

**TOWN OF WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT  
APPLICATION NO. ZB 2018-14**

**RESOLUTION DENYING THE APPLICATION FILED BY  
FILLMORE PLACE WNY, LLC**

**FILLMORE PLACE WNY, LLC  
6108 FILLMORE PLACE, WEST NEW YORK, NJ  
BLOCK 42, LOT 37**

**WHEREAS**, Fillmore Place WNY, LLC (the “Applicant”) made application to the Zoning Board of Adjustment (the “Board”), Town of West New York, County of Hudson and State of New Jersey, seeking site plan approval, floor area ratio (“FAR”) variance pursuant to N.J.S.A. 40:55D-70(d)(4), variance for density pursuant to N.J.S.A. 40:55D-70(d)(5), bulk variances for lot area, lot width, lot depth, front yard, side yard, rear yard, lot coverage, parking space size, parking aisle width, as well as relief pursuant to the Residential Site Improvement Standards (“RSIS”) to construct a four story, ten (10) unit multi-family apartment building with off-street parking on the property commonly known as 6108 Fillmore Place (Block 42, Lot 37), West New York, New Jersey (the “Property”); and

**WHEREAS**, 6108 Fillmore Place (Block 42, Lot 37) is owned 6108 Fillmore, LLC, 97 Old Tappan Road, Old Tappan, NJ 07675; and

**WHEREAS**, the Property is located in the R-M Medium Density Zone; and

**WHEREAS**, the Applicant has submitted proof of due notice containing a description of the matter and the hearing date to all property owners located within 200 feet of the Property, in accordance with the Zoning Ordinance of the Town of West New York and the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the “MLUL”) and has provided proof of publication of the required notice at least ten days before the date set for the public hearing; and

**WHEREAS**, public hearings were held on March 7, 2019 and May 16, 2019, and the Applicant was represented by J. Alvaro Alonso, Esq., Alonso & Navarrete, 6121 Kennedy Boulevard, North Bergen, New Jersey 07047; and

**WHEREAS**, the Board received and considered the report of the Board Engineer, Remington & Vernick Engineers, dated October 26, 2018; and

**WHEREAS**, the Board received and considered the memorandums of the Board Planner, David Spatz, PP, AICP, dated July 5, 2018 and July 23, 2018; and

**WHEREAS**, the Zoning Board of Adjustment of the Town of West New York has considered the application, all relevant submissions and testimony, as well as the objectives as set

forth in the Zoning Ordinance of the Town of West New York (the “Zoning Ordinance”), the Master Plan of the Town of West New York and the MLUL; and

**WHEREAS**, the Board, after carefully considering the evidence presented by and on behalf of the Applicant, as well as all testimony, and upon the advice and recommendations of the Board’s professionals, including, without limitation, those set forth in the engineering report prepared by Remington & Vernick Engineers and the reports of David Spatz, PP, AICP, makes the following findings of fact and conclusions of law.

A. **FINDINGS OF FACT**

1. The Applicant filed an application with the Board, dated June 9, 2018, seeking site plan approval, floor area ratio (“FAR”) variance pursuant to N.J.S.A. 40:55D-70(d)(4), variance for density pursuant to N.J.S.A. 40:55D-70(d)(5), bulk variances for lot area, lot width, lot depth, front yard, side yard, rear yard, lot coverage, **parking space size, parking aisle width**, as well as relief pursuant to the Residential Site Improvement Standards (“RSIS”).
2. The Board heard testimony on March 7, 2019 and May 16, 2019. Along with the application, the Applicant filed the following:
  - Plan set titled “Proposed Multi Family Dwelling for Hakan USAL at 6108 Fillmore Place, West New York NJ, Lot #37 Block #42”, prepared by Albert Arencibia, RA, of CPA Architecture, dated August 13, 2017, as follows:
    - T-100: Site Plan, Maps, Zoning Information;
    - T-101: Notes, Site Details;
    - T-101.1: Site Details, Notes;
    - A-100: Floor Plans, Roof Plan; and
    - A-200: Elevations.
  - “Stormwater Management Report” dated May 2, 2019 as prepared by Adnan Khan, PE, of AWZ Engineering, Inc.
  - Traffic Impact Statement prepared by Dynamic Traffic, dated June 20, 2018.
  - “Water and Sanitary Sewer Analysis Report” prepared by Adnan Khan, PE, of AWZ Engineering, Inc., dated May 2, 2019.
  - “Aerial Views A-D” submitted by CPA Architecture.
  - Location Survey prepared by Miloslav Rehak, PLS, of First Sight Surveying, LLC, 10 North Fifth Street, Park Ridge, NJ 07656, dated September 13, 2017.
  - Board of Adjustment Application, dated June 9, 2018.
  - Denial Letter from Thomas O’Malley, Zoning Official, dated April 6, 2018.

- CPA Architecture’s response letter dated February 27, 2019.
  - Planning Exhibit prepared by John McDonough, PP.
3. As described in the Remington & Vernick report dated October 26, 2018, the property is located on the eastern side of Fillmore Place, between 61<sup>st</sup> and 62<sup>nd</sup> Streets, in the Town’s R-M, Medium Density Residential Zone. The property is currently occupied by a 1.5-story frame dwelling and a detached garage. The Applicant proposes to demolish the existing structures and construct a new four-story, 10-unit multi-family dwelling.
  4. As described in the July 23, 2018 report of David Spatz, PP, AICP, the property is located on the eastern side of Fillmore Place, north of 61<sup>st</sup> Street, in the R-M, Medium Density Residential Zone. The Applicant proposes to demolish an existing 1.5-story frame dwelling and detached garage and construct a new four-story, ten-unit multi-family building. The project will consist of three residential floors over parking; there will be four one-bedroom units on the second floor and three one-bedroom units each on the third and fourth floors. The units will range in size from 663.25 SF to 1,078.2 SF. The following chart is included in the July 23, 2018 report:

<b>R-M Zone (High Rise)</b>	<b>Required</b>	<b>Proposed</b>	<b>Variance</b>
Lot area	40,000 SF	5,000 SF	Variance
Lot width	200 feet	50 feet	Variance
Lot depth	200 feet	100 feet	Variance
Front yard	15 feet	1.3 feet	Variance
Rear yard	15 feet	5 feet	Variance
Side yards	10 feet	0 feet/3 feet 8 inches	Variance
Lot coverage	75%	95%	Variance
Building height (stories)	12	4	Complies
Building height (feet)	135 feet	46 feet	Complies
Density	9 units	10 units	Variance
Floor area ratio	3:1	3.28:1	Variance
Parking	18	10	Variance

March 7, 2019 Hearing

5. On March 7, 2019, the Applicant’s counsel appeared before the Board to inform the Board that the Applicant intended to amend its application and to reduce the scope of the subject project. The matter was accordingly adjourned and an announcement was made carrying the matter to May 16, 2019. At the time that Mr. Alonso appeared before the Board to request the adjournment, the plans prepared by CPA Architecture were dated August 13, 2017. The plans reflected a ten-unit project, as aforesaid.
6. Subsequent to the March 7, 2019 hearing and prior to the May 16, 2019 hearing, the Board received a letter from CPA Architecture, signed by Albert Arencibia, advising that the project was reduced to a subdivision application of the subject property and two three-family homes.

7. The Applicant submitted plans from AWZ Engineering and CPA Architecture in connection with the proposed two three-family homes, and those plans are identified hereinbelow:
  - The Applicant submitted revised plans prepared by Albert Arencibia, RA, of CPA Architecture, dated May 16, 2019, as follows:
    - T-100: Site Plan, Scope of Work;
    - T-101: Site Plan, Zoning & Tax Maps, Survey;
    - T-102: Site Details and Notes;
    - T-103: Existing View and Adjacent Properties Pictures;
    - A-100: Floor Plans; and
    - A-100: Existing View and Adjacent Properties Pictures.
  - Plan set titled “Tax Lot 37.01, Block 42, 6108 Fillmore Place, Township of West New York, Hudson County, New Jersey”, prepared by Adnan Khan, PE, of AWZ Engineering, Inc., 150 River Road, Suite B3, Montville, NJ 07045, dated May 2, 2019, consisting of the following:
    - C-01: Site Development Plan;
    - C-02: Grading and Utility Plan;
    - C-03: Construction Details; and
    - C-04: Construction Details.

#### May 16, 2019 Hearing

8. At the May 16, 2019 hearing, Mr. Alonso advised the Board that although revised plans were submitted, the application had not been amended to propose the subject three-family homes and that the revised plans were submitted in error. Mr. Alonso further informed the Board that, notwithstanding the exchange between Mr. Alonso and the Board at the March 2019 hearing, the Applicant decided to stick with the original ten-unit multi-family project.
9. Mr. Alonso elicited testimony from Albert Arencibia, AIA, of CPA Architecture. Mr. Arencibia was sworn and qualified as a licensed professional architect of the State of New Jersey prior to providing testimony. Mr. Arencibia testified as to the plans dated August 13, 2017 and revised to February 25, 2019.
10. There was some confusion as to which application was before the Board, as Mr. Arencibia had submitted plans for two three-family dwellings for the project. However, based on discussions between the Board Attorney and the Applicant’s Attorney, Mr. Arencibia was not authorized to submit those plans and, therefore, Mr. Alonso submitted a letter to the Board Attorney confirming that the Applicant was not moving forward with the two three-family project, but was in fact presenting the ten-unit project.

