

MINUTES - ZONING BOARD

April 9, 2018

The Workshop portion of the meeting was called to order at 8:09 P.M. by Mr. Marotta, Chairman.

ROLL CALL:

Members Present:

Mr. Marotta
Mr. Pistol
Mr. Illing
Mr. Bovasso
Mr. Salomon

Members Absent:

Ms. Daly
Ms. Drake

Alternates Present:

Ms. Hay

Alternates Absent:

Mr. Trelease

Also in attendance: Nicholas Giuditta, Esquire, Ron Johnson, Zoning Officer, Kathy Lenahan, Administrator/Scribe

COMMUNICATIONS:

None

RESOLUTIONS OF MEMORIALIZATION:

1. Application No. ZBA-17-025

Applicant: Florin Traistaru

115 Miln Street, Block 187, Lot 13, Commercial D-B Zone

Requesting a use variance to convert a principal permitted use space (retail) to a dentist office (conditional use) on the first floor in a zone where not permitted (§136-30).

The Resolution of Memorialization (attached and made part of these minutes) as amended was reviewed by the Board. After discussion, a motion to approve the resolution was made by Mr. Pistol, seconded by Mr. Illing and passed with the following voting in favor of the motion: Mr. Illing, Mr. Pistol, Mr. Bovasso, and Mr. Salomon.

2. Application # ZBA-17-030

**Applicant: Community Access Unlimited, Inc,
70 Myrtle Street, Block: 634, Lot: 1.01 Zone C-2**

Preliminary and final site plan approval for amendment to prior site plan approval (July 13, 2015) regarding use of administrative office space, expand on-site training and educational services that will exceed the maximum allowable lot coverage (§136-30, Attachment 1, Schedule 1); and with the following previously approved variances: to exceed maximum all allowable lot coverage (§136-30, Attachment 1, Schedule 1); generator located in the front yard (§136-31D(4)); less than the minimum required parking aisle width (§136-23.6) and the following pre-existing conditions: less than the minimum required setback to the GSP (§136-30, Attachment 1, Schedule 1); less than the minimum required front yard setback (§136-30, Attachment 1, Schedule 1).

The Resolution of Memorialization (attached and made part of these minutes) was reviewed by the Board. After discussion, a motion to approve the resolution was made by Mr. Bovasso, seconded by Mr. Pistol and passed with the following voting in favor of the motion: Mr. Illing, Mr. Pistol, Mr. Bovasso and Mr. Salomon

MINUTES:

Motion to adopt minutes of the March 26, 2018 meeting, as amended was made by Mr. Salomon and seconded by Mr. Pistol and passed by unanimous voice vote.

OLD/NEW BUSINESS

Mr. Johnson gave the Board samples of cards/badges that could be for identification. Board decided on photo badges.

The Workshop portion of the meeting concluded at 8:14 P.M.

PUBLIC PORTION:

A public meeting of the Cranford Board of Adjustment was called to order by Mr. Marotta on April 9, 2018 at 8:15 P.M. in Room 107 of the Municipal Building, 8 Springfield Avenue, Cranford, New Jersey. Mr. Marotta announced in accordance with the terms and conditions of the Open Public Meetings Act, the Westfield Leader or Star Ledger has been notified and the agenda posted in the municipal building as required.

Mr. Marotta explained the protocol, purpose and procedure that will be followed during the hearing.

**1. Application # ZBA 18-003
Applicant/Owner Emanuel Nimrud
496 Centennial Avenue
Block 594 Lot 8 Zone: NC**

The applicant is proposing 4 residential apartments and one retail space for a new mixed-use building with 11 parking spaces. The applicant is seeking preliminary and final site plan approval and requires several C(2) variances and a D(3) and D(5) variances, along with design waivers. The applicant needs the following C(2) variances: Minimum side yard (12'/24' required; 3'/18' proposed); Parking (25' from residential zone required; 5'8" requested); Loading Zone (required, none requested). In support of the applicant's D-5 variance for density, he is seeking 4 apartments where residential apartments are a conditional use, and where the lot size permits only 3.646. Pre-existing non-conforming conditions include lot area and lot width. The applicant is also seeking a D(3) variance for not meeting one condition, which is density (up to 20 dwelling units permitted per acre).

Gary Goodman, Esq., appeared on behalf of the applicant. Discussed *res judicata* and the reason this application is different than the other two applications that previously appeared before this Board. The first application was heard in June of 2014, which was for a commercial use and 6 apartments; the second application was heard in November of 2015, which was for a commercial use and 4 apartments. However, the Township had an ordinance in place not to allow residential uses in the zone. In 2016, the Township changed the ordinance, allowing mixed use and residential in the zone. Now that the zone allows for commercial and residential uses he feels the application should be given reconsideration.

