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Florence, New Jersey 08518-2323  
February 5, 2024

The Regular meeting of the Florence Township Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Puccio called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Sullivan read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	Anant Patel
Dennis Puccio	Lou Sovak
Daniel Studzinski	Gina Sullivan
Charles Wible	Kevin Minton
James Fevola	

Absent: Planner Edward Fox (Excused)

Also Present: Solicitor David Frank  
Engineer Hugh Dougherty

#### RESOLUTIONS

A. Resolution ZB-2024-06: Approve 2023 Annual Report

It was the Motion of Mr. Patel, seconded by Vice Chairman Buddenbaum to approve Resolution ZB-2024-06. Motion unanimously approved by all members present.

#### MINUTES

It was the Motion of Mr. Studzinski, seconded by Vice Chairman Buddenbaum to adopt the minutes from the Reorganization Meeting of January 8, 2024. Motion unanimously approved by all members present. Mr. Patel abstained.

#### CORRESPONDENCE

A. Letter from Parker McCay re: Rant Properties, LLC 1496 Hornberger Ave, Block 125 Lots 24&25

Solicitor Frank has been in communication with the applicant's attorney, Mr. Gillespie. Mr. Gillespie, of Parker McCay, is asking for an extension of time for the various improvements called for under the site plan approval, through the end of April 2024. The applicant has filed suit against the owners who have refused to convey the property to them because of a cell tower on the property which they would like to continue receiving revenue from. The judge has required them to participate in a court-ordered mediation scheduled for February 22, 2024. If the board wishes, the applicant can come to a meeting to officially extend the timeframe. The new owner plans to implement all the improvements as soon as they own the property.

Chairman Puccio asked that once they officially close on the property, can the board ask for a timeframe for the new owners to implement the improvements. Solicitor Frank confirmed that the board can do so. We can ask for a report to be ready for the March 4 meeting.

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If the applicant does come in for an extension, then we can require them to notice at that point.

All members present voted in favor to receive and file this correspondence.

#### APPLICATIONS

A. Application ZB#2024-01: Application for Maricruz Calderon 315 West Fourth Street for Impervious Coverage for front porch addition, Block 38, Lot 9.02

1. Engineer Dougherty's Review Letter dated January 17, 2024

Solicitor Frank swore in Ms. Calderon. Ms. Calderon explained that her son, Julian, has special needs and is in a wheelchair. They had applied for a variance and in 2015 for a ramp/lift and were approved & received permits, but they were not able to complete the work due to losing financing from the government. She needs to complete the work in about a month in order not to lose the financing again. It has been a very long process. She had a contractor come in to help with this project, and also help convert an old apartment upstairs to a master bedroom, guest bedroom and bathroom, adding a new roof, porch and wheelchair lift. The first floor of the house would be for Julian and second floor for his parents. The minimum she would like to be approved for would be the porch, porch roof and lift. There are some rental violations that Ms. Calderon is trying to clear up and currently the landlord inspection is on hold for January while this application gets an approval.

Engineer Dougherty went over his review letter with Ms. Calderon. The checklist requires that the survey submitted be signed and sealed by an engineer and that was not submitted. And there were no calculations of impervious submitted with the application. The Zoning Officer had issued a report that indicated that the addition was not adding impervious coverage and the setbacks were previously approved by Resolution ZB-2015-18 which includes the front and rear yard and side yard setbacks and an impervious coverage of up to 48%. The application is incomplete but the board can wave that and can declare the application complete and proceed.

The Zoning officer indicated because some of the improvements on the property in the back yard, the applicant had received an approval in 2015 for up to 48% impervious coverage. Based on what Engineer Dougherty can see on the Google Earth image and a scale, it appears to be around 80% impervious coverage. The back yard is mostly covered with pavers and there are some planting boxes, which do not sit on top of the pavers. The lot is about 5,000sf and estimating from the Google Earth image, there is about 4,000sf of impervious coverage on the property. There is a pool in the backyard which has dirt underneath.

Engineer Dougherty confirmed with Ms. Calderon that her neighbors do not have any issues with water draining onto their property. The rainwater flows to the alley in the back of the property. The water drains toward the street in the front of the house as well and there is no ponding of water on the property. The existing non-conforming setbacks have already been approved in the past, so the impervious coverage overage that requires a variance.

Engineer Dougherty also mentioned the applicant provide green infrastructure such as rain barrels or directing some of the roof runoff to the green space in the front yard. Removing the pool could also be a condition of approval.

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Solicitor Frank added that the issue with impervious coverage is that the rainwater runs off and can cause drainage problems on other properties. It could be useful to work with the board engineer to help mitigate some of that rainwater. It doesn't sound like the impervious is 80%, the lot is 5,000sf where the zone requires 10,000sf. There is a lot of impervious coverage on this lot but the size of the lot is half the size of other lots. From a zoning perspective, there are some reasonable accommodations under the ADA, so there needs to be some accommodations made in this case. The porch addition is all about getting the lift, and the impervious coverage in the backyard is so a wheelchair can be maneuvered. This would fall under the C2 criteria as well as a C1 variance due to the size of the lot. If we are mitigating the storm water then we are mitigating a substantial detriment.

Ms. Calderon has her plans for the upcoming construction that are signed and sealed, which now means that the application is deemed complete.

Mr. Sovak asked if the porch is staying around the same distance as the existing porch but will extend across the front of the house. Ms. Calderon stated that there are special measurements for it so a wheelchair can turn and it is wide enough, so it will be wider than the existing porch.

Mr. Minton asked what the difference is between the existing and proposed square footage of the front porch. Engineer Dougherty said the difference is that the porch will go across the front of the house as opposed to a front stoop.

