ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
MAY 21, 2018

A REGULAR MEETING of the Zoning Board of Adjustment was held on Monday, May 21, 2018, in the Dorothy E. Harrington Municipal Council Chambers, 630 Avenue C, Bayonne, New Jersey.

Chairman Urban called the meeting to order at 6:05 p.m. Commissioner Egan called the roll. Present at the meeting were Chairman Urban, Commissioners Adams, Egan, LeFante, Lombari, Pineiro, DiLullo, and De Ros were present. Commissioners Pelliteri, Dorans and Simmons were absent.

Also present was Richard N. Campisano, Esq., Board Counsel, Alicia Losonczy, Zoning Board of Adjustment Secretary, Robert Russo, P.E., City Engineer's office and Malvika Apte, P.P., AICP, consulting City Planner.

After the Pledge of Allegiance to the Flag, Chairman Urban declared a quorum and advised that the Board had complied with the Open Public Meetings Act/Sunshine Law.

Adoption of Minutes:

Commissioner Pineiro made a motion to adopt the minutes of the regular meeting held on April 16, 2018. Commissioner Lombari seconded the motion and a unanimous vote of eligible members followed.

Communications:

Richard N. Campisano, Esq. read a letter from Paul N. Weeks, Esq., attorney for application Z-18-005; MILL WRIGHT, LLC, located at 86 Hobart Avenue in City Block 359, Lot 10.01, requesting an adjournment until July 16, 2018.

Commissioner Adams made a motion to adjourn the matter until the meeting to be held on July 16, 2018 without any further notice on the part of the applicant. Commissioner LeFante seconded the motion.

Richard N. Campisano, Esq. read a letter from Paul N. Weeks, Esq., attorney for application Z-18-006; EHTISHAM RAHAT HUSSAIN, located at 1031 Broadway in City Block 53, Lot 24, requesting the application be withdrawn.

Public Hearing:

Z-18-004 – RICHARD CHERCHIO – Site: 120 – 122 West 39th Street; Block 107, Lot 13 *[The applicant is seeking a Certificate of Nonconformity to continue the use of a basement studio apartment.]*

Paul N. Weeks, Esq., attorney for the applicant, moved his exhibits into evidence and called his first witness.

Witness:

Richard Cherchio, President of the condominium association, explained that the basement studio apartment has been occupied by the superintendent who has lived there since 1998. Mr. Cherchio verified that he has personal knowledge of the layout of the interior. He stated that twenty-three apartments are owned by individuals and the apartment in the basement is for the superintendent who does not pay rent. He lives there rent-free in exchange for his services. Mr. Cherchio also mentioned that they have passed all building and fire inspections.

Board questions:

Chairman Urban and Commissioner De Ros questioned Mr. Cherchio.

Audience questions:

Resident Dorothy Perez questioned Mr. Cherchio.

Mr. Weeks testified that the unit has been there for twenty years and many inspection reports show the twenty-fourth apartment. Mr. Weeks asked for approval from the board to rectify the inconsistency.

Zoning Officer Donna Ward was sworn in and testified that Ms. Perez came in to her office to see her approximately one year ago to discuss the apartment in question. Ms. Ward confirmed that the records were conflicting. Given the information she has heard tonight, it is Ms. Ward's opinion that the applicant should not be seeking the Certificate of nonconformity this evening; he should instead submit an application to the board for a use variance.

Closing Remarks

Resident Dorothy Perez spoke against this application.

Mr. Weeks said Ms. Perez' internal dispute lies between the condominium Board and Ms. Perez because she is against the idea of having a superintendent. He said the evidence shows that the Certificate of nonconformity is the proper mechanism for this application. He respectfully requested the Board approve the application in order to have the tax records and the master deed amended.

Closed Caucus:

Chairman Urban doesn't feel that a certificate of nonconformity is the correct request before the Board. He believes the applicant should come before the Board for a use variance. Commissioner Adams said that the facts appear to be conflicting and it may not be clear, therefore, he supports the Zoning Officer's opinion. Commissioner Pineiro said he feels the applicant should come back and submit a use variance in its place. Commissioner De Ros said that he would like to see more information about the unit. Commissioners DiLullo, Lombari and

LeFante concurs with their fellow commissioners. Commissioner Egan said he would actually be in favor of this application after hearing the testimony presented.

