

**BOROUGH OF NEW PROVIDENCE
BOARD OF ADJUSTMENT
MEETING MINUTES – MONDAY, FEBRUARY 25, 2019 – 8:00 p.m.**

Present: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Grob, Mr. Kogan, Mr. Morgan, Mr. Nadelberg, Mr. Ping, Mr. Sorochen, Phil Morin, Board Attorney, and Margaret Koontz, Secretary.

Ms. Ananthakrishnan left at 9:10 p.m.

Also present: McKinley Mertz, Borough Planner; Michael O’Krepky, Borough Engineer; Kevin Boyer, Borough Engineer; and, Keith Lynch, Director of Planning and Development.

Absent: Mr. Galluccio.

A. CALL TO ORDER

Chairman Nadelberg called the meeting to order at 8:08 p.m. This meeting was held in the Council Conference Room.

B. RESOLUTIONS

Lisa Maria Burkitt Application #2018-31
161 Mountain Avenue, Block 262, Lot 18.01, R-1 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Schedule I for permission to keep alpacas. The keeping of livestock is strictly prohibited in the R-1 Zone.

This resolution will be memorialized at the meeting on March 4, 2019.

Members eligible to vote in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Ping, Mr. Sorochen and Mr. Grob.

John and Kerry Filippatos Application #2018-34
55 Dogwood Lane, Block 181, Lot 7, R-1 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition and front porch. The proposed side-yard setback to the addition is 10 feet whereas 15 feet is the minimum required. The proposed front-yard setback to the front porch is 37.9 feet whereas 40 feet is the minimum required. The existing front yard is 39.9 feet. The existing driveway is 3 feet from the property line.

Ms. Ananthakrishnan moved this and Mr. Ammitzboll seconded same. Members voting in favor: Mr. Ammitzboll, Ms. Ananthakrishnan, Mr. Sorochen, Mr. Morgan, Mr. Ping and Mr. Grob.

E. PUBLIC HEARINGS SCHEDULED FOR FEBRUARY 25, 2019

TALAE 77 LLC Application #2018-16
1682 Springfield Avenue, Block 180, Lot 1, R-2 Zone, New Providence, NJ 07974
Preliminary and final major site plan approval; variance relief to permit the expansion

and modification of the pre-existing non-conforming commercial use and/or in the alternative a use variance; location of an entrance or exit driveway on Springfield Avenue; an access driveway for a non-permitted use; maximum lot coverage; maximum improved lot coverage and rear-yard setback together with all other relief in the form of variances, appeals, interpretations, waivers or exceptions.

Bartholomew Sheehan of Dempsey, Dempsey & Sheehan, attorney for the applicant, introduced the application. The site is located at the intersection of Springfield and Central Avenues, two busy streets, one of which is a county road. A delicatessen/convenience store currently operates on the site which has been used for a non-conforming use since the 1920s. Remediation on the site is ongoing as a result of contamination from its previous use as a gas station. The building is antiquated and in need of upgrading and could be fixed up but this would not be a good use of capital. The applicant proposes to raze the approximately 950 SF existing building and construct a 3,200 structure for two low-traffic retail uses one of which will be the existing delicatessen/convenience store. The applicant is willing as a condition of approval to limit the use of the other space to one that falls under the Department of Transportation's definition of a specialty retail center.

The application has been filed as a d-2 variance for the expansion of a non-conforming use or d-1 variance for a use that is not permitted. Mr. Sheehan agreed with the Borough Planner, as stated in the comment letter dated January 30, 2019, that a d-1 variance is required for the construction of a non-permitted use in a residential zone as it is not hard to dispute that the difference in size between the existing and proposed structures represents a non-permitted use (d-1). The non-conforming use, however, is already there and it can be argued that a variance is not required but it's not an absolute that a variance is not needed. While Mr. Sheehan is not sure based on case law and the statutes that the enhanced quality of proof of the Medici standards applies to this application as the site has been used for a non-conforming use for the past 90 years and the existing non-conforming use will continue in a new structure that is suited to receive it, the testimony will satisfy the enhanced standards to show that the use variance can be granted without substantial detriment to the public good and without substantial detriment to the Master Plan and zone ordinance.

Hamed Saraj, principal of TALAE 77, LLC, was sworn in and described the site. The building is 90 years and requires numerous updates/corrections: The roofs are at different levels; there is no air conditioning because there's no room for duct work; the kitchen and bathrooms are not in good condition. Mr. Saraj has tried to fix things since he purchased the site in 2013, but he believes that it would be better to raze the existing building and construct a new one.