Engineer Dougherty asked Ms. Calderon if the houses next to her are consistent with the same characteristics as her proposed project. Both homes next to her house have second stories. The home will have the same footprint as it has now. Engineer Dougherty offered to help Ms. Calderon and the architect to implement some green infrastructure ideas.

Mr. Patel asked Ms. Calderon to confirm that the apartment rental upstairs has been legally abandoned as a rental. Ms. Calderon stated that it has been and Solicitor Frank said this information will be in the resolution he prepares since it is a pre-existing, non-confirming use. It is information that would need to be memorialized in the resolution and that will go in the property records.

Seeing no more questions from the Board, the application is open to public comments. There is no one from the public present in the courtroom. The Zoom moderator also confirmed there is no one logged into Zoom. It was the motion of Vice Chairman Buddenbaum, and seconded by Mr. Patel to close public comment.

Solicitor Frank stated that he outlined the potential legal considerations.

It was the motion of Mr. Patel seconded by Vice Chairman Buddenbaum to approve Application ZB-2024-01. Motion was approved unanimously by all members present.

B. Application ZB#2023-13: Application for CCP Outdoor Media, Premier Outdoor Media 307 Fellowship Rd, Mt. Laurel, NJ 08054 to install a billboard on 2033 Route 130 South. Block 159 Lot 3. *Continued from Jan 8, 2024, adjourned to March 4, 2024*

1. Letter with enclosures from Szaferman, Lakind dated January 10, 2024
2. **Letter from Szaferman Lakind regarding Watchfire dated January 25, 2024**

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This application was adjourned to the March 4 meeting as the Planner, Ed Fox, was unable to attend tonight's meeting. The applicant and attorney agreed to this as well.

Motion to adjourn to the March 4, 2024 7:30PM meeting without requiring further notice was made by Mr. Patel and seconded by Mr. Sovak. Motion unanimously approved by all members present.

#### OTHER BUSINESS

Solicitor Frank wanted to take this time to go over some basic information for some of the board's new members. One of the most important things is that we afford everyone the same due process, basic fairness. Based on decision making, it is very important to make these decisions based on competent and credible evidence; not based upon anything we might hear outside of here. Looking back at the last meeting, the board received a report from a company that was not attached to any name. This evidence wasn't competent because we didn't know what its source was. Something like an unsigned architectural drawing or survey is also not credible. There is a big difference between that and a survey/drawing prepared by a licensed surveyor or architect who has professional qualifications and standards.

There are two different kinds of testimony we hear-one is called "fact witness". This kind will tell you what they saw, or what they did, but they cannot tell you what that means or what the implications are. For example, someone could stand outside and count how many trucks they see go by. But if this person is not a traffic engineer, we can't know if it was measured at the right time of day to achieve a measurement. An expert witness can give opinions on things where a lay person cannot.

As we look at our variance applications such as setbacks, height changes, impervious lot coverage...etc, the positive criteria are going to be the hardship where there is something about the property that makes it unfair to apply the general rule. Or it will be a C2 criteria, where the benefits of providing the variance are outweighed by any detriments. Every variance that we hear we need to address the negative criteria, that it does not substantially affect the public good and does not substantially impair the zoned plan and the zoning ordinance. The public good problem is always asking how this affects the neighbors and neighborhood. The zone plan means is it consistent with the neighborhood and with the standards that are in this zone.

The Zoning Board is the only board that can hear D variances: 1. Use Variance not permitted in the zone, 2. Expansion of a non-conforming use, 3. A deviation from a conditional use, 4. Increase to Floor Area Ratio, 5. Increase in permitted density, 6. Increase in height.

The important thing is the D1 variance where we are permitting something in a zone where it is not allowed. This has the highest threshold of proof of all the variances as you have to have special reasons which can be a variety of different things, such as advancing a significant purpose of the Municipal Land Use Law. With a D1 variance, there is negative criteria to hear as well as the enhanced quality of proof. Often the argument for special reasons are that the use is a rare use that maybe was not taken into consideration when the zoning district was created. Another special reason would be a "new" use.

Expansion of a non-conforming use as well as the other D variances are slightly less of a burden of proof, than a D1 use variance because it's already there. There are two kinds of D1 variances:

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one for commercial uses and one for inherently beneficial uses. Inherently beneficial uses are generally considered valuable to the community and are suitable mostly anywhere, and only need to deal with the negative criteria. Examples of inherently beneficial uses are schools, hospitals, churches...etc.

Mr. Minton asked how/if the ADA comes into play when a ramp/lift needs to be installed and this would mean that the impervious coverage is exceeded. Solicitor Frank said ADA is federal law, and there is a supremacy law that states that federal law trumps state law in any areas that are delegated to the federal law through the constitution. They have the authority to require us to make reasonable accommodation under the standards of the ADA and find ways to mitigate any negative impact from those accommodations.

Mr. Fevola asked, if a property was 100% impervious and there was no way to mitigate the impact with rain barrels... etc, would that application have to be denied? Solicitor Frank said in that case, the board would have to figure out ways to mitigate it. We always have an obligation to look at the impact.

#### PUBLIC COMMENT

The meeting was opened for public comment on any general matter.

There was no one from the public attending in person and the Zoom moderator confirmed that no one was being muted by us.

Hearing no one wishing to speak, it was the Motion of Mr. Studzinski, seconded by Mr. Patel to close public comment. Motion unanimously approved by all members present.

#### ADJOURNMENT

It was the Motion of Mr. Patel, seconded by Mr. Studzinski to adjourn the meeting at 8:43 p.m. Motion unanimously approved by all members present.

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Gina Sullivan, Secretary

GS/ah