

Florence, New Jersey 08518-2323
December 1, 2014

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 Zekas called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Buddenbaum then 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	William Bott
John Groze	Larry Lutz
Lou Sovak	Keith Crowell
B. Michael Zekas	Anant Patel
Joseph Cartier	

ABSENT: None

Also Present:

Solicitor David Frank
Planner Barbara Fegley

Excused:

Engineer Anthony LaRosa

RESOLUTIONS

APPLICATIONS

- A. Application ZB#2014-06 Use Variance application for Firdous A. and Irfan Ul Huq. Property consists of a commercial use (doctor's office) on the first floor and a residential apartment on the second floor. The applicant proposes to abandon the commercial use and convert the building to have two residential apartments, one on each floor. Property located at 132 Delaware Avenue, Block 96, Lots 10 & 11.

Chairperson Zekas called the applicant forward. Irfan Ul Huq and Mohammed Ijaz, the project builder, were sworn in by Solicitor Frank.

Dr. Huq explained he is a physician by profession. The bottom floor of the property has been a doctor's office for almost fifty years. He took over twenty years ago and is planning to retire. He thought after he retired he would like to convert the first floor

office into an affordable rental unit. Chairperson Zekas confirmed the applicant wanted to convert the existing office into an apartment. He inquired what the upstairs has been used for. Dr. Huq said it has been an apartment. Currently there are no tenants. Chairman Zekas asked about the number of bedrooms in the units. Mr. Ijaz said each unit would be three bedrooms and one bathroom. Chairman Zekas asked if the home had a driveway. Mr. Ijaz said there is a driveway with room for three or four cars. There would not be any on street parking. Chairman Zekas asked what kind of changes there would be to the structure. Mr. Ijaz said the only real change is to install a window in a bedroom downstairs.

Chairman Zekas asked if there were any other multi-family dwellings in the area. Dr. Huq said he did not know if there were. He said he thinks there are some on Hornberger Avenue. Board members discussed where they believed there were some multi-family dwellings in the area.

Member Bott asked how the upstairs is accessed. The applicant said there are steps on the left side. Member Bott said there weren't any floor plans submitted for the second floor. Mr. Ijaz said he didn't include them because there are no changes to the existing second floor.

Chairman Zekas confirmed the applicant received a copy of the planner's letter discussing the positive and negative criteria. The applicant said he did receive a copy. He said part of the positive criteria is that there aren't many affordable units in the area. There are many people in the area who are in need. It would be good for the community. Mr. Ijaz said many people cannot afford to rent a whole house, but can afford one of these units and would be able to have shelter.

Solicitor Frank asked if the applicant was aware that the township has an obligation by law to provide a certain amount of affordable housing. The township does have a program that creates affordable housing that is subject to restrictions. There would be a deed restriction placed on the property for a minimum of thirty years.

Solicitor Frank said the planner's letter stated that the governing body creates zoning for areas, such as areas where there can only be single family homes. There have to be what the law calls special reasons to allow there to be something different. The burdens to that are fairly high. The burden would be less when you want to do something that is an inherently beneficial use. The law says deed restricted affordable housing is an inherently beneficial use. If the applicant is genuinely interested in providing affordable housing that would be subject to the restrictions, there is a program through the township. Solicitor Frank said if the applicant were part of that program, the proofs under the zoning law would be reduced. If the applicant just wants to build the apartments, the burdens under the zoning would be relatively high. The board has a strong obligation to uphold the law as it is written.

Solicitor Frank suggested the applicant meet with the township administration about the parameters for having affordable housing that would fit within the programs. It might make it easier for this board to make a decision that the applicant would be happy with.

Dr. Huq said he understands but he was not trying to be part of the affordable housing program, he wanted to provide units that were more affordable for people. Solicitor Frank said low and moderate income qualifies; he thought Dr. Huq would be surprised by the income levels that qualify for affordable housing and what the rents can be. Solicitor Frank said the applicant would proceed as he wished but it would reduce his burden before this board if he explored the option. The applicant expressed that he understood.

Solicitor Frank said the applicant did not have to proceed with the application this evening. He could talk to the township about the affordable housing program and come back. It is the applicant's decision. The applicant thanked Solicitor Frank but said he would like to proceed this evening.

Chairman Zekas asked about the square footage on each floor. He noted there weren't any dimensions on the plans that were submitted. He asked if both floors would be three bedroom apartments. Mr. Ijaz confirmed. Chairman Zekas inquired about off street parking for four vehicles. Mr. Ijaz said the driveway is almost 50' long. It could accommodate the cars. Planner Fegley provided a photo of the driveway that was labeled Exhibit P-1.

Member Bott asked if there were two lots and if they were joined. Dr. Huq said there are two lots that are joined. Planner Fegley asked if the lots were consolidated into one tax bill. The applicant said they are on one bill.

Planner Fegley said she looked at the survey and the driveway looks like a single lane. Member Buddenbaum said he is concerned with the single lane driveway; the tenants would block each other in. Mr. Ijaz said the driveway could be widened to the other lot. The board members were concerned about lot coverage.