11. Mr. Arencibia testified that the lot is 50 feet x 100 feet. He testified that there are other multi-family buildings on Fillmore Place, as well as some two-family buildings on that block.
12. He testified that the Applicant will have parking on the ground floor to accommodate ten parking spaces, and three residential floors are proposed. All the unit will be one-bedroom units in the proposed elevator building. The building will be fully sprinklered and fully suppressed. The Applicant is proposing a small rear yard consisting of 5 feet 0 inches. Based on a question from the Chairman of the Board, Mr. Arencibia testified that it is a four-story project consisting of three residential stories over parking. Four one-bedroom units are proposed on the second floor, three one-bedroom units are proposed on the third floor and the fourth floor, for a total of ten units.
13. Mr. Arencibia testified that the building is set back 3 feet in the front at the ground floor and 1 foot 3 inches on the upper floors. The Board expressed concerns with the deficient setbacks, including the front yard setback. One access point is from the parking area directly into the lobby. The Applicant is proposing a handicap van-accessible spot, as well as a bike-rack system in the garage for residents. At the rear corner of the building, exit stairs are proposed. Mr. Arencibia testified as to A-200 of his plan. He testified that, as shown on his plan, on the front side of the building there will be brick on the ground floor. The Applicant proposes to utilize metal panels and possibly cement board on the proposed façade.
14. Mr. Arencibia testified that the garage door only fits one car at a time. As a point of clarification and in response to a question from a Board member, Mr. Arencibia clarified that the Applicant is proposing a 3 foot front yard setback at the ground floor, and 1.3 feet on the upper floors. The minimum setback required is 15 feet. As to the side yard, 3 feet is required and the Applicant proposed 0 feet 0 inches at the ground right side. With regard to lot coverage, a maximum of 60% is permitted and the Applicant proposed a lot coverage of 95%, triggering a variance. With regard to building height, the maximum building height is three stories/35 feet and the Applicant proposed four stories/45 feet 11 inches, triggering a variance. The other variance requested by the Applicant relates to floor area ratio, and the Applicant triggered a variance pursuant to N.J.S.A. 40:55D-70(d)(4), as 3:1 is required and the Applicant proposed 3.28:1. As to density, the Applicant triggered a density variance pursuant to N.J.S.A. 40:55D-70(d)(5) as, pursuant to West New York's Ordinance, the maximum density is nine units and the Applicant proposed ten units. The proposed height is 43 feet 7 inches to average grade of the building.
15. **Mr. Arencibia testified that the parking spaces are compact.** The Applicant, in lieu of providing parking spaces of 9.5' x 20', proposed parking spaces consisting of various sizes, including 7.5' x 15' for compact cars; two parking spaces consisting of 7'6" x 16'; three parking spaces consisting of 8' x 16'; four parking spaces consisting of 8' x 18'; and one 8' x 18' with 8' aisle, van-accessible proposed. The Applicant also proposed 0 off-street loading spaces, where one off-street loading space is required. As to design waivers pursuant to RSIS, a 24 foot driveway width is required for two-way traffic, and 24 foot width travelway as per RSIS. The Applicant proposed 15' x 9" and 17' and 21' 3". The

Applicant also requested a design deviation with regard to the distance between the garage door and the first parking space.

16. As to the rear yard setback, same is proposed at 5 feet 1 inch.
17. The Board then heard testimony from Andrew Jafolla, the traffic engineer with Dynamic Traffic, LLC. Mr. Jafolla was duly sworn and qualified prior to providing testimony to the Board. He testified that the Residential Site Improvement Standards (“RSIS”) would require 1.8 parking stalls per unit. A project with ten one-bedroom units would require 18 parking stalls. He testified that the RSIS standard does allow for deviation based on, for example, local conditions, availability of mass transit, and urban versus suburban location. He testified that there is mass transportation in West New York. He testified that U.S. Census data for West New York demonstrates that for renter-occupied units, the average number of parking stalls available to a rental unit, regardless of the number of bedrooms in that unit, so that would include one, two, three and upwards of that, is .7 per unit available. In his opinion, .7 vehicles per unit is what is needed by residents of West New York. In his opinion, the aforesaid factors result in RSIS not being applicable and, therefore, the Applicant focused on the Town Ordinance. The Town Ordinance requires 1 parking stall per one-bedroom unit, requiring ten parking stalls, which is what the Applicant is proposing. However, RSIS is the State standard that governs, and most municipal ordinances have not been revised in light of recognition of the fact that RSIS is the State standard. Mr. Jafolla rendered his opinion that the parking stalls provided for the proposed project are sufficient.
18. Mr. Jafolla further testified that RSIS typically requires 9 foot x 18 foot parking stalls. The Applicant is not proposing any stalls that meet the RSIS standard, and is proposing six stalls at 8 feet x 18 feet, which meets the length but is short in terms of width by 1 foot. The Applicant is proposing two stalls consisting of 7.5 feet x 16 feet, which are parallel parking stalls. There are two parking stalls that are 8 feet x 16 feet. The length does not meet the criteria, nor does the width, and these would be compact stalls.
19. Mr. Jafolla discussed the widths of the stalls and other standards. In the Institute of Transportation Engineers publication, it discusses the various dimensional characteristics of parking stalls. Instead of relating to a strict standard applicable to any parking stall, same discusses it in terms of how often that parking stall is going to be utilized. The less you utilize that parking stall, the less turnover that is going to be anticipated. Typically, you can design it tighter because you are not constantly going in and out. He stated that, for a standard parking stall, the narrowest they would say for a standard parking stall would be 8 feet wide. With the exception of the two parallel parking stalls, all the proposed parking stalls are 8 feet wide. For a compact vehicle, the publication says you can utilize a 7 foot width. As far as length, 18 feet is required by RSIS. Several of the proposed stalls are 18 feet, and for the two compact stalls that are right angles, there is 16 feet. Mr. Jafolla stated that the average car length for a vehicle in West New York is just over 15 feet. Since the project contains one-bedroom units, he does not see a need for larger vehicles. All things considered, Mr. Jafolla opined that the garage will work. Mr. Alonso asked Mr. Jafolla if a traffic study is warranted for this application, and Mr. Jafolla responded that it

is not. According to the trip generation, there were three people leaving in the morning and three people returning in the afternoon. In the morning, one person came to this site and two left in the afternoon. From a traffic generation perspective, this is a very low intensity site, according to Mr. Jafolla.

20. Chairman Blane noted that this application was listed on prior agendas three times, and questioned if testimony was taken on any of those occasions. Mr. Alonso advised it was not. Mr. Blane asked where the concept for the revised plans that were contemplated came from. Mr. Alonso advised that, at that time, the Applicant considered changing the application. Chairman Blane stated that those plans looked good, providing a 15 foot front yard, a 9 foot rear yard and other positive items, as opposed to building up to the property line. Mr. Alonso stated that the Applicant has taken into consideration the criteria the Board has sought in recent applications as to parking, a 3 foot front setback more or less so landscaping could be provided, and height consistent with other properties in the neighborhood. This project meets all those criteria. The Chairman questioned the front yard setback proposed, and was advised it is 3 feet. The Board Planner has it as 1.3 feet. Mr. Alonso advised that the ground floor is 3 feet, and the upper floors project out a little bit, at 1.3 feet.
21. Mr. Arencibia was recalled by Mr. Alonso after Mr. Jafolla testified. He testified to an elevation of the building within the streetscape, which Mr. Arencibia identified as a streetscape of Fillmore Street, which he prepared. He testified there is multi-family development building across the street.
22. As to the subject project, Mr. Arencibia pointed out the 1.3 foot setback is the residential portion of the building. The ground floor is set back, and landscaping is provided along the front of the building. He stated the proposed building is consistent with the rest of the block. There are five-story buildings across the street, and behind the two-family buildings at the end of the block is another mixed building that is three-stories. There is also a multi-family building on Hudson Street. On the corner is a one-story daycare, and on another corner is a five-story industrial building. Mr. Blane advised he is not talking about the height, but keeping the 3 foot setback going all the way up the building. Mr. Arencibia stated that can be accommodated. He suggested giving a 5 foot setback with landscaping along the front, and then 3 feet above, for a true 3 foot setback. Mr. Blane asked why the 5 foot setback could not be continued up the entire building, and Mr. Arencibia stated that could be done. Vice Chairman Alberto Chapin suggested nine units instead of the proposed ten, so that the parking garage would not be so crowded, and Mr. Arencibia advised that he did not believe that request could be accommodated.
23. Board Engineer Paul Cray requested clarification regarding the front yard setback. He questioned if the building depth is being reduced or is the building being shifted back. Mr. Arencibia advised that the building would be shifted back. Mr. Cray pointed out the exterior door in the back, and was advised by Mr. Arencibia that the stairs would have to be relocated. The Applicant agreed to the various setback changes discussed by the Board. However, Mr. Arencibia does not think reducing the project to nine units is feasible. He feels the parking works well.

24. The Board Engineer expressed a concern regarding the way the parking spaces in the garage are situated. He requested additional testimony from the traffic engineer about coming into a 13 foot driveway (which opens up to almost 18 feet at the garage opening), and the maneuverability of the first parking space, especially is the second space is occupied and someone is coming in. Mr. Jafolla thinks it would be very rare that you have two people trying to come and go at the same time on this site. He would anticipate someone to come into the garage and then back into the spot. To leave, they will need to do a K-turn and then leave. It will be tight, but it can be done, according to Mr. Jafolla. Mr. Chapin reiterated that a regular size parking spot is 18 feet, which Mr. Jafolla confirmed. Mr. Chapin pointed out that the Applicant is providing 16 feet, with a 3 foot buffer, leaving 1.7 inches to maneuver in a normal size parking spot. Mr. Jafolla responded by saying that the stall is 16 feet, plus the 3 feet 7 inches, giving 19 feet 7 inches to maneuver, and the average West New York vehicle is a litter over 15 feet. He also suggested moving the first compact vehicle directly across from another compact stall, which would provide more maneuverability.
25. Mr. Chapin thinks the project is too big with too many units. Board member Michael Calderara stated that, since this is a new project, the Board should strive for greater conformity to the Ordinance. Board member Jeffrey Courtney agreed. Chairman Blane recommended that the developer to consider going from 10 units to 9 units, and combining the two parking spaces in question into one parking space.
26. After continued discussion regarding the parking, a short break was taken to allow Mr. Alonso to speak with his client about reducing the density of the project. After the break, Mr. Alonso acknowledged the Board's concerns, stating he does not believe the density (ten units versus nine units) is a problem, but accommodating ten parking spaces was an issue for the Board. He brought Mr. Arencibia back to provide a resolution to hopefully satisfy the Board in terms of the parking layout. Mr. Arencibia stated that they were aware the parking is a little tight. They discussed shifting the building back, since there is a two foot rear yard, and provide that additional space within the parking area. The building in front will now be flush, with a three foot front setback from the ground all the way straight up, providing an addition three feet in the parking area. Those three feet will make the parking spaces more in compliance with the space that they need and allow for a standard backup parking space, with an 18 foot spot in front of it. The Applicant will still maintain the landscaping in front of the building. The two foot rear yard is only on the ground floor. The residential portion of the building will not be shifted back.
27. After additional discussion regarding the number of and sizes of the parking spaces, and suggestion by the Board that the density be reduced to nine units and eliminating one of the parking spaces to allow for more room, Mr. Alonso commented that the developer is entitled to a fair return on his investment, and that is one of the things that is always considered by the Board. The Board Attorney advised the Board that is incorrect. Case law provides that it is not the Board's concern as to whether or not the project is economically viable. The question is whether or not the Applicant has met its burden of proof in support of the relief requested. The Applicant is seeking a number of variances in

order to construct the building, and the Board has indicated that the density variance is a big concern. Mr. Alonso questioned what is the difference and/or problems between nine units and ten units. The Board advised the parking is a big issue and the safety concerns as to same.

