

**RESOLUTION**  
**Borough of Union Beach**  
**Planning Board**  
**i/m/o Michael Fabozzi-Florence Development, LLC**  
**Decided on November 28, 2018**  
**Memorialized on January 30, 2019**  
**Preliminary and Final Minor Site Plan Approval with Bulk Variance Relief**

**WHEREAS**, i/m/o Michael Fabozzi-Florence Development, LLC (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for Preliminary and Final Minor Site Plan, minor subdivision with use and bulk variance relief on property located at 603 Florence Avenue, also known as Block 15, Lot 1 on the Tax Map of the Borough, in the R-8 Residential Zone; and

**WHEREAS**, a public hearing was conducted on November 28, 2018;

**WHEREAS**, the Applicant was represented by Laurence Kantor, Esq.; and

**WHEREAS**, the Application was deemed complete and evidence of compliance with the notice requirements was presented establishing that the Board has jurisdiction over the Application.

**NOW THEREFORE**, the Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made.

The application before the Board has undergone numerous revisions since the initial submission. There has been a total of four engineering reviews conducted by T&M Associates, Inc. to the Board, engineers, the most recent being November 28, 2018. All of these reports are part of the administrative record before the Board. The most recent set of revised plans were submitted on October 26, 2018 by Scott Nichol, AIA, dated August 9, 2018, revised September 26, 2018 and a printing date of November 16, 2018. The minor subdivision plan was prepared

by Steven Kelly, PLS, PP dated October 22, 2018, revised November 15, 2018. Also, part of the administrative record was the original zoning application of June 22, 2018 and permit denial letter dated July 3, 2018. The property in question is an existing 12,192.4 square foot (0.28 acre) irregularly shaped corner lot with frontage on Dock Street, Florence Avenue and Fifth Street. Property is located in the R-8 (residential) Zone, which permits single-family dwellings, governmental buildings and grounds, public and private schools, essential services, and community residences.

The subject property received site plan approval and a use variance from the Planning Board on January 31, 2007 to permit use of the property as mixed use. That approval was never perfected, and the approval has been abandoned since there has been a cessation of the use or activity on the property by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period one year from the date of cessation or discontinuance. The existing lot consists of a two-story masonry frame structure and a one-story frame structure. The existing two-story structure will remain on one lot, proposed Lot 1.01, and will be used as mixed-use structure with an office use on the first floor and the revised plans in a non-conforming apartment on the second floor, triggering the need for (d)(1) variance relief. A new single-family structure is proposed to be constructed on proposed Lot 1.02. The Applicant has also made a request to the Borough Council with regard to a possible vacating of a portion of Dock Street and Fifth Street to increase the lot areas. The consent of the Borough Council was communicated to the Board through a letter from John T. Lane, Esq., Borough Attorney, dated October 4, 2018, addressed to the attorney for the Planning Board. That letter is also a part of the administrative record before the Board and clearly indicates the consent of the Borough

Council to this application, since it implicates the use of a section of right-of-way which is owned by the Borough.

Based upon the reviews conducted by the Board Engineer, the Applicant requires a series of both variances which are set forth as follows:

1. Section 13-10.4 f.1.(b) – Minimum lot area of 9,124 square feet where 10,000 square feet is required.
2. Section 13-10.4 f.2.(b) – Minimum lot width of 88 feet on Dock Street and of 41.58 feet on Fifth Street where 100 feet is required.
3. Section 13-10.4 f.3.(b) – Minimum lot frontage of 41.58 feet on fifth Street and 100 feet is required.
4. Section 13-10.4 f.4.(b) – Minimum lot depth of approximately 60 feet on Dock Street and approximately 90 feet on Florence Avenue where 100 feet is required on both streets.
5. Section 13-10.4 f.5 (b) – Minimum front setback of 9.27 feet on Florence Avenue where 20 feet is required.
6. Section 13-10.4 f.6 (b) – Minimum side yard setback of 9 feet where 20 feet is required.

**Proposed Lot 1.02**

7. Section 13-10.4 f.1 (b) – Minimum lot area of 7,500 square feet where 10,000 square feet is required.
8. Section 13-10.4 f.2 (b) – Minimum lot width of 76 feet on Fifth Street where 100 feet is required.
9. Section 13-10.4 f.3 (b) – Minimum lot frontage of 76 feet on Fifth Street where 100 feet is required.
10. Section 13-10.4 f.4 (b) – Minimum lot depth of 69 feet on both Dock Street and Fifth Street where 100 feet is required on both streets.

Also, Section 13-8.4.a requires a 20-foot-wide buffer along all sides and rear property lines which abut areas zoned residentially. Bulk variances are required, as no buffering is proposed along the entire perimeter of Lot 1.01. The Applicant has revised the plans to show a 2

square foot sign on the building façade mounted above the window. A bulk variance is required to permit the sign to exceed the maximum 4-foot sign height as set forth in Ordinance Section 13-8.26.d.1.