Planner Fegley said she included in her report that if the application was approved it would need to follow the Residential Site Improvement Standards (RSIS), imposed by the state for residential uses. It would require four off-street parking spaces. The current driveway would not be sufficient because people would be shuttling cars back and forth.

Solicitor Frank said if it was a single residence stacking would be permitted to some extent under the RSIS requirements. When there are multiple residents stacking is not permitted. There would need to be places for both residences to park their cars without having to drive on the grass. Chairman Zekas said with three bedrooms in each unit there could potentially be three drivers on each floor.

Solicitor Frank said since this is a D-1 variance the board needs to look at the positive criteria. There needs to be something about this site that is so different from what's around it that is very clear it should be permitted. That threshold needs to be met before

the details of the application were discussed. Chairman Zekas said that was his reason for asking if there were other multi-unit dwellings in the area. He did not believe there were; he believes it is all single family homes. He would like for the applicant to provide testimony that this site is particularly suited for this use.

Mr. Ijaz said when the property was a doctor's office there were many patients and they parked on the street. The proposed use would have less traffic than the commercial use. Chairman Zekas asked how long it had been a doctor's office. Dr. Huq said it has been a doctor's office since 1935. Mr. Zekas does not recall ever seeing heavy traffic at the site. Planner Fegley asked how many patients would be there at one time. Dr. Huq said usually there were four to six patients at one time.

Planner Fegley asked about the downstairs. She asked how many offices there were and what it looked like now. Dr. Huq said there were two patient examination rooms, there was an area for storing medications, and office for consultations and there is a lab, waiting room, receptionist area and kitchen area. Planner Fegley asked if there was something about the house that made it uniquely suitable for an apartment. She inquired about what it would take to return it to a single family house. Dr. Huq said the office lends itself to being a three bedroom apartment. Mr. Ijaz said it would not work well as a single family home because the rooms are very small. There would be no living room if it was a single family home. There would be nowhere inside to put stairs. There would have to be a brand new staircase put in. Dr. Huq said it has been the same way since 1935. The apartment upstairs had a separate entrance and the office was downstairs. There were no stairs to go from the first floor to the second floor.

Member Buddenbaum asked if there ever was in the past, there could have been a room or hallway where there had been steps. Dr. Huq said there is a dropped ceiling and he hasn't seen anywhere there would have been stairs.

Member Bott asked for clarification regarding the property being too small for a single family home. He asked if the rooms in the proposed apartments would also be too small. Mr. Ijaz said if space was taken to put in stairs it would take away from the rooms.

Planner Fegley asked about stairs noted on the submitted floor plans. Mr. Ijaz said those are stairs to the basement from the first floor. Planner Fegley asked if there was an outside staircase to get to the second floor apartment. Dr. Huq said they are outside. There was discussion regarding the stairs, it was determined they are inside but not accessible from the inside. Chairman Zekas said he believes at some point this was a single family home and someone closed off the staircase so that it was not accessible from the downstairs. Exhibits P-2 and P-3 were entered into evidence. P-2 shows the side of the house where the apartment entrance is located. P-3 shows the front of the house with the entrance to the first floor.

Chairman Zekas asked to return to the positive criteria. He told the applicant it was his responsibility to make the case why this site is particularly suited for this use. Dr. Huq

said this is the only use the property could be used for. He does not believe it can be turned into a single family home.

Member Patel asked if the parking requirements were based on the number of bedrooms in the apartments. Planner Fegley said it was. Solicitor Frank noted even with less parking requirements there would still be an issue with stacking. Member Patel suggested making the driveway wider. There was discussion regarding how many spaces would be required with different numbers of bedrooms. Mr. Ijaz asked if the applicant could use the adjacent lot for parking. Solicitor Frank said it could be used but it raises more issues. There are limits on lot coverage and stormwater management might come into play. These were things the applicant might not want to get into.

Chairman Zekas asked if the applicant had looked at any other use for the property, for example, continuing the use as a doctor's office. Dr. Huq said he did try that but there weren't enough patients to support a practice. Member Sovak asked if keeping a commercial use would be a positive criteria. Solicitor Frank said converting to something that is residential is definitely a positive criteria. It would be seen as moving it closer to conformity. It is an improvement. With a use variance there is the positive criteria of some peculiar suitability of the site for the proposal then there is also the negative criteria. It can't be substantially detrimental to the public good. A lot of parking issues and such go to that. It must also not be substantial impairment for the zone and the zoning ordinance. Moving closer to conformity a planner could say this application is closer to what the zone had in mind so it is not an impairment. On the other hand the zone plan calls for a single family dwelling. The board has to gauge the gain and the loss. Also, with the use variance there needs to be something called the enhanced quality of proof. It translates to, if it is such a good idea to do this why isn't it zoned that way. Here the fundamental argument would be that this use is closer to the desired use of the zone than what is presently there. But is it close enough that the board would think it is gaining something for the community by approving this application. It becomes easier for the board if the applicant decides to sign up with the township affordable housing program. Then it becomes an inherently beneficial use.