28. Paul Cray, PE, the Board Engineer, commented that the Applicant tried to fit the ten units in the ten spaces. What he is now hearing is that the front setback will be reduced from five feet to three feet, shift the whole building back two feet, and that spaces 1 through 5 would move back three feet. In addition, space 9 would be moved towards the back more than two feet. It does appear to provide a little bit more space. Mr. Cray and Mr. Jafolla discussed the dimensions of various parking spaces.
29. Vice Chairman Chapin spoke to the fact that this is a relatively small project, yet it requires ten variances. Mr. Alonso stated that the property is in the R-M Zone, and the zoning requirements are predicated on a 40,000 SF lot, while the subject lot contains 5,000 SF. He believes you cannot apply the setbacks required for a 40,000 SF lot on a 5,000 SF lot. A smaller lot only requires 3 foot front setbacks. Mr. Chapin pointed out that if the Board asked for bigger setbacks, the Applicant would not meet the requirements. Reducing the density to nine units would remove the need for at least one of the required variances. The Board Attorney advised Mr. Alonso that the Board is not being unreasonable in asking his client to consider its concerns, especially relating to safety issues. Mr. Chapin feels that for quality, nine units and nine parking stalls would alleviate the Board's concerns.
30. The next witness to testify in support of the application was John McDonough, PP, after his credentials as an expert planner were accepted by the Board and he was duly sworn. Mr. McDonough acknowledged that the Applicant requires variances for density and floor area ratio ("FAR"). The West New York Board of Adjustment includes parking in its floor area count. If parking was exempted, as in other municipalities, there would be no FAR variance required, according to Mr. McDonough. If the project was reduced by one unit, no (d) variance would be required and the application would be before the Planning Board. Mr. McDonough stated that from a building standpoint, this 50 foot x 100 foot lot could accommodate two three-family buildings, providing a front setback of 15 feet. In this instance, the Applicant is providing a nice green belt along the 3 foot front setback that goes towards the quality of life concerns. With the change to a flush building front, light and air will go all the way up, so even though the building is closer to the street, it will be greener than if two three-family homes were constructed there. This is a betterment as far as the aesthetics and quality of life. Chairman Blane questioned why Mr. McDonough believes that two three-family dwellings will have cement from the building to the curb, and believes that from 3 to 5 feet along either side of the driveways would have greenery. Mr. Blane feels this is an option. Mr. McDonough reiterated that it is conceivable, under the zone scheme, there is a potential that there could be full pavement along the front of the property. In addition, if the Applicant provided two two-family dwellings, that would be four units with three bedrooms in each, looking at eight to ten bedrooms for this location, which is what the Applicant is proposing.

31. With respect to the density relief, Mr. McDonough testified that the project will promote Purpose A of the land use law, the promotion of the general welfare with a new housing stock. In addition, Purposes D and E are promoted by this project. The consideration has to be whether the Board's concerns translate to substantial negative impacts, and Mr. McDonough believes there was reasonable testimony from a traffic expert that the parking will function safely and efficiently from an engineering standpoint. The application promotes Purpose I, the promotion of a desirable visual environment, and Purpose M, to promote efficient use of land.
32. As to the (c) variance relief requested, there is a 3 foot front yard provided, where 15 feet is required. Mr. McDonough believes this is better than a conceived paved area in front of the property. The side yard on the left is going to be 3.67 feet, whereas 10 feet is required. The 3.67 feet is better than if it was a three-family or two-family dwelling, which would require a 3 foot setback. On the right side, it would be set at 0 feet, but the upper levels would be recessed by 3.67 feet, again better than a two or three-family dwelling. As to the rear yard, the setback is 2 feet versus the required 15 feet, which again is justifiable. As for the lot coverage, 75% is required and 95% is provided, again in the interest of providing safe and efficient parking and circulation.
33. Mr. McDonough then testified as to the design exceptions. The Applicant is seeking relief from the parking standard under RSIS. Ten spaces are provided, where 18 are required under RSIS. Mr. McDonough testified that mass transit is available near the subject project. As to the parking stall sizes, testimony has been provided regarding the use and safety of same as to safe and efficient circulation. There is no loading zone provided internally to the development, whereas one would be required. It is not necessarily designated, but will be under the control and management of the management entity. Lastly, relief is requested for the size of the handicap parking stall and driveway width.
34. Mr. Chapin inquired as to which is the tallest structure on that side of the street where the proposed building will be located. Mr. McDonough advised there is a one-story childcare center next door, and a three-family building immediately adjacent on the other side. There are no other four-story buildings on this side of the street. This will be the only four-story building on that side of the street, per Mr. Chapin. Mr. McDonough stated there is a row of five-story buildings across the street, and no height variance is required of the Application for the proposed project.
35. For the reasons expressed on the record and summarized in this Resolution, the Board voted to deny the application. The Board determined that the granting of the variances would be substantially detrimental to the public good and would substantially impair the purpose and intent of West New York's zone plan and zoning ordinance. The Board determined that the Applicant proposed an apartment building in the neighborhood, as opposed to a development that would be more compatible with the area, and raised major concerns with regard to inadequate parking and safety. The Board determined that the application triggered substantial relief and that the project was too intense for the site, as demonstrated by the inadequate parking and relief requested by the Applicant. The motion to deny the application passed by a vote of 6-1.

36. The Applicant required a density variance, as well as a substantial number of bulk variances. The Applicant sought exceptions pursuant to RSIS for parking, where 18 spaces are required vs. 10 proposed, as well as exceptions, as stated in this resolution and on the record. Based on the Board's knowledge of local conditions, parking is a critical issue in West New York. The Board was also concerned with the inadequate parking, parking stall sizes and lot coverage, among other concerns. The Board felt the project was too intense, as demonstrated by the relief sought by the Applicant. The proposed multi-family building is incompatible and does not fit within the characteristics of the neighborhood. The inadequate parking stall sizes, deficient aisle widths, lot coverage and setbacks demonstrate the project is too intense for the site. The Applicant failed to justify the grant of the substantial relief requested, particularly since the existing building will be demolished and the Applicant has the ability to bring the site into greater conformity with West New York's Zoning Ordinance. The Board determined the site cannot accommodate the proposed development. An applicant must demonstrate that the proposed variance can be granted "without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance". Based upon the application, plans, reports and testimony provided before the Board, the Board finds that the Applicant has not met the minimum requirements of the Municipal Land Use Law, case law and Town Ordinance to grant the requested relief. The Board finds that the Applicant has not set out in the record insufficient proofs to justify the grant of the requested variances. The Applicant has not demonstrated that the approval can be granted without substantial detriment to the public good, the zone plan and Zoning Ordinance of the Town of West New York. The Board felt that the Applicant did not meet its burden of proof pursuant to the Municipal Land Use Law. Members expressed concerns with respect to the proposed building, including concerns related to coverage, inadequate number of parking spaces proposed for this project and inadequate setbacks. The Applicant is proposing an insufficient number of parking spaces for the proposed development. The Board determined the project did not fit within the characteristics of the neighborhood. The Board felt that the relief could not be granted without substantial detriment to the public good, and that the negative criteria outweighs the positive criteria.
37. The Board also expressed concerns with regard to the number of variances requested by the Applicant, including but not limited to, the proposed density. The Applicant applied for a density variance pursuant to N.J.S.A. 40:55D-70d(5). The Applicant failed to demonstrate the site will accommodate the problems associated with a density greater than what is permitted pursuant to the Town's Ordinance pursuant to Price v. Himeji, LLC, 214 N.J. 263, 296-297 (2013). Pursuant to the West New York Zoning Ordinance, 9 units are permitted, and the Applicant is proposing 10 units. Density restrictions, as applicable to residential structures, control the intensity of use. The applicant failed to demonstrate that the site can accommodate the proposed density and that the site can be adequately parked. Pursuant to RSIS, 18 parking spaces are required, and the Applicant is proposing 10 parking spaces, as well as multiple bulk variances and variances related to inadequate parking space sizes, parking within zero feet of the property line and a variance from providing a loading zone. The Applicant also requested design waivers, as set forth herein and depicted in the architectural plan prepared by the project architect. The Applicant failed

to meet the RSIS parking standards. Furthermore, the Applicant is proposing a building that triggers a substantial number of bulk variances, is incompatible with the existing neighborhood and overall, the Board determined the Applicant failed to meet its burden of proof to warrant the grant of a d(5) variance. The Board felt that the Applicant did not meet its burden of proof pursuant to the Municipal Land Use Law. Accordingly, the site is not particularly suited for the proposed development.