Mr. Saraj responded to questions from the Board. The structure has a second floor living space that is not occupied. The ground water monitoring wells were on the site before he purchased the property. The current occupant is a delicatessen/convenience store. A good part of the property is a grassy area with trees in the rear that is not used. The encroachment of the sidewalk on the neighbor (Block 180, Lot 2) will be removed. The proposed structure is 3,200 SF. The site will have proper entrances and exits and landscaping. Mr. Saraj believes the application represents a big benefit for residents with a property that will be maintained with a proper parking lot that meets ADA standards. The site will have 14 parking spaces and two-way entrances/exits on Springfield and Central Avenues. No second floor is proposed. One retail space will be

occupied by the delicatessen/convenience store and the other will be leased to a business that won't generate much traffic and won't compete with the delicatessen/convenience store such as a hobby shop, coin shop or wedding store. Mr. Saraj is willing to limit use of the second space to a business as identified by NJ Department of Transportation as specialty retail.

The Board had additional questions. Mr. Saraj could change the application to have one store instead of two. As currently proposed, the spaces will be divided equally. Mr. Saraj has not received any complaints from the neighbors about the site since he purchased it. He owns other properties and purchased this one at a county sheriff auction as it was in foreclosure. He didn't do any research before he purchased it. He bought it as an investment property because of the location and size, and he always looks for ways to improve his investments. The site was in remediation when he bought it. He hired a Licensed Site Remediation Professional and reactivated the site remediation. The level of contamination on the site is too high for residential use but is okay for commercial use.

A color rendering of the proposed one-story retail building dated 5/11/18 was marked as Exhibit A-1.

The Board had no further questions for the applicants. The hearing was opened to questions from the public.

Carl Manger, 1667 Springfield Avenue, asked about the delicatessen/convenience store's hours of operations and if there are ordinances that restrict business hours. Mr. Saraj wasn't sure about the business hours but believes the delicatessen/convenience store is open from 6 a.m. to 2 p.m. or 3 p.m. Mr. Lynch responded that there are no ordinances that restrict hours of operation. Chairman Nadelberg added that business hours could be imposed as a condition should the Board decide to grant approval. Mr. Manger also asked about restrictions regarding the rear of the property. Mr. Lynch believes a previous application was for a subdivision which has different zoning requirements: The current application has no conditions or restrictions on the rear of the property.

Nikisha Hidalgo, 1677 Springfield Avenue, stated that her property faces the site and asked if there is any way to keep cars from parking on the site during non-business hours and about the hours for construction. Mr. Saraj responded that there's no curb on the site now so people pull in and park. The site will have signs that indicate cars will be towed and will also have extra lights and cameras. Construction will be done during the day. Ms. Hidalgo also commented that the police park on the site and the lights from their vehicles shine on her house. Mr. Ammitzboll asked about chaining the entrances to prevent vehicles from parking during non-business hours. Mr. Saraj was willing to chain the entrances if this would help, but Mr. Morin expressed concern about doing so. Mr. Sheehan stated that the applicant would accommodate use of the site by the Police Department and will allow the Police Department to monitor the site for parking during non-business hours.

Ray Mooney, 937 Central Avenue, asked if the façade shown on Exhibit A-1 is the Central Avenue side of the building and if the gasoline has been removed from the site. The rendering shows the Central Avenue side of the building (long side) and the short side of the building that will front Springfield Avenue. Mr. Saraj believes the soil is still

contaminated.

Nikisha Hidalgo, 1677 Springfield Avenue, asked if a bar could open on the site. The specialty retail center classification precludes use of the site for a bar. In addition, the Board could impose a condition prohibiting a bar on the site.

Frank Hall of Jacob Solomon Architect, LLC, in Fairlawn, NJ, was sworn in and presented his credentials as a licensed professional architect and was accepted as such. Mr. Hall described Sheet A-2, Preliminary and Final Site Plan 1-Story Retail Building dated 1/11/2017 that was included as part of the application and shows the floor plan for the proposed building and the four building elevations. The long side of the 3,200 SF building faces Central Avenue and the short side faces Springfield Avenue. The portion of the building closest to Springfield Avenue will be occupied by the delicatessen/convenience store. The two retail spaces will be of equal size. The proposed structure is a traditional style building which is more appropriate to a residential neighborhood with display windows and a peak roof, stone plinth course, clapboard and shakes above the clapboard. Mr. Hall then described Exhibit A-1 as it relates to the floor plan on Sheet A-2. The building will have limited openings on the western side and two exit doors at the back (east side) of the building. Two windows are proposed on the southern elevation that faces the neighbor on Central Avenue. When asked about the southern elevation, Mr. Hall stated that these windows can be modified or eliminated if this is better for the neighbor and Board. The architectural vocabulary used is similar to a residential use. The dormers, shape of the roof, gables to soften the volume of the structure, stone base, clapboard and shakes give the building a more residential feel.