Commissioner Egan made a motion to approve the application subject to any and all conditions agreed to and spread across the record. Commissioner Pineiro seconded the motion. The following vote followed: Commissioner Egan voted to approve the Certificate of Nonconformity. Chairman Urban, Commissioners Adams, LeFante, Lombari, Pineiro and DiLullo voted against the issuance of a Certificate of Nonconformity. Also, Commissioner De Ros offered his opinion of the application but was ineligible to vote. Due to there being six Commissioners that voted against the application and only one Commissioner voted for it, this application was denied.

Public Hearing:

Z-18-012 – PETER AWAD – Site: 140 West 3rd Street; Block 363, Lot 28 *[The applicant is proposing to convert a one-family dwelling to a two-family dwelling which will require a parking variance.]*

The applicant, Peter Awad, asked the Board to move his exhibits into evidence. He explained that he is looking to convert a one-family house into a two-family. He is the owner of the property and explained that his driveway can stack three cars. It used to be a two-family and then later became listed as a one-family on the tax roll. He explained there are two separate meters for gas and electric. He stated that he will occupy the upper floor and his parents will occupy the one-bedroom apartment on the lower floor.

Board Questions:

Chairman Urban and Commissioners Egan, Pineiro, DiLullo and De Ros questioned Mr. Awad. Malvika Apte, P.P. also questioned Mr. Awad.

Chairman Urban invited Zoning Officer, Donna Ward, to testify and clarify if this is a two-family house. Ms. Ward was sworn in and testified that she was not familiar with this residence but could check her records in her office if given the opportunity.

The board took a recess at 6:50 and returned at 7:00 pm.

Ms. Ward advised that she has no record of this house being a two unit residency.

Mr. Awad presented two PSE&G bills and asked the Board to accept them as Exhibits A-21 and A-22. Commissioner Egan made note that the addresses are different on each bill.

Commissioner DiLullo questioned Mr. Awad.

Audience Questions:

There were no questions from the audience.

Closing Remarks:

Mr. Awad relied on the testimony provided and respectfully requested the Board look favorably upon this application.

Closed Caucus:

Chairman Urban feels he hasn't heard enough testimony in support of this application to vote with an approval. He doesn't see the parking working out in a stacking fashion and doesn't have evidence that this was a two-family dwelling. Commissioner Pineiro suggested the applicant may want to seek the advice of a land use attorney and added that he cannot support the variance. Commissioners Pineiro, De Ros, DiLullo, Lombari, LeFante and Egan concur that they are not in favor of the application.

Commissioner Adams made a motion to approve the application subject to any and all conditions agreed to and spread across the record. Commissioner Lombari seconded the motion and a unanimous vote followed.

The following vote followed: Chairman Urban, Commissioners Adams, Egan, LeFante, Pineiro, DiLullo, and De Ros voted Nay; Commissioner Lombari abstained. Due to there being seven Commissioners that voted against the application, this application was denied.

Public Hearing:

Z-18-010 – 160 EAST 22ND STREET 2-01 REALTY, LLC - Site: 160 East 22nd Street; Block 464.01, Lot 2 *[The applicant is seeking preliminary and final major site plan approval, use and bulk variance relief to allow the construction of a supermarket, retail, restaurant with drive-through, motor vehicle repair and car wash at the site.]*

Patrick McNamara, Esq., attorney for applicant, moved his exhibits into evidence and called his first witness.

Witness #1:

Mr. Jose C. Santos, R.A. of Architrave Group, PC was sworn to provide factual testimony in support of the application. Chairman Urban recognized Mr. Santos as an expert. Mr. Santos displayed the architectural rendering and pointed out the applicant has proposed an automotive repair shop that concentrates tire-repair shop and may include minor brake changes but they do not do major automotive repairs. He described the facility to have eight bays with low hazard storage and a small waiting area for the public. Both the employee and customer bathrooms are handicap-accessible. He explained due to the set-up, only four vehicles could be worked on at once.

Mr. Santos explained that the exterior construction will mimic the brick veneer and metal panels that are across the street and construction may take approximately five months until completion.

Board Questions:

Commissioner Egan, Adams, De Ros, Pineiro and Chairman Urban questioned Mr. Santos. Malvika Apte, P.P. questioned Mr. Santos.

Audience Questions:

Residents Peter Franco and Michael Morris questioned Mr. Santos.