38. The lot is undersized for the R-M Zone, where 40,000 SF is required and 5,000 SF exists. The lot is also currently deficient as to minimum lot width, where 200 feet is required and 50 feet is existing and proposed, and lot depth, where 200 feet is required and 100 feet is existing and proposed. With respect to the minimum front setback, 15 feet is required and the Applicant is proposing 3 feet at the ground floor. With respect to the minimum rear setback, West New York's Ordinance requires a minimum of 15 feet and the Applicant is proposing 5 feet and the ground and 3.67 feet above. In addition, with regard to the minimum side yard setbacks, 10 feet on each side is required, and the Applicant is proposing 0 feet and 3 feet 8 inches. In terms of lot coverage, a maximum of 75% is permitted, and the Applicant is proposing 95%. Finally, with regard to West New York's Zoning Ordinance, one loading zone is required, and the Applicant is proposing zero. The Applicant failed to justify the grant of the substantial relief requested from the Board. The Board felt that the variances could not be granted without substantial detriment to the public good, and that the negative criteria outweighed the positive criteria.
39. The applicant failed to provide sufficient testimony to allow the Board to conclude that the undersized lot could support the proposed project.
40. Based upon the application, plans, reports and testimony provided before the Board, the Board finds that the Applicant has not met the minimum requirements of the Municipal Land Use Law, case law and Town Ordinance to grant the requested relief. The Board finds that the Applicant has set out in the record insufficient proofs to justify the grant of the requested variances. The Board determined that the proposed use, minimum lot area, width, proposed density, floor area ratio, inadequate parking, substantially deficient setbacks and substantial relief sought by the Applicant are substantial concerns for the Board. The Board was concerned about safety. The Applicant has not demonstrated that the variances can be granted without substantial detriment to the public good, the zone plan and Zoning Ordinance of the Town of West New York.
41. The Board Secretary shall provide a copy of this Resolution to the Attorney for the Town of West New York.

**NOW THEREFORE, BE IT RESOLVED** that the Zoning Board of Adjustment for the Town of West New York has denied the application for site plan approval, floor area ratio ("FAR") variance pursuant to N.J.S.A. 40:55D-70(d)(4), variance for density pursuant to N.J.S.A. 40:55D-70(d)(5), bulk variances for lot area, lot width, lot depth, front yard, side yard, rear yard, lot coverage, parking space size, parking aisle width, as well as relief pursuant to the Residential Site Improvement Standards ("RSIS") to construct a four story, ten (10) unit multi-family apartment building with off-street parking on the property. The Board further determines that the requested

variances cannot be granted without substantial detriment to the public good. The Board further finds that the requested variance relief will substantially impair the purpose and intent of the Zone Plan and Zoning Ordinance of the Town of West New York. Accordingly, the Board hereby denies the relief requested by the Applicant in connection with the subject application.

WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
Kenneth Blane, Chairman

Date: \_\_\_\_\_

Witnessed by:

\_\_\_\_\_  
Natalia Novas, Secretary  
West New York Zoning Board of Adjustment  
Date: \_\_\_\_\_

DENIAL VOTE:

MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Kenneth Blane, Chairman	x		x			
Alberto Chapin, Vice-Chair			x			
Katherine Chao			x			
Jeffrey J. Courtney				x		
Oscar Guerrero			x			
Ricky Solares			x			
Michael Calderara		x	x			
Ronald Theobald (alternate)						

MEMORIALIZATION VOTE:

MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Kenneth Blane, Chairman						
Alberto Chapin, Vice-Chair						
Katherine Chao						
Jeffrey J. Courtney						
Oscar Guerrero						
Ricky Solares						
Michael Calderara						
Ronald Theobald (alternate)						

**CERTIFICATION**

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_.

By: \_\_\_\_\_  
 Natalia Novas, Secretary  
 West New York Zoning Board of Adjustment

Date: \_\_\_\_\_

Fillmore Place WNY, LLC  
6108 Fillmore Place  
Block 42, Lot 37

**WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT  
NOTICE OF DENIAL**

TAKE NOTICE that on May 16, 2019, the Zoning Board of Adjustment of the Town of West New York denied the application of Fillmore Place WNY, LLC, for the property located at 6108 Fillmore Place, Block 42, Lot 37, Town of West New York, New Jersey, Application No. 2016-04. The Memorializing Resolution was adopted on \_\_\_\_\_. The Applicant has been denied approval to construct a 10-unit multi-family building on the property. The Applicant's request for site plan approval, floor area ratio ("FAR") variance pursuant to N.J.S.A. 40:55D-70(d)(4), variance for density pursuant to N.J.S.A. 40:55D-70(d)(5), bulk variances for lot area, lot width, lot depth, front yard, side yard, rear yard, lot coverage, parking space size, parking aisle width, as well as relief pursuant to the Residential Site Improvement Standards ("RSIS") were denied by the Board. The Resolution denying the application is on file in the Office of the Zoning Board of Adjustment and is available for inspection at 428 60<sup>th</sup> Street, West New York, New Jersey.

\_\_\_\_\_  
Natalia Novas, Secretary  
West New York Zoning Board of Adjustment

Date of Notice: \_\_\_\_\_

## MEMORANDUM

To: Town of West New York Board of Adjustment

From: David Spatz, P.P., AICP *DS*

Date: March 11, 2020

Subject: Zoning Board Docket #ZB 2020-02; filed February 14, 2020  
423 63<sup>rd</sup> Street, LLC site plan  
423 63<sup>rd</sup> Street (Lot 18 in Block 34)

I am in receipt of materials for the above noted application, including the following:

1. Application to the Board of Adjustment and Completeness Checklist
2. Survey of Property, prepared by Lakeland Surveying and dated May 25, 2018.
3. Engineering plan entitled "Site Development Plan", prepared by AWZ Engineering, Inc. and dated September 27, 2019.
4. Architectural plan, entitled "Proposed Discos Pepe, Corp. Warehouse", prepared by JCA Group and dated January 17, 2020.
5. Letter of Denial from Thomas O'Malley, dated November 25, 2019.

The applicant proposes to demolish an existing two story brick dwelling and construct a new two story warehouse. The property is located on the southern side of 63<sup>rd</sup> Street, between Palisade Avenue and Bergenline Avenue, in the Town of West New York's R-M, Medium Density Residential Zone.

I have reviewed the submitted Completeness Checklist and the other submitted documents and have the following comments:

1. The survey must signed and sealed by the preparer.
2. All existing structures within 200 ft. of the site and their uses must be provided.

3. A waiver has been requested for the submission of a key map, showing the location of the site with reference to surrounding areas and streets. This is a basic submission requirement and must be provided.
4. The location and method of refuse storage must be provided.
5. The Statement of the Tax Collector must be provided.

Based upon our review of the submitted materials, we recommend that the Board of Adjustment declare this application as incomplete at this time.

**TOWN OF WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT**

**RESOLUTION DISMISSING APPLICATION FOR  
LACK OF PROSECUTION**

**L&C PROPERTIES, LLC  
441-443 62nd STREET, WEST NEW YORK, NJ  
BLOCK 52, LOT 13**

**APPLICATION NO. ZB-2018-08**

**WHEREAS**, L&C Properties, LLC (the “Applicant”) made application to the Zoning Board of Adjustment (the “Board”), Town of West New York, County of Hudson and State of New Jersey, seeking site plan approval, bulk variances and parking exception from the Residential Site Improvement Standards (“RSIS”) in connection with a proposed 16-unit multi-family project on property commonly known as 441-443 62nd Street (Block 52, Lot 13), West New York, New Jersey (the “Property”); and

**WHEREAS**, the Applicant is represented by Edward J. Mullins III, Esq., 1010 Summit Avenue, Union City, NJ 07087; and

**WHEREAS**, the subject application was scheduled for hearing on October 4, 2018 but was not heard because the appropriate notice had not been provided to the Board; and

**WHEREAS**, the subject application was scheduled for hearing on March 21, 2019 but was not heard because the appropriate notice was not published and served; and

**WHEREAS**, at its February 6, 2020 hearing, the Zoning Board of Adjustment moved to dismiss the application for lack of prosecution; and

**WHEREAS**, this Resolution is to memorialize the action taken by the Board on February 6, 2020 respecting Applicant’s lack of prosecution of said application.

**NOW THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Town of West New York that the application of L&C Properties, LLC for property located at 441-443 62nd Street, West New York, New Jersey, is hereby dismissed without prejudice.

WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT

By: Kenneth Blane  
Kenneth Blane, Chairman

Date: Feb 20, 2020

Witnessed by:

Tanya Rodriguez  
Tanya Rodriguez, Secretary  
West New York Zoning Board of Adjustment  
Date: Feb 20, 2020

**CERTIFICATION**

I certify that the foregoing is a true copy of the Resolution adopted on Feb 20, 2020.

By: Tanya Rodriguez  
Tanya Rodriguez, Secretary  
West New York Zoning Board of Adjustment

Date: Feb. 20, 2020

## MEMORANDUM

To: Town of West New York Board of Adjustment

From: David Spatz, P.P., AICP *DS*

Date: March 24, 2020

Subject: Zoning Board Docket #ZB 2020-03; filed February 12, 2020  
Cirvino Doleo site plan  
5709 Palisade Avenue (Lot 22 in Block 71)

I am in receipt of materials for the above noted application, including the following:

1. Application to the Board of Adjustment and Completeness Checklist
2. Survey of Property, prepared by GB Engineering, LLC and dated July 11, 2019.
3. Architectural plan, entitled "Layout of Existing Commercial Space", prepared by OMLK Architects, LLC and dated June 26, 2019.
4. Letter of Denial from Thomas O'Malley, dated June 4, 2019.

The applicant proposes to operate an appliance store in an existing commercial space, located on the above noted lot. The property is located on the southwestern corner of Palisade Avenue and 58<sup>th</sup> Street, in the Town of West New York's R-M, Medium Density Residential Zone.

I have reviewed the submitted Completeness Checklist and the other submitted documents and have the following comments:

1. All existing structures within 200 ft. of the site and their uses must be provided.
2. A waiver has been requested for the submission of a key map, showing the location of the site with reference to surrounding areas

and streets. This is a basic submission requirement and must be provided.

3. Although the proposal is to occupy an existing space, a zoning chart must be provided to indicate all pre-existing non-conformities and any potential changes. Any other uses in the building must also be identified.
4. The submission includes a Certificate of Sale for Unpaid Municipal Liens, however, this is from 2009. A current Statement of the Tax Collector must be provided.

Based upon our review of the submitted materials, we recommend that the Board of Adjustment declare this application as incomplete at this time.