Patrick Daly – 7 Cranford Terrace appeared. He requested the hearing to be dismissed based on *res judicata*. Stated the similarities of the application that the Board voted down in 2015. Stated that the layout and units are same size and size of building is similar. Described the legal standard of *res judicata* and asked the Board to deny the application.

Mr. Goodman stated that he would have agreed with Mr. Daly, if the Township had not changed the ruling on the zone. Rules now permit the exact thing they denied at the last hearing. Stated this is now a new application and should be given reconsideration.

Board asked Mr. Giuditta to clarify *res judicata*. Mr. Giuditta stated that the elements of *res judicata* are:

- Second application is substantially similar to the first;
- Same Parties are involved;
- No substantive change in application itself or conditions surrounding the property;

- An adjudication on the merits on the first application;
- Both applications must involve the same cause of action

Stated it is the Board's decision to decide whether or not to proceed.

A board member asked how the zoning change affects this application. Mr. Giuidatta stated that some of what the applicant choose to do in the first application was not permitted, but now the law governing this application is clearly different.

Board discussed the issue and a motion to allow the application to proceed was made by Mr. Illing and seconded by Mr. Bovasso. The following voting in favor of the application to proceed: Mr. Marotta, Mr. Illing, Mr. Pistol, Mr. Bovasso, Mr. Salomon and Ms. Hay.

Robert Hudak, appeared and was sworn in. His credentials were presented to the Board and he was accepted as an expert witness in the field of Planning.

He testified to the following through questions posed by Mr. Goodman:

He has visited the site and has reviewed the Cranford Zoning Ordinance as well as the Master Plan. Described the site and stated that the principal structure burned down, and the applicant purchased the property sometime after that. Described the two previous applications and reasons for their denial. After ordinance was changed in 2016, the applicant resubmitted his application with residential units being allowed in the zone as a conditional use. Mr. Hudak was one of the authors of the new ordinance which allows residential as part of a mixed use. The old ordinance specifically stated that residential units could only be above the first floor. Present ordinance allows for non-residential use on the first floor but does not prohibit residential uses on the first floor.

Mr. Hudak stated that the applicant is proposing a mixed use building in the NC zone. Applicant is seeking minor site plan approval along with additional relief. Stated that the applicant is seeking D(3) relief and that before the change in the ordinance the property was located in the B-3 zone. Described the B-3 zone located on pages LU 30 & LU 32 in the Master Plan. Described the previous use of the site which was a pest control business with residential units. Stated that the new application would not have a substantial detriment to the neighborhood and must satisfy the negative criteria. Described the variances that applicant is requesting and how the negative criteria is satisfied due to the setbacks that are in line with setbacks in the area.

Described the design exceptions to the ordinance. Stated it seems to meet the variance thresholds for the D variance relief as well as the C(1) relief.

Questions posed by the Board ascertained the following:

Size of old building compared to proposed building was smaller. First floor commercial will be used as kitchen design company. As of right is 3 residential units plus commercial use. Applicant needs D-3 variance (conditional use) and D-5 variance (density). Police comments were that they did not want a loading zone in that area.

Emanuel Nimrud applicant, appeared and was sworn in. Stated that the sq. ft. of previous building was smaller but the same conditions such as: 3 units, store front, trucks and setback all the same. Parking lot 0 setback is still the same. Conditions similar. Stated that he lowered the height of building to 24.4 feet. Compacted the building. Stated that he is putting a buffer zone in back so neighbors don't have an issue with lighting. Tried to accommodate all the requests. The commercial component of the project will not have any deliveries, will not sell product. They will only provide a service. It is only approximate 800 sq. feet of commercial space. It will be an appointment-based business.

Mr. Marotta opened the application to the public for questions of this witness with the following appearing:

Patrick Daly – 7 Cranford Terrace – Asked Mr. Hudak questions about traffic with Arnold Pest Control versus the proposed new use. Asked how many trucks would come and go and would there be more traffic. Stated there were 2 non-commercial vehicles parked in lot before. Asked about the appearance of the house while it was Arnold's Pest Control. Asked about the Master Plan and how the application conformed to it. Described the LU 1 of Master Plan. Asked if he considered it a suburban area and introduced into evidence Exhibit O-1 which is a picture of 500 Centennial Avenue. Asked how many units are in that building and the lot size. Showed a print out from the Union County website marked Exhibit O-2 which gives a description of the lot acreage. Asked about other mixed-use buildings in area and if any of them had 4 residential units. Showed another photo marked Exhibit O-3 which is 415 Centennial Avenue. Asked how many units are in that building. Showed another photo marked, Exhibit O-4 which is a close up of that building (415 Centennial) showing 2 mailboxes. Asked about the Master Plan and the characteristics that the town would like to retain. Described the goal of the Master Plan. Asked about the variances the applicant is seeking, also about granting the D-5 and the legal standard of granting that variance.

