

CITY OF BURLINGTON
LAND USE BOARD MEETING MINUTES
MAY 22, 2013

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The City of Burlington Land Use board held their regular monthly meeting on Wednesday, May 22, 2013 in the City Hall Complex, 525 High Street, Burlington, New Jersey.

Members present: Chairwoman Claudine Conaway, Vice Chairman Samuel Richter, David Ballard, Victor Carnivale, Councilwoman Helen Hatala, Michael Johnson, Charles Johnston and Raymond Schobert (8). Absent: Officer Mercuri and David Tishler (2).

Also present: Board Solicitor M. Lou Garty, Planner Robert Perry of Remington & Vernick and Board Secretary Diane Burns.

APPLICATIONS

Saliba Real Estate, LLC

Application #669-13

600 Rt. 130 North (Block 222 Lot 4)

Prel./final site plan / car lot and showroom

Attorney Garty advised the Board that the applicant's attorney has requested a continuation without prejudice and had agreed to the stipulation that the time for the Board to act on the application would not start until the next month's meeting, which avoids the potential triggering of an "automatic" approval of the application under the time constraints for action by the Board of the Municipal Land Use Law. Councilwoman Hatala moved for the continuation second from Mr. Ballard. All in favor.

Continuation:

Donald J. McMenamin

Application #668-13

204 E. Union Street (Block 132 Lot 2)

Application for a Certificate of a pre-existing nonconforming use (4 units within a dwelling) or, the alternative, for approval of a Use Variance to allow 4 units within a single dwelling

Attorney Garty stated this matter is a continuation of the hearing from the April meeting. Mr. McMenamin of 22 W. Union Street, Burlington, was sworn in by Solicitor Garty. Mr. McMenamin explained he had contacted PSE&G and was told they did not have the requested records on the date of installation of meters to provide to him. Mr. McMenamin presented as evidence, a copy of his e-mails with PSE&G which was accepted by the Board Chairwoman. Mr. McMenamin again explained that Merrill Mirsky would not testify on his behalf for the fact he remembers seeing tenants in the building; but, remembers no names or number of tenants. Mr. McMenamin introduced James Isaia who owned the property in 1961. James Isaia of 358 Ayrestown Road, Vincentown, NJ, was sworn in by Solicitor Garty. Mr. Isaia testified he owned the building in question in 1961 and converted the building into three (3) apartments. He testified he had started converting the 4th unit; but, before the fourth unit was completed, he sold the property to Ray Anderson in 1963. He testified that he knows that Mr. Anderson completed the necessary renovations to convert the property to one with a fourth unit the year of the sale. He remembers the year the renovation was completed because he recalls that Mr. Anderson told him that Anderson needed additional income to finance the purchase in terms of making the payments for the building.

Tom Sasaki of 816 Salem Road, Burlington, was sworn in. Mr. Sasaki testified that **he resided in the property in the late 70's from 1976 thru 1977** and there were four apartments. He testified the landlord Mr. Cartis owned it. Mr. Sasaki testified that there were separate utilities for each existing unit. He also testified that he lived in the rear 2nd floor unit.

Mr. Isaia was recalled and testified again. He testified that the fourth unit was half way done when he sold it to Mr. Anderson in 1963. Mr. Isaia testified he did see the stairway to the third floor. Mr. McMenamin testified again and testified that the State Fire Prevention Department did inspect the third floor fire escape. Mr. McMenamin testified that office has no City records prior to 1985. The State inspects multi-unit apartment units every five years. Photographs submitted by the applicant, which were taken on March 28, 2013, were marked as exhibits and reviewed by the Board Members and the Board's professionals. Mr. Johnson questioned why there were five meters. Mr. McMenamin testified there was one for each unit and one for the

common areas. Mr. McMenamain testified he had thought he had with him copies of the five year inspections, but found he did not have them at the time of the hearing. He testified he would submit them the following day to the Board Secretary.

Public Comment: Mr. McIntosh of 216 E. Union Street stated he doesn't believe the applicant has met the requisite proof threshold for approval of either application. He feels parking should be addressed and feels having a 4 unit property would detract from the character of the neighborhood.

Don Vasquez of 206 E. Union Street stated he believes there are only two other multi-family units on the block plus the Aged Women's Home.