**TOWN OF WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT  
RESOLUTION GRANTING MINOR SITE PLAN APPROVAL AND  
VARIANCES PURSUANT TO N.J.S.A. 40:55D-70(d)(2), (d)(4) AND (d)(5)  
AND PARKING EXCEPTION PURSUANT TO RSIS  
TO 5902 HUDSON AVE, LLC  
5902 HUDSON AVENUE, WEST NEW YORK, N.J  
BLOCK 61, LOT 2  
ZB 2018-24**

**WHEREAS**, 5902 Hudson Ave, LLC (the "Applicant") made application to the Zoning Board of Adjustment (the "Board"), Town of West New York, County of Hudson and State of New Jersey, seeking minor site plan approval and variances pursuant to N.J.S.A. 40:55D-70(d)(2), (d)(4) and (d)(5) and parking exception pursuant to RSIS to expand a non-conforming use on property commonly known as 5902 Hudson Avenue (Block 61, Lot 2), West New York, New Jersey (the "Property"); and

**WHEREAS**, the Applicant also applied for the following waivers within the site and within 200 feet thereof:

- Requirement for paving and right-of-way widths of existing streets;
- Existing and proposed manholes, sewer lines, fire hydrants, water lines, utility poles and all other topographical features of a physical or engineering nature;
- Location, use, finished grade level, ground coverage, first floor and basement elevations, front, rear and side setbacks of all buildings and other pertinent improvements;
- Existing and proposed public easements or rights-of-way and the purposes thereof, including conservation easements;
- Grading plan;
- Drainage plan;
- Off-site drainage plan;
- Street profiles;
- Soil boring logs;
- Key map;

- Common open space plans;
- Off-site parking plan;
- Traffic plan;
- Loading docks
- Curbs and sidewalks and cross-sections;
- Lighting plan;
- Landscaping and screening plan;
- Storage areas;
- Building elevations;
- ADA facilities;
- Sectionalization and staging plan;
- Operations plan;
- Traffic report;
- Fiscal impact analysis report;
- Housing plan;
- Violations; and
- Permit/inspection waiver; and

**WHEREAS**, there are existing bulk deficiencies that are being continued by the Applicant; and

**WHEREAS**, the Property is located in the R-M Medium Density Residential Zone; and

**WHEREAS**, the Applicant has submitted proof of due notice containing a description of the matter and the hearing date to all property owners located within 200 feet of the Property, in accordance with the Zoning Ordinance of the Town of West New York and the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL") and has provided proof of publication of the required notice at least ten days before the date set for the public hearing; and

**WHEREAS**, a public hearing was held on March 7, 2019 and the Applicant was represented by Bianca Pereiras, Esq., 1116 Summit Avenue, Union City, NJ 07087; and

**WHEREAS**, the Board deemed the application complete on January 17, 2019; and

**WHEREAS**, the Board received and considered the report of the Board Planner, David Spatz, PP, AICP, of Community Housing & Planning Associates, Inc., dated January 9, 2019 and the Applicant's application to the Board of Adjustment filed on December 10, 2018; and

**WHEREAS**, the Zoning Board of Adjustment of the Town of West New York has considered the application, all relevant submissions and testimony, as well as the objectives as set forth in the Zoning Ordinance of the Town of West New York (the "Zoning Ordinance"), the Master Plan of the Town of West New York and the MLUL; and

**WHEREAS**, 5902 Hudson Avenue (Block 61, Lot 2) is owned by 5902 Hudson Ave, LLC, with an address of 775 Bloomfield Avenue, Clifton, NJ 07012; and

**WHEREAS**, Steven Schwartz is identified as the sole member of the subject LLC; and

**WHEREAS**, the Board, after carefully considering the evidence presented by and on behalf of the Applicant, as well as all testimony, and upon the advice and recommendations of the Board's professionals, including, without limitation, those set forth in the planning report prepared by David Spatz, PP, AICP, makes the following findings of fact and conclusions of law.

A. FINDINGS OF FACT

1. The Applicant filed an application with the Board and was heard on March 7, 2019. Along with the application, the Applicant submitted the following:
  - Board of Adjustment application to Zoning Board (CAL No. 2018-24), filed December 10, 2018.
  - Plan set entitled "Basement Legalization, 5902 Hudson Ave. West New York NJ", prepared by Manuel J. Pereiras, AIA, of Pereiras Architects Ubiquitous, 1116 Summit Avenue, Union City, NJ 07087, dated June 12, 2017 and revised to May 11, 2018, consisting of Sheet Z01: Proposed Floor Plan, Project Description, Code Data, Zoning Data, Zoning Map, Location Map.
  - Survey prepared by Marc J. Cifone, PLS, of Lakeland Surveying, 117 Hibernia Avenue, Rockaway, NJ, dated September 29, 2016.
  - Denial letter from Thomas O'Malley, West New York Zoning Official, dated December 27, 2018.

2. As described in the Community Housing & Planning Associates, Inc. report dated January 9, 2019, the subject property is located on the eastern side of Hudson Avenue between 59<sup>th</sup> and 60<sup>th</sup> Streets, in the R-M Medium Density Residential Zone. The Applicant proposes to legalize a basement apartment in an existing four-story multi-family building. The building currently contains eight dwelling units, and there will be a total of nine dwelling units. The proposed apartment will have two bedrooms. The existing multi-family building is a pre-existing, non-conforming use. The proposal would be considered an expansion of that non-conforming use.
3. The Board heard testimony from Manuel Pereiras, AIA. Mr. Pereiras was duly qualified as a licensed professional architect of the State of New Jersey and sworn and provided testimony in support of the subject application. Mr. Pereiras prepared the plans to legalize an existing apartment on the site, increasing same from eight dwelling units to nine units. There are currently eight units in the building, seven of which are two-bedroom units and one is a single-bedroom unit. The Applicant purchased the building with the existing unit in the basement. When he found out that this was illegal, he removed the tenants and vacated the unit and demolished the kitchen. The Applicant seeks to legalize the basement apartment and improve same.
4. Mr. Pereiras testified that the interior layout will be changed. Two bedrooms will be created along the back. It is 8 feet x 4.7 feet in size. There will be a dining area, living area and kitchen. The apartment will be separated from the mechanical works of the building. There is clear and separate access to the mechanical rooms without going through the basement unit.
5. In addition, Mr. Pereiras testified that structural enhancements will be undertaken. There will be some structural changes to the building and emergency escape windows. The building and the unit will comply with all building codes, along with an upgraded fire alarm system and a domestic line sprinkler system covering the basement unit. There will be a fire wall between the basement unit and the rest of the building. There are currently 0 parking spaces and that existing condition will be continued.
6. Chairman Blane asked if any Board members have any questions of Mr. Pereiras. Mr. Chapin asked for confirmation of the existing number of units in the building. Mr. Pereiras stated there are eight existing apartments, seven of which are two-bedroom units and one is a one-bedroom unit. Mr. Chapin wanted to clarify that the application is for legalization of a basement apartment. Mr. Chapin questioned why the new unit will not be a one-bedroom unit, as no parking is being added. Mr. Pereiras stated that this was a pre-existing two-bedroom unit. Board members told Mr. Pereiras that they would prefer a one-bedroom unit so the parking requirement would be reduced. Mr. Pereiras deferred to the Applicant, and they agreed to reduce the subject basement apartment to a one-bedroom unit.
7. There are existing, non-conforming conditions that will be continued, relating to minimum front yard (15 feet required, 0 feet existing and proposed); minimum side yard (3 feet required, 4 feet on one side and 0 feet on the other side existing and

proposed); maximum building height (three stories permitted, four stories existing and proposed); maximum building height (35 feet permitted, ±45 feet existing and proposed); maximum building coverage (60% permitted, 70.69% existing and proposed); maximum lot coverage (100% existing and proposed); off-street parking (0 parking spaces existing and proposed).

8. The Board Attorney marked the plan prepared by Mr. Pereiras, dated June 12, 2017 and revised to January 7, 2019 as Exhibit A-1 for the record.
9. No members of the public appeared to ask questions of Mr. Pereiras.
10. The next witness to testify was Michael F. Kauker, PP, of Kauker & Kauker, LLC, 256 Franklin Avenue, Wyckoff, NJ 07481. Mr. Kauker's credentials as a professional planner of the State of New Jersey were accepted by the Board and he was duly sworn prior to testifying before the Board. Mr. Kauker reviewed the plans prepared by Manuel J. Pereiras, AIA and confirmed he is familiar with the neighborhood and the West New York Zoning Ordinance. Mr. Kauker testified that, from a planning perspective, the property itself permits the use as proposed, notwithstanding the fact that there is no parking on-site, which is typical to the surrounding area. The property is located in the R-M Zone. The lot area meets the minimum requirement of the zone.
11. Mr. Kauker testified that the property has several non-conforming conditions as it relates to setback, which will not be changed. The improvement of the existing space of the foundational level of this building will serve as one of the principal objectives of the Municipal Land Use Law, which is to protect health, safety and welfare. The subject application serves several goals and objectives set forth in the 2015 Master Plan, specifically "B", for protecting and advancing man-made resources. The application shall improve deteriorated areas by removing unsightly or out-of-place structures and revitalizing the area. Mr. Kauker testified that this also advances the goal of respecting the scale of existing nearby housing. The building size will not change and will remain the same. In Mr. Kauker's opinion, this application is a positive one and presents an improvement to the property and the surrounding area.
12. A member of the Board commented that the January 9, 2019 completeness review listed several outstanding items. If the application is approved, the Board wanted confirmation that revised plans will be submitted based on the January 9, 2019 review. Mr. Pereiras confirmed that revised plans will be submitted to the Board.
13. No members of the public appeared either in favor of or opposed to the subject application.
14. The Board, having considered the testimony and evidence submitted in connection with this application, felt the Applicant has met its burden of proof to warrant the grant of relief, as requested by the Applicant.