Mr. Hudak stated in regard to the traffic with Arnold's Pest Control, it was his observation as the past Zoning Officer. Stated that the applicant would operate during normal business hours and traffic would be similar. Stated that they meet the required amount of parking spots. Said the look of the house is very subjective. There are 2 units in the building at 500 Centennial Avenue and the applicant is complying with the facade requirements. Stated they are asking for a small increase in density.

Andzejus Ruskulis – 2 Garden Place - Asked about waiver for parking and what types of trucks will be coming to the site for the commercial aspect of the building.

Mr. Hudak talked about street parking and municipal lot parking. Described the D-3 and D-5 variances the applicant is seeking. Described what the use will be on site. Did not anticipate large vehicles coming to the site. Stated there are small businesses in the area. The non-residential use is permitted in the zone.

Manual Pereiras, appeared and was sworn in. His credentials were presented to the Board and he was accepted as an expert witness in the field of architecture. Prepared a 4 page Exhibit marked A-1. Described the site as pre-existing non-conformity. Addressed concerns about dangerous intersection and concern about proximity to the neighbors so they decided to drop the site down. They set the building back 15 feet from Centennial Avenue. It will have a landscaping wall along the property line plus a 5-foot buffer of landscaping. Parking is compliant, 11 required: 3 commercial and 8 residential. There is a handicapped compliant space. Garbage storage is enclosed. Will have a bike rack. Reduced the size in every direction. It is a 2-story building, no mezzanine. Described the floor plan. First floor is 875 sq. ft. of commercial space. There will be access off Centennial Avenue. Additional entrance access from parking lot. There is an ADA compliant bathroom. Two entrances for the residential component on the ground floor. Apartment is 734 sq. feet, significantly smaller than the commercial component. Stairwell leads to 2nd floor which has 3 apartments. There is a 2-bedroom apartment to the left. Middle unit is a one-bedroom unit and third apartment is a mirror of the previous unit. Discussed the density permitted which is 3.65. Stated that by creating a unit on the first floor which is compliant, they are providing housing for someone with mobility issues. Discussed the Exhibit marked A-2 which is a rendering of the building. Compared this rendering to the previous one submitted with old application.

Discussed the reasoning for brick and Hardie Plank on various sides/areas of the building. Stated that brick should be added from front on Centennial corner to end of ground floor apartment. Brick will be on both levels of Cranford Terrace facade until the point where building overhang begins. Stated that they will comply with everything requested by the Township engineer.

Mr. Nimrud stated that the first-floor apartment is there to help someone who is handicapped. Feels it is a very important unit.

Questions posed by the Board ascertained the following:

Applicant is reducing the height of the entire site. Much lower than the last application. Zoning density is units per acre. FAR does not apply in this zone. Materials proposed are brick along Centennial Avenue and Hardie Plank along Cranford Terrace. Building mounted lighting are down lights for parking. Sign lighting will be gooseneck lamps. Interior lighting on retail space would be on in store front. Lighting will only be on Centennial Avenue. When they are closed, the security lights will be on but not the showcase lights. Hardie Plank is a hard board and it performs extremely well in a fire.

Mr. Marotta opened the application to the public for questions of this witness with the following appearing:

Patrick Daly – 7 Cranford Terrace – Asked if the Cranford Terrace side structure will be 15 feet off sidewalk or street. Stated the sq. ft total is 3061 feet, of that, the residential component is 3000 feet and the commercial is 875 sq. ft. Principle use of building will be residential vs. commercial. Asked if the handicapped accessible unit could still be on the first floor if applicant did not get the D5 variance.

Mr. Pereiras stated it will be 15 feet from the property line. Stated that yes, they could still put handicapped unit on first floor without the D-5 variance but applicant would not do that.

Kristin Russell – Maser Consulting – Planner to the Board – Asked the reason for the 3 foot setback. Asked if there will be testimony about signage and materials. Also asked if the building coverage includes the overhang.

Mr. Pereiras stated that the signage will be only on Centennial Avenue, not on Cranford Terrace. He does not have dimensions on elevations but will be in compliance with ordinance for signage. Since neighbors were concerned about traffic and site lines, felt pulling away from street would make everyone happier.

