

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Frank Servidio
Application No.
Decided on February 23, 2022
Memorialized on April 27, 2022
Approval for Bulk Variance Relief

WHEREAS, Frank Servidio (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for bulk variance relief to construct a new single-family dwelling at 901-903 Sixth Street, also known as Block 38, Lot 24, on the Tax Map of the Borough, in the R-8 Zone; and

WHEREAS, a public hearing was conducted on February 23, 2022; and

WHEREAS, the Applicant was represented by John Jackson, Esq.

NOW THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made. The Applicant is the owner of the subject property. The Applicant is requesting a certification to recognize a prior nonconforming use and grant a use variance with respect to his property to permit two dwelling units on the lot. Mr. Jackson stated that a prior nonconforming use is a use of land, building or premises that lawfully existed before the enactment of a zoning ordinance even though it does not comply with the restrictions applicable to the area in which it is situated. He further argued that such property is deemed to have acquired a vested right to continue in such forum irrespective of the restrictive zoning citing Euneva versus Keansburg. Mr. Jackson also stated that an Applicant could apply to the zoning officer for a certificate of nonconforming use within one year of the zoning change or appear before the board at any time thereafter and in this case, it has been more than a year. He testified that the first dwelling on the property was built in 1920 before the formation of Union Beach in 1925 and that the second dwelling was built in 1947. He presented

tax records, a certificate of tax sale reflecting two principal structures, separate bills for gas, separate bills for electric, separate bills for water, as well as historical and Google Earth photographs as proof of the same. He stated that the zoning regulation changed in 1963 to prohibit two principal structures on one lot.

The Applicant is requesting relief as follows:

1. A certification to recognize a prior nonconforming use or a use variance where Section 13-10.4, in the R-8 Residential Zone, single-family dwellings are the only permitted use. Further, Section 13-5.9 regarding the Number of Principal Dwellings states that any lot utilized for single-family or two-family dwelling purposes shall not contain more than one principal building.

The first witness for the applicant was Mr. Frank Servidio, the property owner, who was sworn in. He proceeded to testify with regard to the two residential dwellings. He stated that he couldn't live in the homes since purchasing them on March 5, 2021 because he hadn't been able to obtain a CO until the zoning issue is resolved. He stated that the property was marketed as two homes on a single lot which he purchased through a realtor. He testified that both houses have single bathrooms, a separate kitchen, heat, hot water, utilities and everything else that would make a single-family home. He stated that when he took occupancy it looked like someone had recently moved out. He also stated that all that was required was trash clean up and cosmetic repairs to both 901-903 Sixth Street which he performed as he is in the construction business.

Ms. Alexandra Ehrhardt, Esq. testified as a witness who hopes to live in the house with Frank Servidio. She stated that they searched the tax records and the property is taxes as one taxable parcel however it is appraised and assessed as two properties on the lot as indicated by the 1975 and 1977 tax assessment cards.

No members of the public spoke for or against the application.

The Board raised some concerns and asked some questions and conducted a short discussion with the applicant, who agreed to provide a garage door and stipulate that they do not intend to make a second dwelling of what they agreed was a garage.

NOW THEREFORE, the Planning Board makes the following conclusions of law, based upon the findings of fact. The Applicant before the Board seeks approval for a prior nonconforming use at the property located on 901-903 Sixth Street.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other non-use related Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions; physical features, or other extraordinary circumstances exist which uniquely affect the specific piece of property and limit its development potential in conformance with Ordinance requirements, such that the strict application of a regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Alternatively, under the (c) (2) criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an Applicant for these variances must also show that the proposed relief sought will not cause a substantial detriment to the public good and, further, will not substantially impair the intent

and purpose of the zone plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met.

Based upon the application, plans, reports and testimony placed before the Board, the Board finds that the Applicant has met the requirements of the Municipal Land Use Law, case law and City ordinances so as to grant the relief requested. Pursuant to these criteria, the purposes of the Municipal Land Use Law will be advanced and the benefits of granting the relief requested clearly outweigh any detriments. While the use is not one that is permitted in the R-8 Zone, a residential use is still requested. The use variance that is being sought is a pre-existing condition in nature. The Board finds that the relief requested is for a pre-existing condition which is not being significantly exacerbated. The benefits of the redevelopment of the property and the rehabilitation of the dwellings outweighs any minimal detriments from granting this relief. Furthermore, the evidence before this Board indicates there will be no substantial detriment to the public good and no substantial impairment to the intent and purpose of the zoning ordinance or Master Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Frank Servidio for the property located at 901-903 Sixth Street known as Block 38, Lot 24 on the Tax Map of the Borough is determined as follows:

1. The Applicant's request for approval of a prior nonconforming use is approved.

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The plan shall be implemented strictly in accordance with the plans submitted and approved by the Board.

2. The Applicant shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications from the Board's professionals.

3. Payment of all fees, costs and escrow due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary.

4. Certification of taxes have been paid to the date of approval.

5. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Union Beach, County of Monmouth, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies the within decision was adopted by this Board on February 23, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on April 27, 2022.

Laurette Wade, Planning Board

FOR: 7

AGAINST: 0

ABSTAIN: 2

Board Member(s) Eligible to Vote:

____Murray____Wells____Sweeney____Devino____Coffey____Connors____