15. Chairman Blane made a motion to approve the application, with the amendment to a one-bedroom unit, as well as the stipulation that all outstanding comments by either the Board Planner or Board Engineer be addressed, and that revised plans be submitted prior to memorialization of the Resolution. The motion was seconded by a member of the Board and passed by a vote of 7 to 0.
16. A (d)(2) variance is required to permit the expansion of a non-conforming use, as the existing use is not permitted in the R-M Medium Density Residential Zone. Because this application involves a (d)(2) variance for a use that is not inherently beneficial, the Applicant must establish special reasons in support of the application. Additionally, the applicant must affirmatively show that the granting of a use variance will not cause substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and Zoning Ordinance (i.e., negative criteria). Per this standard, as set forth in Burbridge v. Township of Mine Hill, 117 N.J. 376, a (d)(2) applicant does not need to meet the “enhanced quality of proof” set forth in Medici nor advance the positive criteria (i.e., the particular suitability of the site) as is required for a new (d)(1) use variance.
17. Based upon the application, plans, reports and testimony provided before the Board, the Board finds that the Applicant has met the minimum requirements of the Municipal Land Use Law, case law and Town Ordinance to grant the relief requested. The Board finds that the Applicant has set out in the record sufficient proofs to justify the grant of the variance. The use is not so out of place as to interfere with existing uses in the area as to be fundamentally incompatible. The Board determined that the proposed use will not substantially impair the purpose and intent of the zone plan and Zoning Ordinance of the Town of West New York.

**NOW THEREFORE, BE IT RESOLVED** that the Zoning Board of Adjustment for the Town of West New York has granted the Applicant minor site plan approval and variances pursuant to N.J.S.A. 40:55D-70(d)(2), (d)(4) and (d)(5) and parking exception pursuant to RSIS in connection with the legalization of the basement unit in the building on property commonly known as 5902 Hudson Avenue (Block 61, Lot 2), West New York, New Jersey. Accordingly, the Board hereby grants the requested relief, subject to the following conditions:

1. The Applicants will comply the Town’s Construction Code and the comments made by the Board in its report(s) and on the record.
2. Before any permits are applied for, it is the responsibility of the owner to research if there are any open permits, fines or violations. If there are, they must be addressed before a new permit can be issued.
3. The Applicant must apply for all necessary permits regarding the conversion of the apartment.

4. When applying for the permits, a copy of the signed resolution and board-approved plans must accompany the permit application.

5. Once a permit has been issued, inspections must be conducted and all inspections must pass.

6. If this is a conversion from a one or two-family to a multi-dwelling, proof of registration with the State Department of Housing must be provided. If this is an additional unit in an already registered multi-dwelling, the current registration must be amended to include the new unit and must be provided.

7. No certificate of occupancy will be issued unless all inspections have been performed, passed, and all prior approvals have been satisfied.

8. The Applicant shall maintain an adequate escrow account for the review process, as determined by the Municipal officials.

9. The Applicant shall comply with any and all Federal, State, County and local laws, ordinances, codes, rules and regulations with respect to all aspects of the project, property and proposed use, and with all such applicable laws and codes, and shall be responsible for all costs and fees associated therewith. Notwithstanding the approval granted by the Board, the Applicant shall obtain all other applicable approvals and comply with all applicable laws, codes, ordinances, regulations and the like as to the Property.

10. The Applicant shall obtain all appropriate and applicable approvals and permits as required from all governmental agencies having jurisdiction over the project or the subject matter of this application, shall comply with each and every requirement of every issued permit, and shall be responsible for all costs and fees associated with these approvals. Before any permits are applied for, the Applicant shall determine whether there are any open permits or violations for the Property and resolve any such issues to the satisfaction of the Construction Official. A signed Board resolution and Board-approved plans shall be submitted with all applications for permits.

11. If other agency approvals modify the plan, same will trigger a return to the Board.

12. The Applicant agrees to provide revised plans to the Board in accordance with the comments in the June 9, 2019 report of the Board Planner.

13. The boiler room is to have its own separate entrance and access to the boiler room shall not be through any apartment/unit. There shall be clear and separate access to the mechanical room without going through the one-bedroom basement apartment.

14. The proposed basement apartment will be a one-bedroom unit.

WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
Kenneth Blane, Chairman

Date: \_\_\_\_\_

Witnessed by:

\_\_\_\_\_  
Natalia Novas, Secretary  
West New York Zoning Board of Adjustment

Date: \_\_\_\_\_

APPROVAL VOTE:

MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Kenneth Blane, Chairman	x		x			
Alberto Chapin, Vice-Chair			x			
Katherine Chao			x			
Jeffrey J. Courtney			x			
Oscar Guerrero			x			
Ricky Solares			x			
Cibelis Rosado-Mota			x			
Michael Calderara (alternate)						x

MEMORIALIZATION VOTE:

MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Kenneth Blane, Chairman						
Alberto Chapin, Vice-Chair						
Katherine Chao						
Jeffrey J. Courtney						
Oscar Guerrero						
Ricky Solares						
Cibelis Rosado-Mota						
Michael Calderara (alternate)						

CERTIFICATION

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_.

By: \_\_\_\_\_  
Natalia Novas, Secretary

West New York Zoning Board of Adjustment

Date: \_\_\_\_\_

5902 Hudson Ave, LLC  
5902 Hudson Avenue  
Block 61, Lot 2

**WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT  
NOTICE OF APPROVAL**

TAKE NOTICE that on March 7, 2019, the Zoning Board of Adjustment of the Town of West New York granted the application of 5902 Hudson Ave, LLC, for minor site plan approval and variance pursuant to N.J.S.A. 40:55D-70(d)(2), (d)(4) and (d)(5) and parking exception pursuant to RSIS, along with the continuation of the existing non-conforming conditions, on property commonly known as 5902 Hudson Avenue (Block 61, Lot 2), West New York, New Jersey, Application No. 2018-24. The Board approved the legalization of an additional one-bedroom apartment, increasing the number of apartments from eight apartments to nine apartments. The Memorializing Resolution was adopted on \_\_\_\_\_. The Resolution granting the Application is on file in the Office of the Zoning Board of Adjustment and is available for inspection at 428 60<sup>th</sup> Street, West New York, New Jersey.

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Natalia Novas, Secretary  
West New York Zoning Board of  
Adjustment

Date of Notice: \_\_\_\_\_

**TOWN OF WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT**

**RESOLUTION GRANTING SITE PLAN APPROVAL, (d)(2) VARIANCE FOR  
EXPANSION OF A NON-CONFORMING USE, (d)(5) VARIANCE FOR DENSITY  
AND (d)(4) VARIANCE FOR FLOOR AREA RATIO, BULK VARIANCES AND  
PARKING EXCEPTION PURSUANT TO RSIS**

**6002 REALTY, LLC  
6000-6002 BROADWAY, WEST NEW YORK, NJ  
BLOCK 45, LOT 31  
APPLICATION NO. ZB 2018-25**

**WHEREAS**, 6002 Realty, LLC (the “Applicant”) made application to the Zoning Board of Adjustment (the “Board”), Town of West New York, County of Hudson and State of New Jersey, seeking site plan approval, variance for expansion of a non-conforming use pursuant to N.J.S.A. 40:55D-70(d)(2), variance for density pursuant to N.J.S.A. 40:55D-70(d)(5) and variance for floor area ratio pursuant to N.J.S.A. 40:55D-70(d)(4), continuation of bulk variances for front yard setback, rear yard setback, side yard setbacks and lot coverage, and parking associated with the conversion of the existing commercial space to three dwelling units on an existing building located at 6000-6002 Broadway, West New York, New Jersey and identified on West New York’s current tax assessment map as Block 45, Lot 31 (the “Property”); and

**WHEREAS**, the Property is located in the R-M Medium Density Residential Zone; and

**WHEREAS**, the Applicant has submitted proof of due notice containing a description of the matter and the hearing date to all property owners located within 200 feet of the Property, in accordance with the Zoning Ordinance of the Town of West New York and the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the “MLUL”) and has provided proof of publication of the required notice at least ten days before the date set for the public hearing; and

**WHEREAS**, a public hearing was held on November 7, 2019, and the Applicant was represented by Anthony F. Sarsano, Esq., 3413 Bergenline Avenue, Union City, NJ 07087; and

**WHEREAS**, the Board received and considered the Memorandum of the Board Planner, David Spatz, PP, AICP, of Community Housing & Planning Associates, Inc., 60 Friend Terrace, Harrington Park, NJ, dated January 10, 2019, revised to February 1, 2019; and

**WHEREAS**, the Board heard and considered testimony from Alan Feld, AIA, 215 Fourteenth Street, Jersey City, NJ 07310; and John McDonough, PP, 101 Gibraltar Drive, Parsippany, NJ; and

**WHEREAS**, the application was scheduled for hearings at the July 18, 2019 and September 5, 2019 Zoning Board of Adjustment meetings but, in both instances, notices were deficient and the application was not heard by the Board; and

**WHEREAS**, the Zoning Board of Adjustment of the Town of West New York has considered the application, all relevant submissions and testimony, as well as the objectives as set forth in the Zoning Ordinance of the Town of West New York (the “Zoning Ordinance”), the Master Plan of the Town of West New York and the MLUL; and

**WHEREAS**, 6000-6002 Broadway (Block 45, Lot 31) is owned by the Applicant; and

**WHEREAS**, the Board, after carefully considering the evidence presented by and on behalf of the Applicant, as well as all testimony, and upon the advice and recommendations of the Board’s professionals, including, without limitation, those set forth in the planning reports prepared by David Spatz, PP, AICP, makes the following findings of fact and conclusions of law.