The Board had several questions regarding the signage, doors and height of the building. The applicant proposes two signs on the Springfield Avenue façade and two on Central Avenue side of the building. The signs will comply with the sign ordinance and will be externally illuminated with gooseneck lights. No other signs are proposed on the site other than signage for traffic control. The two signs on Springfield Avenue are intended to identify each tenant for motorists driving on Springfield Avenue even though there is only one tenant and one entrance at this end of the building. The retail space closest to Springfield Avenue to be occupied by the delicatessen/convenience store will have two doors: One on Springfield Avenue and the other on Central Avenue. Mr. Lynch noted that an additional variance will be required for the fourth sign as there are only three entrances. The height of the building to the peak is 25.'

The Board asked why the building is designed to look as if it is two stories when it isn't as this contributes to the mass. Mr. Hall responded that the gable is a function of the height of the roof and a shallower pitch would give the building a more modern look. The higher pitched roof was intended to give the building a more residential look and to be more aesthetically pleasing. Mr. Hall estimated that the height of the existing structure is 15.' He also estimated the height of the neighboring home adjacent to the southern side of the property at 22.' The house on the eastern property has a steeper gable roof but he doesn't believe it's taller than the proposed building.

Sheet A-2, dated 1/11/2017, was modified to show the actual roof line as shown on Exhibit A-1 and marked as Exhibit A-4.

Mr. Hall responded to additional questions from the Board. The neighborhood is a mix

of one- and two-story buildings. The colors of the proposed structure are similar to what is shown on Exhibit A-1. The service doors at the rear of the building are customary but aren't necessary as the square footage of the building is under the requirement for a second egress. Coach lamps will be located around the perimeter of the building on either side of the windows.

The Board asked if the applicant considered a smaller building facing Central Avenue with a second floor. Mr. Hall responded that the building would have to be much taller to get a functional second floor. Retail on a second floor is a different sell to a retail tenant. The Board asked about ADA requirements for a second floor. Mr. Lynch responded that an elevator would not be required. Mr. Ammitzboll questioned why the building has to have a residential look when it is a commercial building and asked about a building with a flat roof. Several Board members expressed concern that the building is too large as the lot coverage is almost double what is permitted and asked about a single use in the building. Mr. Sheehan responded that the applicant would be willing to consider a single use in a smaller building.

Mr. Grob asked about the historical significance of the existing building. Mr. Hall testified that he isn't an historic preservation expert but responded that the building no longer has any of the exterior elements of the former gas station. Restoring the existing structure represents a geometry issue as the space isn't on a single level and the size of the structure won't permit modernization for normal size toilet rooms. The Board asked about adding to the rear of the structure for food type business and about razing the existing structure and reconstructing the building with the look and feel of the existing structure with modern functionality. Mr. Hall responded that reconstructing the building from a construction point of view is possible but to do so is also a question of capital. A reconstructed building would probably have to have a higher roof.

The audience had additional questions for the witness.

Nikisha Hidalgo, 1677 Springfield Avenue, asked if eliminating the rear service doors would result in trucks having to park on the street which could impact traffic. Eliminating the rear service doors won't have an impact on trucks loading/unloading on the site. The engineer will provide testimony about parking and traffic/truck traffic and circulation on the site.

Ms. McKinley asked about the retaining wall at the rear of the property. The retaining wall is required for the service doors because of the grade but would not be required if the service doors are eliminated.

Barbara Roberts, 963 Central Avenue, asked if the signs would be illuminated 24 hours a day. They will not, but the engineer will testify to this.

Mr. Sheehan requested a break. Following the break, Mr. Sheehan asked the Board to carry the application so the applicant can reflect on the plans filed and modify them based on Board's questions and comments as well as the economics of any changes. The hearing will be carried to April 1, 2019. The applicant will re-notice property owners within 200' feet.

Ms. McKinley asked the Chairman if she could provide her professional opinion on the testimony and Board discussion of the application. Ms. McKinley agrees that the

massing is large and there is an opportunity to tighten the massing, but the proposed structure is aesthetically more appropriate to New Providence and the location than a flat roofed building or smaller more modern building as discussed by the Board.

The hearing was carried to April 1, 2019. The applicant will re-notice for the hearing.

F. REVIEW OF PUBLIC HEARINGS SCHEDULED FOR MARCH 4, 2019

Vanderlei Silva Application #3029-01
40 Crest Road, Block 243, Lot 4, R-2 Zone, New Providence, NJ 07974
Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct a front porch. The proposed front-yard setback to the porch is 36.49 feet whereas 40 feet is the minimum required. The existing side yards are 6.5 feet and 10.24 feet. The existing driveway is 4 feet from the property line.

G. COMMUNICATION ITEMS

No communication items.

H. MISCELLANEOUS BUSINESS

No miscellaneous business.

I. MINUTES FROM 2/4/19

The minutes of February 4, 2019, were approved as submitted.

J. ADJOURNMENT

The meeting was adjourned at 10:10 p.m.