

RICHARD N. CAMPISANO, ESQ.
1081 AVENUE C
BAYONNE, N. J. 07002
ATTORNEY FOR DEFENDANT
CITY OF BAYONNE ZONING BOARD
ATTORNEY I.D. NO. 005061983

ABBA KARAS REALTY, LLC

Plaintiff,

vs.

CITY OF BAYONNE ZONING
BOARD

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-1804-22

Civil Action

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between ABBA KARAS REALTY, LLC ("Applicant"); and the CITY OF BAYONNE ZONING BOARD, a land use board organized under the Municipal Land Use Law, N.J.S.A. 40:SSD-1 et. seq., (the "Zoning Board"). This Agreement will be effective and binding on the Applicant and the Zoning Board (collectively, the "Parties") upon the later of: (i) the execution of the Agreement by the Parties, and (ii) the authorized execution of the Agreement pursuant to an enabling Resolution to be adopted by the Zoning Board, respectively (the "Effective Date").

WITNESSETH:

WHEREAS, Applicant owns property in the City of Bayonne ("City") identified as Block 144, Lots 17 & 18 on the City's Tax Map, which has street frontage on 73 & 77 West 32nd Street (the "Property"); and

WHEREAS, the Applicant applied to the Zoning Board for use and bulk variance relief to demolish all of the existing structures on the property and permit the construction of a new

twenty unit multi-family building with twenty five parking spaces ("the Application"); and

WHEREAS, the Zoning Board conducted a public hearing on the Application on March 21, 2022, and at the conclusion of the hearing, the Zoning Board voted to deny the Application; and

WHEREAS, on April 18, 2022 the Board adopted a resolution memorializing the denial of the Application and the notice of adoption of the Resolution was published on April 26, 2022; and

WHEREAS, on or about June 1, 2022, Applicant filed a Complaint in Lieu of Prerogative Writs, bearing docket number HUD-L-1804-22, challenging the denial of its Application (the "Complaint"); and

WHEREAS, the Zoning Board filed an Answer and Separate Defenses denying the claims set forth in the Complaint; and

WHEREAS, the Applicant and the Zoning Board have agreed to a proposed settlement of the claims and defenses raised in the pleadings, subject to the adoption of an enabling resolution ("Resolution of Approval") after a Whispering Woods public hearing on notice before the Zoning Board, and by this Agreement intend, without any admission as to liability or responsibility of either Party, to serve the best interests of both Parties and the populace of the City by memorializing same by the execution of this Agreement.

NOW THEREFORE, in consideration of the following mutual promises and terms and conditions, and intending to be legally bound, the Parties agree as follows:

1. Zoning Board Action. The Zoning Board agrees to conduct a public hearing, pursuant to Whispering Woods v. Middletown Tp., 220 N.J. Super. 161 (Law Div. 1987), upon proper notice, and to consider approval of both the terms of this Agreement and an amended application to be filed by the Applicant to permit the Applicant to build a twenty unit multi-family building with 25 parking spaces as shown on the drawings attached hereto as **Exhibit A** ("Amended Application"), and as shown as requested the use and bulk variance relief on the zoning chart included in **Exhibit A**. All of the existing structures on the Property shall be demolished before any new construction of the proposed multi-family commences. If the Zoning Board votes to approve both the terms of this Agreement and the Amended Application, the Zoning Board will adopt a memorializing resolution setting forth its findings and approval within 45 days of its vote on the terms of this Agreement and the Amended Application with said conditions (the "ZB Approval Resolution").

2. Dismissal of Complaint with Prejudice. Conditioned upon the ZB Approval Resolution becoming final and non-appealable, the Parties will cause to be executed by their respective counsel the Stipulation of Dismissal with Prejudice attached hereto as **Exhibit B**. The Applicant will file the Stipulation of Dismissal with Prejudice within ten (10) days after the ZB Approval Resolution becomes final and non-appealable.

3. Limited Release of the Zoning Board. Conditioned upon the PB Resolution becoming final and non-appealable, and subject to the satisfaction of all conditions of this Agreement, Applicant hereby releases and forever releases the Zoning Board from any and all actions, causes of action, suits, debts, accounts, damages, claims, and demands whatsoever, in law or in equity, whether known or unknown, which Applicant ever had or now has against the Planning Board arising from facts in existence on or before June 1, 2022 that refer or relate in any manner whatsoever to the subject matter of the Complaint and Answer, including, but not

limited to, any and all actions, causes of action, suits, debts, accounts, damages, claims, and demands that were asserted or could have been asserted in connection with the Complaint and Answer. Nothing in this release is intended to prohibit or limit the Parties' ability to enforce the terms of this Agreement.