A. FINDINGS OF FACT

1. The Applicant filed an application with the Board and was heard on November 7, 2019. Along with the application, the Applicant submitted the following:
  - Architectural plan entitled “Conversion of Commercial to 3DU, 6000-6002 Broadway, West New York, NJ”, prepared by Alan Feld, AIA, dated May 10, 2018, revised to April 8, 2019, consisting of Sheet A-1 (Site Plan, Floor Plan, Location Plan, Zoning Comparison Chart, Data).
  - Survey of Property, prepared by George J. Anderson, PLS, P.O. Box 1348, Little Falls, NJ 07424, dated March 9, 2015.
  - Denial letter signed by Thomas O’Malley, Zoning Official, dated May 28, 2018.
  - Board of Adjustment Application to the Zoning Board, filed December 27, 2018.
2. The Board also considered the Memorandum of David Spatz, PP, AICP, of Community Housing & Planning Associates, dated January 10, 2019 and revised to February 1, 2019.
3. As described in the Memorandum of David Spatz, PP, AICP dated May 28, 2019 and revised to July 22, 2019, the Property is located along the northeastern corner of Broadway and 60<sup>th</sup> Street, in the R-M Medium Density Residential Zone. The Applicant proposes to convert the ground floor commercial space, in an existing mixed-use building, to three apartments. The building currently contains 9 dwelling units. Two of the new units will have two bedrooms and the third new unit will have one bedroom. Page 3 of Mr. Spatz’s report contains a chart outlining the zoning requirements in the R-M Zone, which chart is replicated hereinbelow:

<b>R-M Zone</b>	<b>Required</b>	<b>Proposed</b>	<b>Variance/Compliance</b>
Lot area	40,000 SF	2,750 SF	Variance, pre-existing
Density	80 du/act	190.08 du/ac	Variance (d)(5)
Front yard	15 feet	0 feet	Variance, pre-existing

Rear yard	15 feet	0 feet	Variance, pre-existing
Side yards	10 feet	0 feet	Variance, pre-existing
Lot coverage	55%	95%	Variance, pre-existing
Building height (stories)	12	4	Complies
Building height (feet)	135 feet	45 feet	Complies
Floor area ratio	3:1	See Note 2	Variance (d)(4)
Parking	See Note 3	0	Variance

Note 1: A (d)(2) variance is required for the expansion of a non-conforming use.

Note 2: The FAR calculation must be provided.

Note 3: The bedroom mix of all nine units must be provided to determine the amount of parking required.

4. According to David Spatz's report, the Applicant proposes to convert the ground floor commercial space of an existing four-story mixed-use building into three dwelling units for residential use, bringing the total dwelling units in the building to 12 units. The existing multi-family building is a pre-existing non-conforming use.
5. Anthony Sarsano, Esq., counsel for the Applicant, provided an overview of the application to the Board. The Applicant wishes to convert the commercial ground floor to three residential units.
6. The first witness to testify in support of the application was Alan Feld, AIA, whose credentials as a licensed professional architect of the State of New Jersey were accepted by the Board. Mr. Feld was duly sworn prior to providing testimony with regard to the subject application. Mr. Feld testified that the existing building contains four stories. The first floor is commercially used and the upper floors are residential. There are two commercial tenants on the first floor and nine residential units on the upper floors. The Applicant proposes to convert the entire first floor from commercial to residential use, consisting of three dwelling units (two one-bedroom units and one one-bedroom unit).
7. Mr. Feld testified as to the variances required by the Applicant's proposal, which include a (d)(2) variance to convert the ground floor to residential use and a density variance. In addition, according to Mr. Feld, the Applicant is requesting a parking variance. The new dwelling units would require four parking spaces, and there are no parking spaces proposed. However, the retail use which is being eliminated required six parking spaces. Therefore, the intensity of the parking requirements for this parcel would be decreased.
8. According to Mr. Feld's testimony, the proposed units would be new, with updated kitchens and new bathrooms. The ground floor will be sprinklered. In response to a question from the Board, Mr. Feld stated that the plans he is testifying to are dated May 10, 2018 and revised to April 8, 2019.
9. Board member Oscar Guerrero had a concern that there will be additional rental units with no parking. This is a very difficult location where there is hardly any parking. The commercial use required parking only during the day, but the proposed residential will require parking in the evening and overnight. Mr. Sarsano advised that the parking issue will be addressed during the planner's testimony. Board member Ricardo Solares asked

Mr. Feld how the ground floor units will be accessed. Mr. Feld stated that the corner unit is going to have the same entrance as the rest of the building in the main hallway. The other two units on Broadway will be accessed by existing doors on Broadway.

10. Board Planner David Spatz, PP, AICP stated that a variance is also required for floor area ratio (“FAR”). Now that the building is fully residential, the calculation for FAR is triggered. According to Mr. Spatz, the Applicant requires a (d)(2) variance for the expansion of a non-conforming use, a (d)(4) variance for the FAR, and a (d)(5) variance for density. The other variances are pre-existing conditions. In addition, the Applicant requires relief for parking pursuant to RSIS.
11. The next witness to testify was John McDonough, PP, 101 Gibraltar Drive, Parsippany, NJ. Mr. McDonough was sworn after being accepted by the Board as a professional licensed NJ planner. Mr. McDonough provided handouts for the Board members and professionals. Mr. McDonough testified that the shell of the building is not changing. This is just an occupancy application and only the lower story is being changed. Floors 2 to 4 will remain as they currently exist. The ground floor currently consists of vacant commercial space. Under the Ordinance, the parking demand would equate to 15 parking spaces. By converting the ground floor to residential use, the parking demand is reduced to 6 parking spaces, a substantial drop in intensity. From a planning standpoint, the conversion of the space to a less intense use from a parking demand standpoint is key. Mr. McDonough reminded the Board that this site is in the R-M Zone, which is a residential district. By converting the non-residential use to residential, the property is in greater conformance to the zone requirements. Mr. McDonough stated that the current use is a pre-existing non-conforming use.
12. A discussion ensued regarding the vacant commercial space, which has been empty for at least a year. Board member Guerrero stated he is very familiar with this area, which consists primarily of commercial uses under residential. He questioned that if the proposed conversion is approved for this site, what would happen if other property owners decided to convert their commercial spaces into residential uses. This would add to the parking problem already existing in the Town. Mr. McDonough stated, as far as he knows, other commercial spaces are presently occupied. Chairman Blane asked for clarification regarding the commercial spaces in the area, that they are all pre-existing non-conforming uses, and Mr. McDonough advised that they were grandfathered, because they were there originally. In Mr. McDonough’s opinion, if one of these pre-existing non-conforming uses was vacant for over a year, it would be considered an abandonment and would no longer be grandfathered.
13. The Board and Mr. McDonough further discussed parking (commercial v. residential), along with the FAR. Mr. McDonough stated that the shell/footprint of the building is not being changed. This is just an interior conversion, turning two commercial spaces into three residential units. The building is not getting any bigger, and there is no enlargement. There is no intensification from a parking standpoint. The property is L-shaped, and the existing building is responsive to that. The area has a mix of uses, including a bank and a laundromat, and a fitness center.

14. Mr. McDonough directed the Board to page 4 of his handout, which shows the zoning in the R-M Zone. This is a residential district, which allows for the grandfathering of the mixed-use buildings. Page 5 shows the character of the building. There is no change to the three upper levels. There is a total of 9 units in the building currently, and the 3 additional units would bring the total to 12 units. The maximum allowed is 5 units, triggering the (d)(5) variance.
15. To clarify the requested relief, Mr. McDonough testified that a (d)(2) variance is required to alter a pre-existing non-conforming use, along with a (d)(5) variance for density, where 9 units exist and 5 are permitted, and the Applicant proposes 12 units. A (d)(4) variance for FAR is also required, to allow 3:7 v. 3:1, which is an existing condition. The building is not changing. Parking relief related to RSIS is required, where 6 spaces are required and 0 spaces are existing and proposed. This is less than the 15 spaces required for commercial use. Also, a number of (c) variances are required, which are all existing conditions that are not changing, related to the lot area, and setbacks. In terms of relief, the essence of the (d)(2) test is not whether the use belongs there in the first place, but whether the site is better. The proposed use will add life back into the area and put people back on the streets. All of the other relief is subsumed within the (d)(2) justification as a better zoning alternative for the property, according to Mr. McDonough. The proposed use puts under-utilized space back into a functional use, that goes towards the planning goal of efficient land use. It promotes aesthetics by retaining an existing building and promoting adaptive reuse. This goes towards the purposes of zoning A, J, I and N. On the negative side, there is no substantial detriment to the surrounding neighborhood. The (d)(5) relief can be granted because the site can accommodate the density. The (d)(4) variance can be granted because the building is not being enlarged. Finally, the parking relief can be granted because the parking demand is actually being reduced on the property. All of the other requested relief are for pre-existing conditions not being worsened by this application. At the end of his testimony, Mr. McDonough's handout was marked as Exhibit A-1.
16. Chairman Blane outlined the decision being made by the Board. This is an existing non-conforming mixed-use in a district where no new mixed-uses are permitted. There is a commercial space on the ground floor that has been vacant for more than a year, meaning it is considered abandoned. This makes it doubtful that the building code official would approve a new rental of a commercial space. Since garden apartments and apartments with elevators are permitted, the only difference in this application is that there is no elevator. There is a high likelihood that the commercial space would have to remain vacant because the use has been abandoned. The proposed parking is not being changed, and the Applicant's proposal is closer to a permitted use than what currently exists.
17. Additional questions were asked regarding the proposed use. Mr. McDonough stated that the three proposed units on the ground floor will be market-rate units. According to Mr. Feld, one unit is 635 SF, one is 730 SF and the one-bedroom unit is 486 SF. A question was raised as to whether the exterior of the building would be beautified in any way, and Mr. Feld stated the outside would probably be fixed up and the signs removed from the

building. The two-bedroom units would have separate entrances from the rest of the building.

18. Based upon the application, plans, reports and testimony provided before the Board, the Board finds that the Applicant has met the minimum requirements of the Municipal Land Use Law, case law and Town Ordinance to grant the relief requested. The Board finds that the Applicant has set out in the record sufficient proofs to justify the grant the requested relief and allow the continuation of the existing variances. The use is not so out of place as to interfere with existing uses in the area as to be fundamentally incompatible. The Board determined that the proposed use will not substantially impair the purpose and intent of the zone plan and Zoning Ordinance of the Town of West New York.