Mr. Ruskulis - 2 Garden Place – Asked about parking spots being compliant. Parking spots are 9 x 18, but Cranford ordinance is 10 x 18. Asked how is 2nd floor overhang being supported. Questions the columns in parking lot and ADA compliance.

Mr. Pereiras stated that parking spots are normally 9 x 18, but Cranford's ordinance is 10 x 18. If they made them 10 x 18 they would lose the entire buffer at both ends. If Board wants 10 feet they will modify. The 2nd story is supported by columns.

Edwin Reimon appeared and was sworn in. His credentials were presented to the Board and he was accepted as an expert witness in the field of engineering. Stated that the building is at a T intersection. Described the building as it exists right now. Intersection has a stop sign. Centennial Avenue is a county road with high traffic volume. The proposed conditions are that building will face Centennial Avenue, parking in back, elevation of parking lot is 3 feet higher than side street of Cranford Terrace. There is a French drain at end of driveway. Water stops before gets to sidewalk. It is ADA compliant. Discussed the drainage and the storm water management structure to control the outgoing water from parking lot and building to Cranford Terrace. Stated that he will address comments from Township Engineer and incorporated nonstructural storm water measures. Discussed the buffer areas with vegetation in back and landscaping on Centennial Avenue. Retaining wall around perimeter and around parking less than 4 feet in height. All utilities coming through Cranford Terrace.

Questions posed by the Board ascertain the following:

Sealed trash unit is concrete masonry and there will be a floor drain. There will be a maximum of 4 steps on the proposed plan. Drainage from parking lot will have a funnel effect going to catch basin. The retaining wall turns 90 degrees and wraps arounds Cranford Terrace. Foot candles were not noted on the parking area lighting drawings.

Mr. Nimrud stated that the fence is the property's behind them. The retaining wall will slope with the fence.

Mr. Pereiras stated that the existing fence is over the property line which will have to be removed. There will be a new retaining wall with a new fence which will step every 8 feet.

Mr. Marotta opened the application to the public for questions of this witness with the following appearing:

Bill Masol –Township Engineer – Regarding his review letter of April 5th, asked about the note on plans about extending sidewalk. Stated the driveway area is what he was most concern about. Asked about how the retaining wall will be constructed if on property line. Asked about accessibility of first floor apartment and the evaluation.

Mr. Pereiras stated they will move the wall in on the property and he can match grading plan with height of apartment.

Mr. Daly – 7 Cranford Terrace – Asked to clarify the retaining wall. Asked about storm water management impervious coverage.

Mr. Reimon stated that it is 3 feet sloping down toward Cranford Terrace. Lowest height is .5. Stated that they are going to move the wall inside the property. Stated that any development less than one acre is a minor development and does not need to meet requirement. However, they are following the municipalities' code and will also do nonstructural storm water management and feels they are doing even more then required.

Michael Metzger – 2 Cranford Terrace – Lives across from the proposed building and asked about the lighting in the parking lot and how bright will lights be.

Mr. Reimon stated that they will do the best they can to provide lighting standards.

Mr. Ruskulis – 2 Garden Place – Asked about storm water management and best practices.

Mr. Reimon stated that there will be structure and nonstructural methods for storm water management and they will meet requirements for the town.

Mr. Johnson asked what are the non-structural methods, i.e. Rain gardens.

Mr. Reimon stated that they could do swells and a combination of structural measures.

Steve Durner – 6 Cranford Terrace - Asked about egress for second floor in case of fire.

Mr. Pereiras stated there is one stairwell and every bedroom will have an egress window and there will also be a sprinkler system.

Mr. Marotta asked if anyone in the Public wishes to speak for or against this application the following appeared:

Mr. Metzger – 2 Cranford Terrace appeared and was sworn in. Stated that he is concerned about the quality of life, the traffic and safety issues. Stated that when the building was Arnold's Pest Control there were only 2 trucks and 2 cars and the other tenants parked across by his house. There were no deliveries and not a lot of people coming and going. With the new proposal there will be more cars and will not be enough parking. Parking on Centennial Avenue is just not done. Has no idea how long that business will be there. Feels it is very dangerous now and there is already an overflow of parking onto his street. Feels it cannot be compared to when it was Arnolds Pest Control.

Mr. Durner - 6 Cranford Terrace appeared and was sworn in. Stated that he has lived on Cranford Terrace for 48 years and the Town has made ordinances and variances for a purpose. Feels original ordinances should be enforced and no variances given.