Chairman Zekas said it was the applicant's testimony that had to guide the board through the process. No disrespect intended but he hasn't heard any positive criteria. Chairman Zekas asked the applicant how he would like to proceed. Chairman Zekas explained the Solicitor provided a lot of information about how the township could possibly help the applicant with an affordable housing type proposal. He suggested also talking to a planner for advice regarding the positive and negative criteria.

Mr. Ijaz said he and the applicant spoke to the neighbors and they all would rather see the apartments instead of a commercial use. The bottom of the property has been vacant for two years. There was a family in the upstairs apartment but they recently moved. It is convenient to do all the renovations while the building is empty.

Member Buddenbaum asked what the rent amounts would be. The applicant said no more than \$900.00. Member Buddenbaum thinks it would be more beneficial to have a whole house to rent for \$1800.00. He thinks there would be less for the applicant to do.

Chairman Zekas said the solicitor went through some of the things the board considers when granting a use variance. He mentioned the site needs to be well suited. The homes in the area are mostly single family homes. It is the main road into the community. He asked why the site was particularly suited.

Dr. Huq said it probably was a single family house but he feels it would be harder to convert it to a single family home. He thinks the apartments would be better than a convenience store or beauty salon. Solicitor Frank explained that those uses would not be allowed. The doctor's office use was allowed because it was a pre-existing non-conforming use. The zone is the RA-Low Density Residential. The permitted uses start and end at single family homes.

Planner Fegley said the RA permits the same uses as the residential except for apartments. This shows a deliberate choice to not include apartments.

Planner Fegley referred to what the applicant submitted as positive criteria with his application. He said it was to promote general welfare in the community. Many low income families have difficulty purchasing and maintaining a property, particularly senior citizens on a fixed income. The apartments would provide an affordable and reasonable option with monthly rent of under \$1,000.00. She said this statement takes it back to what Solicitor Frank was saying. If that really is the goal of this application then the applicant might want to seriously consider participating in the township's affordable housing program. She suggested considering the deed restriction so that it stays available to the target population.

Solicitor Frank said Dr. Huq might find the rents very similar to what he wanted. The board's obligation is very different and the law is very different. Dr. Huq asked what would happen if he sold the property and it was in the program. Solicitor Frank said if it subject to the affordability controls it could be sold but only subject to those controls. Any subsequent owner would be subject to the rules for the thirty year period.

Solicitor Frank said the house could also be turned into a single family home and sold at the market value for a single family home. Dr. Huq would not need any special permission for that, he would just need to obtain the proper permits from the Construction Office.

Solicitor Frank said if at this point the applicant had submitted all of his proofs and evidence of testimony, the board could do one of two things. They could table the application until the applicant returned with more proofs or a slightly different proposal or they could vote on what was before them tonight and the application could be finished. If the board decided against the application this evening, the applicant could come back

with a different application but all of the application fees would apply. The applicant could decide what he wanted to do and the board would be willing to work with him.

Dr. Huq said he would like the application to be tabled for now so he could consider all the information he was given this evening.

Chairman Zekas said the application would be continued to the next meeting on January 12, 2015. The applicant would have the opportunity to come back when he is ready.

It was the motion of Groze, seconded by Lutz to adjourn Application ZB#2014-06 to the January 12, 2015 meeting. All ayes.

Solicitor Frank advised the applicant that he would not have to send out notices again but if he decided he wasn't ready for the January meeting he would need to let the clerk of the board know in writing.

MINUTES

It was the motion of Buddenbaum, seconded by Lutz to approve as submitted the minutes of the October 6, 2014 meeting. All ayes.

CORRESPONDENCE

- A. Ordinance No. 2014-21 An Ordinance of the Township of Florence amending Chapter 91 of the Code of the Township of Florence, Part 2, Article II, Section 91-3 to include a definition for public improvement and amending Article XIII Section 91-66 entitled "Performance and Maintenance Guarantees; Surveyor's Certification" to minimize the requirement for Maintenance Bonds for Certain Public Improvements.

Solicitor Frank said this was something Council had done to try to help smaller developers. Having to go out and get a performance bond or post thousands of dollars if they are doing something minor is a burden on small developers. It was an effort to be more workable for people that need something small.

It was the motion of Groze, seconded by Buddenbaum to receive and file correspondence A. All ayes.

Chairman Zekas said he noticed there were some plantings at the LB Solar site. Planner Fegley said she was not aware there was anything happening there. There was discussion regarding the quality of the plantings. Planner Fegley said she was still waiting for revised plans. She said she would inspect the site and reach out again for a new plan.

Chairman Zekas wished everyone a Merry Christmas.

OTHER BUSINESS

73.

Motion of Groze seconded by Crowell to adjourn the meeting at 8:44 p.m. Motion unanimously approved by all members present.

Brett Buddenbaum, Secretary

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