

CITY OF BURLINGTON
LAND USE BOARD MEETING MINUTES

JUNE 26, 2013

The City of Burlington Land Use Board held their regular monthly meeting on Wednesday, June 26, 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, Officer Matthew Mercuri, Michael Johnson and Charles Johnston (7). Absent: Raymond Schobert and David Tishler (2).

Also present: Board Solicitor M. Lou Garty, Engineer Wendell Bibbs, Planner Bob Perry and Board Secretary Diane Burns.

BOARD BUSINESS

Barbara Fegley of Environmental Resolutions, Inc. appeared to give a brief introduction and presentation on the City's TCDI grant to update the Zoning Ordinance in a Form Based code format. The City's Master Plan recommended reorganizing the more traditional current zoning districts into seven Transect Zones. Transect Zones translate zoning districts into different levels of intensity of their physical and natural character which is designed to respond to the natural development that occurs from a central core to more suburban uses. She explained the purpose of a subcommittee and estimates there will be ten (10) monthly meetings. Those on the subcommittee will include the Council President, LUB Chairwoman and the City's Zoning Officer. Chairwoman Conaway stated she is disappointed that the Land Use Board had not been informed and involved up to this point. She feels very strongly that the Board Planner should have been involved.

APPLICATIONS

Continuation: Dolores Robb

Application #666-13

302 Jones Avenue (Block 150, Lot 2)

Cert. of Valid Nonconforming Use Status and/in the Alternative a Use Variance for 2 units

Attorney George Hulse and Board Solicitor Garty gave a brief history of the previous approval which has been reopened. Solicitor Garty reviewed her Zoning Ordinance research with the Board and stated it is the applicant's burden to prove the two (2) units prior to September 1996. Attorney Hulse thanked Ms. Garty for her great job researching the ordinances and summarized the amended application and attachments. Additional evidence reviewed. Definitions of attached and detached multi-units reviewed. Mr. Hulse summarized what was depicted in various photographs, exhibits and document presented, which he asserted confirmed that two (2) units were recognized by the City from at least 1989 until the property was in foreclosure two (2) years ago. Solicitor Garty explained there is case law that if a use is discontinued but not structurally changed that the use is not "abandoned" for the purpose of determining whether a non-conforming use was continuous.

The Applicant Ms. Robb was sworn in. She testified that she purchased the two (2) unit building from the bank in January 2013. She stated the bank said it had been used as a two family dwelling, as indicated in the foreclosure advertisement. Ms. Robb, testified as to what was depicted in the photographs submitted and described the layout of the building. The Exhibits presented by the Applicant were accepted by the Board as evidence. The Applicant stated she was not made aware by the Seller (the bank) of any legal impediment to using the property as a two unit dwelling. There was summation by counsel as to all of the tax, registration, and inspection records and the certificates of occupancy which were produced by the Applicant indicating that the property was rented as a two unit dwelling at least since 1989. There was no comment by the public on this application. Solicitor Garty summed the matter, including the prior testimony at the last hearing and the legal standard for approval. There being no further discussion or questions from the Board, Mr. Ballard moved to grant the issuance of a certificate of a pre-existing non-conforming use for the two (2) dwelling units, second from Mr. Carnivale. Roll call vote. Recusing Themselves: Officer Mercuri and Councilwoman Hatala. Roll call vote. All in favor.

Continued: Saliba Real Estate, LLC

Application #669-13

600 Rt. 130 North (Block 222, Lot 4)

Prel/final site plan – car lot and showroom

Solicitor Garty stated that she understood from the Board Secretary that the a letter was received by fax from the applicant's attorney stating that the Applicant wished to withdraw the application.

Arcadis

Application #670-13

24 East State hwy. (Rt. 130 S.) (Block 164, Lots 15-19)

Site plan – use variance/remediation trailer

The Applicant was represented by Project Scientist/Certified Project Manager Mr. Peter Morris. Solicitor Garty noted since the Applicant is a corporation, the Applicant must be represented by Counsel at the hearing. The Office Manager, who was present, had been advised of this requirement at the Screening Board meeting. Rather than deny the application, the Applicant's Office Manager asked for a continuance. Mr. Ballard moved to place the application on the next agenda subject to the condition that the clock not commence on the time for the Board to act on the Application for a variance; motion seconded by Mr. Johnson. Roll call vote. Voting No: Vice Chairman Richter (1). All in favor.