Mr. Daly – 7 Cranford Terrace appeared and was sworn in. Described the D5 variance and that it has stricter standards. Board must find a particular reason to grant the variance. Board also must find that it will not substantially impair the intent and purpose of the Master Plan, Zoning Plan and Zoning Ordinances. Feels the applicant is inconsistent with multiple parts of the Master Plan. Described those sections. Stated that the ordinance was adopted in 2016 and has not changed since then. Keeps and preserves the character of the neighborhood. Density is more than parking spaces, its people. The applicant's property is about the same size as his one family home. Zoning allows for 3 units there and most would agree that is more than enough. In granting this variance tonight it sets a precedent. The D3 variance requires a principle commercial use. Stated that three-quarters of the use is for residential space. Granting of the variance is based on weighing the negative and positive impacts. Feels they have failed to show the variance should be granted. Showed photos marked Exhibits O-5 & O-6 of two mixed use buildings, 418 & 523 Centennial Avenue, both with less than 4 units. Photos marked Exhibits O-7 and O-8 are of the parking. Photo marked O-9 is of the narrow width of Cranford Terrace. Stated there is an issue of getting a Fire Truck down Cranford Terrace. Photos marked Exhibits O-10 and O-11 show developments on North Lehigh Avenue of 20 units and next to Calabria where there will be 6 to 8 units going in. Feels this will create more traffic on Centennial Avenue. Stated 3 units is what should be allowed.

Mr. Ruskulis – 2 Garden Place appeared and was sworn in. Stated the footprint of new building is much larger than the previous building and there is a very long list of waivers. Feels this only benefits the applicant and is a detriment to the neighborhood. Lived in Jersey City before moving to Cranford and does not want Cranford to become Jersey City.

Jerry Grillo – 4 Seneca Road appeared and was sworn in. Stated that he has watched all the hearings over the years. Stated he owns property on Centennial Avenue which are mixed use buildings. Stated since the fire, the property has been an eyesore to the town. Stated this project is a great project which has been scaled down. Applicant is asking for less than a 10% variance of what he is allowed. Board's job is to grant variances under certain conditions. Stated that there is no storm water management on that property right now. Stated that the applicant is presenting a very low density commercial space. Town has an ordinance for density. Described type of bedrooms units that will be in space. Stated it is a *de minimis* variance. Feels applicant is doing best he can do for his neighbors. Feels variance should be granted.

No one else appeared and this portion of the hearing was closed with the matter referred back to the Board.

Mr. Goodman summarized the application. Stated the ordinance requires principle use of a commercial space on the first floor and would like to correct record. The ordinance states that there has to be a nonresidential use located on ground floor of the building. Unique site. Applicant has complied he best they can. The fourth unit on ground floor is important due to accessibility for someone who has mobility issues. Would be the only unit he is aware of in Cranford that is accessible to someone with mobility issues without being in an elevator building. Agrees with Mr.Grillo that it is *de minimis*. Feels testimony of engineering and architect support this application. Feels it is a good project and a good addition to zone and asked that it be approved.

2. DELIBERATION OF Application # ZBA 18-003
Applicant/Owner Emanuel Nimrud
496 Centennial Avenue
Block 594 Lot 8 Zone: NC

Mr. Marotta reviewed the testimony.

Board comments consisted of the following:

They like the application. Centennial Avenue is improving and developing. Likes the ADA compliant apartment on ground level. There is no parking variance, parking is compliant. Likes that two of the apartments are one bedroom, feel that will be a huge difference on traffic. Stated the buildings with two rentals have a much large commercial space. Site lines will be more than adequate with the moving back of the building 15 feet. Fire and Police signed off on application, had no concerns. Variety of housing stock is key. Lines up with the Master Plan. It is a minor deviation. Property owner has made the revisions that the Board has suggested. Project less units then proposed and has been scaled down. Likes the fact that applicant has lowered the height of the building. Nicely designed. Likes the brick facade. Evident that owner and designer have listened to what the Board has put forth. Much more in character with Centennial Avenue. Owner will be a good neighbor. Each application the Board hears is an individual application and does not set a precedent for a neighborhood.

Motion to approve Application # ZBA-18-003, with the following conditions, applicant will comply with the Storm Water Management Ordinance, the lighting for the property will not reflect off the property and there will be two lighting poles of lesser height then the one 20 foot high light pole proposed, there will be a greenway in back of property for screening and brick will be on both levels of Cranford Terrace facade to the point where the building overhang begins, was made by David Salomon seconded by Mr. Bovasso with the following voting in favor of the motion: Mr. Marotta, Mr. Illing, Mr. Pistol, Mr. Bovasso, Mr. Salomon and Ms. Hay.

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3. PUBLIC PORTION

There being no further business, a motion to adjourn the meeting was regularly made, seconded and passes. The meeting concluded at 11:58 P.M.

Jeffrey Pistol, Secretary