4. Limited Release of Applicant. Conditioned upon the ZB Resolution becoming final and non-appealable, and subject to the satisfaction of all conditions of this Agreement, the Zoning Board hereby releases and forever releases Applicant and its successors and assigns from any and all actions, causes of action, suits, debts, accounts, damages, claims, and demands whatsoever, in law or in equity whether known or unknown, which the Zoning Board ever had or now has against Applicant or its successors or assigns arising from facts in existence on or before June 1, 2022 that refer or related in any manner whatsoever to the subject matter of the Complaint and Answer, including, but not limited to, any and all actions, causes of action, suits, debts, accounts, damages, claims and demands that were asserted or could have been asserted in connection with the Complaint and Answer. Nothing in this release is intended to prohibit or limit the Parties' ability to enforce the terms of this Agreement.

5. The Court to Retain Jurisdiction. If any of the following conditions occur, the Honorable Kimberly Espinales-Maloney, J.S.C. retains jurisdiction to take any and all necessary action to continue if necessary to adjudicate the Complaint:

- (i) the terms of the Agreement and the Amended Application are not approved by the Zoning Board by May 28, 2023;
- (ii) the Zoning Board does not adopt the ZB Approval Resolution by June 30, 2023;
- (iii) the approval of the Settlement Agreement is modified or overturned as a result of an appeal by a non-party to this Agreement;
- (iv) the approval of the Amended Application is in any way modified or overturned as a result of appeal by a non-party to this Agreement; or

(v) the ZB Approval Resolution is in any way modified or overturned as a result of an appeal by a non-party to this Agreement.

6. Waiver. Any waiver of any provision of this Agreement will be effective only if made in writing. Failure to enforce any of the provisions of this Agreement by any of the Parties will not constitute a waiver of these provisions.

7. Entire Agreement. This Agreement contains the entire agreement between the Parties. No representative, agent, or employee of either Party has been authorized to make any representations or promises with reference to that Agreement or to vary, alter or modify the terms hereof except as stated herein. No additions, changes, or modifications, renewals or extensions hereof will be binding unless reduced to writing and signed by the Parties hereof.

8. Mutual Notice. The Parties will provide each other with immediate notice of any lawsuits, actions, or governmental declarations threatened or pending of which they are actually aware that may affect the provisions of this Agreement or the implementation hereof. Any notice required under this Agreement will be given by certified and regular mail at the addresses listed below:

If to Zoning Board:

Richard Campisano, Esq.
1081 Avenue C
Bayonne, N.J. 07002

If to the Applicant:

Peter Cecinini, Esq.
1081 Avenue C
Bayonne, NJ 07002

Each of the Parties will have the right to change the designated recipient of notice by serving upon the other Party notice of any change in designation *in* accordance with the provisions for providing notice set forth above.

9. Preparation. Each of the Parties hereto acknowledges that this Agreement was not

drafted by any of the Parties, but was drafted, renegotiated, and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter will not apply. Each of the Parties expressly represents to the other Party that: (i) it has been represented by counsel in connection with negotiation for the terms of this Agreement; and (ii) has conferred due authority for execution of this Agreement upon the persons executing it.

10. Governing Law. This Agreement has been entered into and will be construed, governed, and enforced in accordance with the laws of the State of New Jersey. Subsequent to the filing of a Stipulation of Dismissal of the Complaint with prejudice, any suit to enforce the terms of this Agreement will be brought in the Superior Court of New Jersey, County of Monmouth.

11. Captions and Titles. This Agreement's caption, titles, and sections are inserted for convenience of reference only and may not be construed as defining, limiting, or modifying the scope and intent of the provisions of this Agreement.

12. Change in Law. The validity and terms of this Agreement will not be affected by any change in law after the Effective Date.

13. Parties Bound/Assignment. This Agreement's terms and conditions bind and inure to the benefit of and/or are the responsibility of any successor-in-interest of any of the Parties to this Agreement and may be enforced by any of the parties or any such successor-in-interest.

14. Effective Counterparts. This Agreement may be executed simultaneously in one or more counterparts, whether by original signature or facsimile execution with original signatures to follow, each of which will be deemed an original.

15. Cooperation. The Parties will cooperate with each other in order to carry out this Agreement's provisions and to cure any defects that would otherwise prevent its implementation.

The Parties also will execute any and all documents that may be reasonably required to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have signed this agreement.

Zoning Board of the City of Bayonne

By: _____
Clifford J. Adams, Chairman

Abba Karas Realty, LLC

By:  _____

Dated:

March 22, 2023

Exhibit A

Exhibit B