Ryan T. Phillips

Application #671-13

749 Columbus Road (Block 206, Lot 23)

Variance(s) for 6' fencing project & addition onto existing deck

Mrs. Laura Philips was sworn in by Solicitor Garty. Mrs. Phillips testified that she is the spouse of the applicant and has either joined the application or wishes to do so. She further testified that the existing fence is very deteriorated and they would like to install in its place a 6' high vinyl fence. The fence will go around the entire property. Mr. Ballard questioned the cul-de-

sac area on Neptune Street which seems to be set 1' from the concrete. Mrs. Philips stated there is an existing 4' fence in that same location. When questioned, she stated there will be no abutting fences. Mrs. Phillips explained her family purchased this property when the alley was vacated about four (4) years ago. Planner Perry stated approximately 10' will be added to the existing deck. Mr. Perry noted the addition will square off the area. It was confirmed the existing fencing surround the pool will remain. When questioned, the applicant stated you will be able to walk out onto the deck from the house and there are 3 steps from the ground to the deck. Planner Perry recommended the fence at the cul-de-sac be set back 2' from the sidewalk. Mrs. Phillips testified there is an existing concrete walk between the deck and the pool to prevent diving. There was no comment from the public on this application. Being no further questions Board Member Johnson moved to approve the application with the following stipulations: 1). The deck addition will square off the area; 2). The 6' vinyl fence will be set 2' off the sidewalk at the cul-de-sac. Motion seconded by Mr. Carnivale. Roll call vote. All in favor.

John Brady

Application #672-13

6 W. Pearl Street (Block 12, Lot 59)

Change of use / historic house museum

The Applicant, Mr. Brady, of Morristown, NJ, sworn in by Solicitor Garty. Mr. Brady submitted a brief history of the property. Solicitor Garty noted that an historic house museum (public museum) is a permitted use in the R-3 zone. Mr. Brady briefly reviewed the history of the 1678 brew house. Mr. Brady noted he did submit an application for the use to the Historic Preservation Commission if it is needed. Chairwoman Conaway stated this is a very fascinating and Mr. Brady should be commended for all his hard work. When questioned, Mr. Brady said it maybe a representative brewery in the future. The property will be listed on the Historic National Register. Public Comment: Samuella Cohen of 180 Riverbank congratulated the owner. Mrs. Cohen questioned the house marker. Mr. Brady explained the marker was approved and he is waiting for the construction to end before it is displayed. He stated this property will not be owned by a non-profit entity. She questioned details about parking, handicap access, bathroom usage, hours. Applicant stated the exhibits will be on the first floor of the property and stated the use will not be full-time. Public Comment opened: Samuela Cohen, Riverbank made comments about the history of the City. She then questioned Mr. Brady as to several aspects of the proposed restoration and use. When asked, Mr. Brady stated he does not live in the property. The Public portion was closed by Chairwoman Conaway.

There being no further questions or comments Mr. Ballard moved to approve the change of use application, second from Mr. Carnivale. Roll call vote. All in favor.

Jeanie Hubbard

Application #673-13

1115 Salem Road (Block 106, Lots 5-8,13.01 & 45.01)

Variance / 6' fence

Applicant Hubbard sworn in by Board Solicitor Garty. The applicant testified that the existing 3' picket fence is deteriorated and rotted. The Survey submitted by the Applicant was reviewed and commented upon by the Board's Planner, Mr. Perry. The 6' vinyl fencing will run off the rear corners of the house. Her fencing will be adjacent to four (4) other fences. The Board recommends her fence be elevated to allow for a weedwacker to reach and remove growth for maintenance purposes. The Applicant agreed to allow for that type of access for maintenance purposes. There was no comment from the public on this application. There being no further questions or comments Vice Chairman Richter moved to approve the application as discussed this evening, second from Mr. Johnson. Roll call vote. All in favor.

Billy J. Wheatley

Application #674-13

16-18 East Union Street (Block 135, Lot 1)

Change of use / thrift shop

Mr. Wheatley of 10 E. Union Street, Burlington, was sworn in by Solicitor Garty. Mr. Wheatley testified that to his knowledge, the prior use of the property was as an Underground Railroad location. When questioned as to the intensity of the use, Mr. Wheatley testified that the hours of operation will be Monday thru Saturday from 9 AM to 5 PM. Board members noted this use is a less intensive use than the previous use. Members noted this property is located in the City's Historic District. No public comment was made for or against the proposal. Board Member Carnivale moved to approve the change of use as requested, second from Mr. Johnson. Roll call vote. All in favor.

PUBLIC COMMENT

Samuella Cohen stated her displeasure with the Board not allowing her time to continue questioning Mr. Brady's application. She claimed that there was no one else ready to speak during that public comment and commented that she thinks the Board's rule limiting public comments to five (5) minute increments should not have been applied to her. She stated that it is her opinion that Mr. Brady will apply for to have 501(c)(3) non profit status. She wished everyone a Happy Fourth of July.

BOARD BUSINESS

Mr. Ballard moved to accept the May 22, 2013 minutes as submitted, second from Vice Chairman Richter. All in favor.

PENDING RESOLUTION(S)

1). Donald McMenemy / 204 East Union Street (Block 132, Lot 2) – granted a Certificate for a pre-existing nonconforming use for four (4) units. Mr. Carnivale moved to accept the resolution, second from Vice Chairman Richter. Not Voting: Mercuri, Hatala (2). All in favor.

There being no further business the meeting was adjourned at 8:27 PM.

Respectfully submitted,

DIANE BURNS, Secretary to the Boards