The first witness on behalf of the Applicant was Mr. Scott Nichol, licensed professional architect who was sworn in and qualified as an expert in this field. The witness proceeded to testify there would be no heavy traffic, no loading or unloading of trucks and, therefore, no need for a loading dock at the premises. In addition to having his architectural office in the downstairs area, there would be approximately one to three employees. He testified that he is out of the office approximately 75% of his work week. He testified that his employees also can work remotely, and when at the office they work generally from 9 to 5. It is an express condition of this Resolution that the downstairs can only be used for the architectural use only and no other uses will be permitted which would exceed parking requirements. In reviewing sections of the most recent report issued by T&M Associates, the witness noted that the sign for the architectural business will not be illuminated and that the parking is sufficient. He also testified that there is manual irrigation and lawn maintenance and that the shed on the premises would be removed. The utilities would be moved up to the attic. He testified in terms of solid waste removal. The only items would be the office waste and the waste from the two-bedroom residential unit. Garbage cans would be utilized. There would be no use of any type of dumpster. The Applicant shall consult with the Building Department to determine if the property needs to be flood proofed. There were no members of the public expressing any desire to question the witness.

The next witness on behalf of the Applicant was Mr. Jim Higgins, licensed professional

planner, who was sworn in and qualified as an expert in his field before the Board. He noted the site is rather unique since it has three front yards, given its triangular shape. The prior use involved a café with a residential use on the second floor. He noted that (d) variance relief had been granted back in 2007 but was never perfected by the prior applicant. He noted that if the minor subdivision was approved the Applicant would be purchasing the right-of-way Dock Street as noted in prior correspondence in the record from the Borough Council. He agreed that the first floor is not suited to a residential use. In his professional opinion, he saw no detriments to granting the variance relief and no negative impact to the use and enjoyment of surrounding properties, the zoning ordinance or the master plan of the Borough. He agreed that some new curbing and sidewalk would have to be installed in coordination with the construction code official. He also agreed that county planning board approval may be needed for the minor subdivision. There were no members of the public who expressed any interest in questioning Mr. Higgins or expressing opinions for or against the subject application.

**NOW THEREFORE**, the Board makes the following conclusions of law, based upon the findings of fact.

The application before the Board seeks Preliminary and Final Minor Site Plan, along with a minor subdivision. There is the need for use variance and bulk variance relief as described above.

Under the Municipal Land Use Law, a Zoning Board of Adjustment, when considering a typical (d) variance, cannot grant relief unless sufficient special reasons are shown, there is no substantial detriment to the public good and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance. The burden of proof is on the applicant to

establish that these criteria have been met. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law, and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute a special reason. Courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any other purposes of zoning set forth in N.J.S.A. 40:55D-2. However, in the final analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interest of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the zone or the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the impact of the proposal on the public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect would be substantial. Furthermore, in most (d) variance cases, the applicant must satisfy an enhanced quality of proof and support by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

With respect to the bulk variances, 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 the detriments.

The uncontroverted evidence before the Board indicates that in this particular circumstance, (d) variance relief can be granted given the historical use of the property, its unique configuration, and the agreement by the Applicant that no other type of use would be permitted in the first floor office that exceeds parking requirements permitted in the zone, thus triggering the need for further variance relief. The reports from the Board engineer do not raise fundamental objections to the bulk variance relief being sought by the Applicant.

Based upon the inquiries made by the Board and its professionals, the Board is satisfied that the proposed office use and residential use upstairs is suitable for the property in question. 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 i/m/o Michael Fabozzi-Florence Development, LLC for property located at 603 Florence Avenue, also known as Block 15, Lot 1 on the Tax Map of the Borough, is determined as follows:

1. The Application for Preliminary and Final Minor Site Plan and minor subdivision approval is approved pursuant to N.J.S.A. 40:55 D-46 and 50;
2. The requested use and bulk variances as recited herein are approved pursuant to N.J.S.A. 40:55D-70(c) and 70(d)(1).



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

1. The implementation of 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. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official, an affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply a copy of any approvals received.

6. A pre-construction meeting shall be held by the Applicant and the Borough officials at least one week prior to the start of construction to ensure all permits, approvals and documents are in order.

7. The Applicant shall seek approval or letter of no interest from the Monmouth County Planning Board.

8. The Applicant shall take all appropriate measures to control any dust, dirt and any vermin during construction/renovation of the building and premises.

9. 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 November 28, 2018 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 17, 2018.

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Madeline Russo, Planning Board

FOR: 7

AGAINST: 0

ABSTAIN: 0

Member(s) Eligible to Vote:

Councilmembers Andreuzzi and Cavallo recused themselves from the hearing on this application, since the Applicant was seeking (d) variance relief.