in connection with:
 - ☐ Any sexual harassment complaint filed with a public employer
 - ☐ Any grievance filed by or against an employee
 - ☐ Collective negotiations documents and statements of strategy or negotiating
- ☐ Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- ☐ Information that is to be kept confidential pursuant to court order
- ☐ Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency
- ☐ Social security numbers
- ☐ Credit card numbers
- ☐ Unlisted telephone numbers
- ☐ Drivers' license numbers
- ☐ Certain records of higher education institutions:
 - ☐ Research records
 - ☐ Questions or scores for exam for employment or academics
 - ☐ Charitable contribution information
 - ☐ Rare book collections gifted for limited access
 - ☐ Admission applications
 - ☐ Student records, grievances or disciplinary proceedings revealing a students' identification
- ☐ Biotechnology trade secrets N.J.S.A. 47:1A-1.2
- ☐ Convicts requesting their victims' records N.J.S.A. 47:1A-2.2
- ☐ Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest) N.J.S.A. 47:1A-3.a.
- ☐ Public defender records N.J.S.A. 47:1A-5.k.
- ☐ Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and privileges created by State Constitution, statute, court rule or judicial case law N.J.S.A. 47:1A-9
- ☐ Personnel and pension records (however, the following information must be disclosed:
 - An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
 - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
 - Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information N.J.S.A. 47:1A-10

N.J.S.A. 47:1A-1

- ☐ "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

Burnett v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

Executive Order No. 21 (McGreevey 2002)

- ☐ Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- ☐ Records exempted from disclosure by State agencies' proposed rules.

Executive Order No. 26 (McGreevey 2002)

- ☐ Certain records maintained by the Office of the Governor
- ☐ Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- ☐ Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- ☐ Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- ☐ Information in a personal income or other tax return
- ☐ Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- ☐ Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- ☐ Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.
(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

REQUEST FOR RECORDS UNDER THE COMMON LAW

If, in addition to requesting records under OPRA, you are also requesting the government records under the common law, please check the box below.

A public record under the common law is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

☐ Yes, I am also requesting the documents under common law.

If the information requested is a "public record" under common law and the requestor has a legally recognized interest in the subject matter contained in the material, then the material must be disclosed if the individual's right of access outweighs the State's interest in preventing disclosure.

Please set forth your interest in the subject matter contained in the requested material:

Note that any challenge to a denial of a request for records under the common law cannot be made to the Government Records Council, as the Government Records Council only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court.

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the **Name of Agency**, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the **Name of Agency**.
5. **You may be charged a 50% or other deposit when a request for copies exceeds \$25.** The **Name of Agency** custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of \$5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the **Name of Agency** must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the **Name of Agency** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the **Name of Agency** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.