Samuella Cohen of 180 Riverbank commented about the application process as she believes that multi-unit dwellings which are properly registered with the Landlord Division of the City have been inspected through the years. She commented about whether there had been a precedent set as an application as to 49 Talbot Street was approved on an unspecified date after she objected to the application for three meetings. She stated the building was a four unit rental before most of the residents there now purchased their homes.

George Hulse of 406 High Street, Burlington, spoke as a resident and business owner of the City for many, many years. He stated that he is familiar with this family and the property and knew Mr. McMenamain's wife for many, many years as a member of the Board and believes there were four units. He stated he has also known Mr. Isaia for many years and believes that testimony. He stated parking is always a problem and parking will always be a problem. He stated the property has been paying taxes for these units for over 40 years. He noted he has heard no negative statements about the property and feels the Board should go with the live testimony heard this evening. Public portion closed.

Board Solicitor Garty summarized the application in terms of advising the Board of the alternate applications and the proofs required for approval. There being no further discussion, Mr. Carnivale moved to grant the application for a Certificate of a pre-existing, non-conforming use of four units within the single dwelling. Board Member Schobert seconded the motion. Roll call vote. All in favor.

Continuation:

Dolores Robb

Application #666-13

302 Jones Avenue (Block 150, Lot 2)

Application for a Certificate of a pre-existing nonconforming use (2 units within a dwelling) or, the alternative, for approval of a Use Variance to allow 2 units within a single dwelling

George Hulse, Esq., the Attorney for the Applicant, requested that the Board take a short break so as to allow time for him to speak with the Board Solicitor and Planner. Board took a ten minute recess. Board Solicitor advised the Board that certain jurisdictional issues were discussed during the recess. The Solicitor advised that in order to meet the jurisdictional requirements for the amended application to be heard, the amended application had to be re-noticed to the adjoining neighbors per the statute. An adjournment requested by the applicant will allow counsel for the applicant the opportunity to provide required notice and to review the proofs required as well as the provisions of certain City Code sections. Mr. Hulse gave a statement as to his understanding of the status of the matter, relating to the previous vote for the approval of the application which was reopened by the Board as there was a misunderstanding of the requirements of the ordinance in effect on a prior date which provided that some duplexes were permitted. It was noted by the Solicitor that the effective date of the rescission of that Code provision has to be clarified in order for the Board to rule on the application to determine whether the non-conforming use (the presence of two units) pre-dates and thus was pre-existing as of the date of the enactment of the Ordinance prohibiting multiple units in the R3 zone. There being no further discussion Board Member Ballard moved to reopen the application and to grant an adjournment of the application to the next meeting with the stipulation that the adjournment does not trigger an automatic approval per the time requirements of the MLUL. Mr. Carnivale seconded the motion. Roll call vote. All in favor.

BOARD BUSINESS

Vice Chairman Richter moved to accept the minutes submitted for the April 24, 2013 meeting, second from Mr. Ballard. All in favor.

PENDING RESOLUTIONS

1) Estate of Patricia R. Webb (by Estate Administrator, Frank J. Volpe, Jr.) / 307 Farner Avenue (Block 66, Lot 39) – granted approval for 6’ fencing. 2) Resolution recommending approval vacation of an “L” shaped alley between Cunningham & McNeal Streets to the Governing Body. 3) Doane Academy / 350 Riverbank (Block 3, Lots 1 & 2 and Block 5, Lots 5 & 6) – amended preliminary and final site plan w/bulk variance and waivers to construct an addition. Mr. Ballard moved to accept the above-captioned resolutions, second received from Mr. Johnson. All in favor.

BOARD BUSINESS

Board Solicitor Garty advised the Board that a grant has been received from DVRPC; therefore Council will request a sub-committee to review revisions to the Zoning Ordinance with Barbara Fegley. Chairwoman Conaway stated she would like to see Planner Perry part of the committee. It was questioned if the grant will cover the professional fees for the planner. Chairwoman Conaway stated she had hoped to hear back from Ms. Fegley prior to this meeting and suggested the matter be postponed to the next meeting. Mr. Ballard stated there is no resolution from Council at this point referring the matter to Land Use Board.

There being no further business the meeting was adjourned at 8:07 PM.

Respectfully submitted,

DIANE BURNS, Secretary to the Boards