

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Mackus, LLC
Block 193 Lot 13
Decided on April 26, 2023
Memorialized on May 31, 2023
Application for Section 68 Approval of Pre-Existing Non-Conforming Use

WHEREAS, Mackus, LLC (the “applicant”) has made an application to the Borough of Union Beach Planning Board for Section 68 approval of a pre-existing non-conforming use for an apartment over a garage for property located at the corner of 531-533 Morningside Avenue, also known as Block 193, Lot 13 as shown on the tax map of the Borough, located in the R-8 Residential Zone; and

WHEREAS, a public hearing was conducted on this application on April 26, 2023.

WHEREAS, the Applicant was represented by Edward Liston, Esq.; and

WHEREAS, the Board determined it had jurisdiction to hear this application, and that notice had been served and published by the Applicant.

NOW THEREFORE, the Board makes the following findings of fact based upon evidence presented at the aforesaid public hearings, at which a record was made. The application before the Board seeks an approval under N.J.S.A. 40:55D-68. The property in question currently contains one (1) dwelling unit and a two bedroom apartment over a detached garage on the single lot. The Applicant is before the Board seeking a Certificate of Prior Non-conformance under Section 68 of the Municipal Land Use Law (“MLUL”). The apartment over the garage is a non-conforming use. It is located in the R-8 Residential Zone, which permits single family dwellings but not apartments over the free-standing garage on the same lot.

Section 68 of the MLUL applies to such properties that fail to conform to the requirements of the zoning district in which it is located by reason of such ordinance adoption, revision or

amendment. The prospective purchaser, mortgaging or any person interested in any land upon which a pre-existing nonconforming uses or structure exists is allowed to apply in writing for the issuance of a certification that the uses or structure existed before the adoption of the ordinance which render the use or structure non-conforming. In this instance that would be 1963. The Applicant carries the entire burden of proof before the Board.

Board counsel reminded the Board of the burden of proof involving this matter. The hearing is solely for the Applicant seeking relief pursuant to Section 68 of the MLUL dealing with pre-existing nonconforming uses. Under this process the application is heard by the Board as a Board of Adjustment, as required by statute. At this point Mr. Andrew Denbigh and Ms. Caroline Reiter, Board Planner were both sworn in and qualified.

Mr. Edward Liston, Esq. of Toms River entered his appearance on behalf of the Applicant. He stated that the property was built in 1955 which is prior to the Zoning ordinances going into effect in 1963. There were four exhibits entered into the record: Exhibit A-1, the chain of title, Exhibit A-2, the Certification from Dana Frieburg, Exhibit A-3, the appraisal and Exhibit A-4, the elevation certificate. Ms. Frieburg, who resides at 537 Morningside Avenue, was sworn in as a fact witness. She testified, consistent with her certification, that her father built the apartment on top of the garage after getting married in 1955. She testified that was her first home for about one and a half years and then they moved into the house next door. Mr. Liston then reviewed Exhibit A-1 and asked the witness when Mackus purchased the property whether both residences as occupied. Ms. Frieburg testified that they were occupied. Mr. Liston asserted that the property has always been taxed as a two-family property.

Counsel for the Board asked whether the apartment had smoke detectors and CO detectors. Mr. Jeremiah McNamara, who was sworn in as a fact witness, stated that was the case.¹ The owner stated he was also willing to replace the wood stairs with metal ones so that did not trigger the need for variance relief. The Board made it clear to the Applicant that updating the stairs is a health and safety issue and not an expansion of the non-conforming use. Board member Sweeney stated the contact record shows it is a one and a half story Cape Cod and the property card does show there is a garage with a finished floor and was not being taxed as a separate apartment. In response to questions from the Board, Mr. McNamara responded that the space has two bedrooms one bath the kitchen area and livings space. Ms. Frieberg, in response to questions from the Applicant, stated that this has been the configuration. Mr. Liston then summarized the presentation put forward before the Board and requested that the application be approved.

There were no members of the public who wished to address the Board or the Applicant to ask questions or express any concerns.

NOW THEREFORE be it resolved by the Planning Board of Union Beach and it makes the following conclusions of law based upon the foregoing findings of fact. The applicant is seeking relief under Section 68 of the MLUL to continue to use and occupy a two-bedroom apartment above a freestanding garage at 531-533 Morningside Avenue, as a pre-existing nonconforming use.

Based upon the record before the Board and testimony by the applicant, as well as taking into account the testimony provided by the fact witnesses, the Board finds that based upon the evidence permitted in this particular instance that it can grant the relief being sought by the applicant pursuant to Section 68 of the MLUL. The proofs presented before the Board by the

¹ Mr. Jeremiah McNamara is the managing member of the LLC that is the Applicant. He is not a relation to the Board attorney.

Applicant show that the property had a freestanding garage and apartment dating back to 1955, which is on it prior to 1963, when the zoning ordinances of the Board were first established. The proofs before the Board show the two dwellings on the property predate 1963. The record shows the property has been consistently occupied prior to 1963 through today. Granting this approval shall not be considered as relieving the Applicant from property maintaining this dwelling. Any work to be done cannot proceed until all of the required permits have been secured from the Borough.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Union Beach that the application approved herein is subject to the following terms and conditions.

1. Certificate that taxes are paid to date of approval. All escrow accounts are to be kept current.

2. The Applicant shall see to the payment of all fees, costs and escrows due or to become due; any and all monies are to be paid within 20 days of said request by the Secretary to the Planning Board. All escrow accounts must remain current and all property taxes are to be kept paid.

3. The Applicant shall comply with all directives of the Borough Fire, Health and Construction Officials, or their designees to properly maintain the dwelling. The wooden stairs into the apartment shall be replaced with steel stairs. This is a health and safety issue and should not trigger the need for bulk variance relief.

4. The Applicant shall take appropriate dust control, noise control and vermin control measures at all times to maintain the property in accordance with law.

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 resolution was adopted by this Board on April 26, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 31, 2023.



Laurette Wade, Secretary, Planning Board

FOR: 6

AGAINST: 0

ABSTAIN: 0

Board Member(s) Eligible to Vote:

___ Wells ___ Coffey ___ Devino

___ Nalick ___ Conners ___ Sweeney