Witness:

Mr. Matthew Seckler, Engineer with Stonefield Engineering was sworn to provide factual testimony in support of the application. Chairman Urban recognized Mr. Seckler as an expert witness. Mr. Seckler introduced new exhibit A-25 and described the project as an upgrade to the facility. He explained the sight is split-zone and the proposed use of the buildings. He discussed raising the level of elevation and projected landscaping. Mr. Seckler testified that the applicant will be upgrading the lighting on the property and will provide the proper amount of ADA parking spaces. Mr. Seckler explained the operations and tenants of the site.

Mr. Seckler testified that the Traffic Impact Study was performed in March of 2018 and he projects the business would operate at acceptable traffic levels according to his analysis. Mr. Seckler discussed the proposed use trip-generator and the parking variance.

He explained that landscaping and signage would be added, activating this location and matching the façade of what is next door.

Mr. Seckler testified that the applicant has no issue addressing comments as part of resolution compliance. A new fire hydrant would be provided and fire truck access would work around the building. The buildings could be sprinklered also if needed for compliance.

Board Questions:

Chairman Urban, Commissioner Adams and Egan questioned Mr. Seckler. Malvika Apte, P.P., questioned Mr. Seckler regarding how he calculated the number of required parking spaces.

Mr. Francesco Alessi, Principal, discussed that private security would be at this location. He would utilize and share what is presently in place at the location across the street; a roving security officer (with an alternate employee) in a designated security vehicle.

Audience Questions:

Residents Peter Franco, Patrick McManus and Michael Morris questioned Mr. Seckler.

Commissioners DiLullo and Lombari questioned Mr. Seckler.

A brief recess was called at 8:44 pm. The meeting was called back to order at 8:55.

Mr. Seckler was recalled and consulted the Board's Planner where both calculated the parking requirement to 124 spaces as earlier stated.

Witness:

Michael J. Pessolano, PP, AICP, was sworn to provide factual testimony in support of the application. Chairman Urban recognized Mr. Pessolano as an expert witness. Mr. Pessolano described the project as an excellent idea that pulls the area together transforming it to the benefits of the residents. He testified that the variances are necessary for the project and doesn't see them as unreasonable requests. With new retail, a restaurant with a drive-through, car wash and an automotive repair facility, the project brings with it a lot of overall good things to the area.

Mr. Pessolano testified this interesting piece of property provides an appropriate location for what is proposed, lending itself to a similar façade with what is across the street. There should be commercial, rather than industrial activity at the site. This project would not cause substantial detriment to the public. He introduced new exhibit A-27 to be put on the record and discussed it. He stated the benefits substantially outweigh any detriments. It is a plus to have this particular configuration of uses on the site since it is a good fit and will produce a project that is a productive part of the community.

Board Questions:

Commissioners DiLullo and Lombari questioned Mr. Pessolano.

Audience Questions:

There were no questions from the audience.

Closing Remarks:

Patrick McNamara, Esq. relied on the testimony provided and respectfully requested the Board approve the application. Resident Peter Franco gave his opinion that he disagrees with the Planner and this application. Resident Michael Morris spoke in support of this application.

Closed Caucus:

Chairman Urban feels the project will enhance the area and will vote in favor of the application. All fellow Commissioners concurred to vote in favor of this application.

Commissioner Egan made a motion to approve the application subject to any and all conditions agreed to and spread across the record. Commissioner Adams seconded the motion and a unanimous vote followed.

Adoption of Resolutions:

- **Z-18-003 – PR BUILDERS, LLC - Site: 82 – 84 East 31st Street in City Block 413, Lot 8**
    - Commissioner Adams made a motion to adopt the resolution and Commissioner Lombari seconded the motion. A unanimous vote followed.
- **Z-18-007 – KOUVEL PROPERTIES, LLC - Site: 871 Broadway in City Block 101, Lot 22.01**
    - Commissioner Lombari made a motion to adopt the resolution and Commissioner LeFante seconded the motion. A unanimous vote followed.
- **Z-18-009 – VICTOR MERCADO - Site: 612 – 616 Avenue A in City Block 176, Lot 50**
    - Commissioner Adams made a motion to adopt the resolution and Commissioner Lombari seconded the motion. A unanimous vote followed.

A motion was made to close the meeting at 9:43 p.m.

Susan Bischoff, Certified Shorthand Reporter, took a transcript of the meeting.

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