**NOW THEREFORE, BE IT RESOLVED** that the Zoning Board of Adjustment for the Town of West New York has granted the Applicant site plan approval, variance for expansion of a non-conforming use pursuant to N.J.S.A. 40:55D-70(d)(2), variances for density pursuant to N.J.S.A. 40:55D-70(d)(5) and floor area ratio pursuant to N.J.S.A. 40:55D-70(d)(4), continuation of all bulk variances for front yard setback, rear yard setback, side yard setbacks and lot coverage (all pre-existing conditions), and parking variance, for property located at 6000-6002 Broadway, West New York, NJ, Block 45, Lot 31. The Board further determines that the requested variances may be granted without substantial detriment to the public good. The Board further finds that the requested relief and variance relief will not substantially impair the purpose and intent of the Zone Plan and Zoning Ordinance of the Town of West New York. Accordingly, the Board hereby grants the requested relief from the Zone requirements associated with the subject property, subject to the following conditions:

1. The Applicant(s) will comply the Town's Construction Code and the comments made by the Board professionals in their report(s) and on the record.
2. Before any permits are applied for, it is the responsibility of the owner to see if there are any open permits or violations and address these before a new permit can be issued.
3. When applying for permits, a copy of the signed resolution and board-approved plans must accompany the permit application.
4. Once a permit has been issued, inspections must be conducted and all inspections must pass before a certificate of occupancy can be issued.
5. No certificate of occupancy will be issued unless all inspections have been performed, passed, and all prior approvals have been satisfied, which includes compliance with all conditions imposed by the Board. Prior to the issuance of a certificate of occupancy, the Applicant shall satisfy all amounts due and owing to the Board's professionals.
6. The Applicant shall maintain an adequate escrow account for the review and construction process, as determined by the Municipal officials.
7. The Applicant shall comply with any and all Federal, State, County and local laws,

ordinances, codes, rules and regulations with respect to all aspects of the project, property and proposed use, and with all such applicable laws and codes, and shall be responsible for all costs and fees associated therewith. Notwithstanding the approval granted by the Board, the Applicant shall obtain all other applicable approvals and comply with all applicable laws, codes, ordinances, regulations and the like as to the Property.

8. The Applicant shall obtain all appropriate and applicable approvals and permits as required from all governmental agencies having jurisdiction over the project or the subject matter of this application, shall comply with each and every requirement of every issued permit, and shall be responsible for all costs and fees associated with these approvals. As stated herein, before any permits are applied for, the Applicant shall determine whether there are any open permits or violations for the Property and resolve any such issues to the satisfaction of the Zoning Official. If there are any open permits or violations, no new permits shall be issued until the open permits and violations are addressed to the satisfaction of the Zoning Official. All sums, fines and penalties assessed by the Zoning Official/West New York Building Department shall be paid as may be due or otherwise adjusted, with the Zoning Official/West New York Building Department, prior to the issuance of permits. A signed Board resolution and Board-approved plans shall be submitted with all applications for permits.
9. If other agency approvals modify the plan, same will trigger a return to the Board.
10. A Developer's Agreement, if applicable, shall be entered into between the Town of West New York and the Applicant.
11. If this is a conversion from a one and two family to multi dwelling, proof of registration to the State Department of Housing must be provided to the Board. That is in addition to the units that are already registered per the drawing. The first registration must be amended to include the new unit and must be provided to the Board and Board Attorney.
12. The Board and Board professionals have the right to do a six-month lookback to determine whether the lighting should be adjusted.
13. No dens are permitted and any dens reflected on the plan shall be eliminated.
14. The Applicant shall comply with the comments and conditions of the Zoning Board Engineer, Zoning Board Planner, Zoning Board Attorney and Board as stated in this Resolution and on the record.
15. The Applicant shall comply with all applicable laws and regulations, including the payment of the non-residential development fee, if applicable, pursuant to the Municipal Land Use Law.

WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
Kenneth Blane, Chairman

Date: \_\_\_\_\_

Witnessed by:

\_\_\_\_\_  
Tanya Rodriguez, Secretary  
West New York Zoning Board of Adjustment

Date: \_\_\_\_\_

APPROVAL VOTE:

MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Kenneth Blane, Chairman			x			
Alberto Chapin, Vice-Chair				x		
Katherine Chao						
Jeffrey J. Courtney			x			
Oscar Guerrero			x			
Ricky Solares		x	x			
Michael Calderara						
Ronald Theobald (second alternate)			x			

MEMORIALIZATION VOTE:

MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Kenneth Blane, Chairman						
Alberto Chapin, Vice-Chair						
Katherine Chao						
Jeffrey J. Courtney						
Dennis Desocio						
Ricky Solares						
Michael Calderara						
Ronald Theobald (second alternate)						

**CERTIFICATION**

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_.

By: \_\_\_\_\_  
 Tanya Rodriguez, Secretary  
 West New York Zoning Board of Adjustment

Date: \_\_\_\_\_

6002 Realty, LLC  
6000-6002 Broadway  
Block 45, Lot 31

**WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT  
NOTICE OF APPROVAL**

TAKE NOTICE that on November 7, 2019, the Zoning Board of Adjustment of the Town of West New York granted the Applicant site plan approval, variance for expansion of a non-conforming use pursuant to N.J.S.A. 40:55D-70(d)(2), variance for density pursuant to N.J.S.A. 40:55D-70(d)(5) and variance for floor area ratio pursuant to N.J.S.A. 40:55D-70(d)(4), continuation of bulk variances for front yard setback, rear yard setback, side yard setbacks and lot coverage, and parking, for property located at 6000-6002 Broadway, West New York, NJ, Block 45, Lot 31 (the "Property"), Application No. 2018-25. The Memorializing Resolution was adopted on \_\_\_\_\_. The Resolution adopting the application is on file in the Office of the Zoning Board of Adjustment and is available for inspection at 428 60<sup>th</sup> Street, West New York, New Jersey.

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Tanya Rodriguez, Secretary  
West New York Zoning Board of Adjustment

Date of Notice: \_\_\_\_\_

## MEMORANDUM

To: Town of West New York Board of Adjustment

From: David Spatz, P.P., AICP *DS*

Date: March 11, 2020

Subject: Zoning Board Docket #ZB 2020-01; filed January 27, 2020  
6110-6114 Jefferson Ave, LLC subdivision and site plan  
6114-6118 Jefferson Street (Lots 5 & 6 in Block 148)

I am in receipt of materials for the above noted application, including the following:

1. Application to the Board of Adjustment and Completeness Checklist
2. Engineering plan entitled "Site Development Plan", prepared by AWZ Engineering, Inc. and dated November 11, 2019
3. Three architectural plans, entitled "Proposed New Three Family After Subdivision", prepared by CPA Architecture. and dated April 16, 2019.
4. Letter of Denial from Thomas O'Malley, dated September 11, 2019.

The applicant proposes to subdivide Lot 6 into two lots and construct a three family dwelling on Lot 5 and each of the two newly created lots. The property is located on the eastern side of Jefferson Street, between 61<sup>st</sup> and 62<sup>nd</sup> Streets, in the Town of West New York's R-M, Medium Density Residential Zone.

I have reviewed the submitted Completeness Checklist and the other submitted documents and have the following comments:

1. The survey and subdivision plat should be provided as a separate submission. The application indicates that a survey was prepared by First Sight Surveying, however this was not submitted.
2. The Statement of the Tax Collector must be provided.

Based upon our review of the submitted materials, we have no objection to this application being deemed complete pending compliance with the above noted comments. In order to maintain compliance, the above noted items must be addressed at least ten (10) day prior to the public hearing.

**TOWN OF WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT**

**RESOLUTION DISMISSING APPLICATION FOR  
LACK OF PROSECUTION**

**AN-MAR REALTY, LLC  
6123-6129 PARK AVENUE, WEST NEW YORK, NJ  
BLOCK 40, LOTS 19 AND 20**

**APPLICATION NO. ZB-2018-07**

**WHEREAS**, An-Mar Realty, LLC (the “Applicant”) made application to the Zoning Board of Adjustment (the “Board”), Town of West New York, County of Hudson and State of New Jersey, seeking site plan approval, bulk variances and parking exception from the Residential Site Improvement Standards (“RSIS”) in connection with a proposed 12-unit multi-family project on property commonly known as 6123-6129 Park Avenue (Block 40, Lots 19 and 20), West New York, New Jersey (the “Property”); and

**WHEREAS**, the Applicant is represented by Bianca P. Pereiras, Esq., 1116 Summit Avenue, Union City, NJ 07087; and

**WHEREAS**, the subject application was deemed incomplete by the Board on May 9, 2018; and

**WHEREAS**, the Applicant was informed by the Board that said application was deemed incomplete and submission of the information and documents set forth in David Spatz’s May 9, 2018 Memorandum was mandated; and

**WHEREAS**, the Applicant failed to submit said documents and information required pursuant to West New York’s Ordinance and Site Plan Checklist; and

**WHEREAS**, at its February 6, 2020 hearing, the Zoning Board of Adjustment moved to dismiss the application for lack of prosecution; and

**WHEREAS**, this Resolution is to memorialize the action taken by the Board on February 6, 2020 respecting Applicant's lack of prosecution of said application.

**NOW THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Town of West New York that the application of An-Mar Realty, LLC for property located at 6123-6129 Park Avenue, West New York, New Jersey, is hereby dismissed without prejudice.

WEST NEW YORK  
ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
Kenneth Blane, Chairman

Date: \_\_\_\_\_

Witnessed by:

\_\_\_\_\_  
Tanya Rodriguez, Secretary  
West New York Zoning Board of Adjustment  
Date: \_\_\_\_\_

**CERTIFICATION**

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_.

By: \_\_\_\_\_  
Tanya Rodriguez, Secretary  
West New York Zoning Board of Adjustment

Date: \_\_\_\_\_

**J. ALVARO ALONSO LLC**  
**ATTORNEY AT LAW**  
6121 Kennedy Boulevard  
North Bergen, New Jersey 07047  
TEL 201-295-9977 / FAX 201-295-9565  
Email: [aalonsoesq@aol.com](mailto:aalonsoesq@aol.com)

April 27, 2020

Nylema Nabbie, Esq.  
Cleary Giacobbe Alfieri Jacobs, LLC  
169 Ramapo Valley Road, Upper Level 105  
Oakland, New Jersey 07436

**Re: Pedro Calvo**  
**441-443 62<sup>nd</sup> Street**  
**West New York, NJ**  
**West New York Board of Adjustment**

Dear Ms. Nabbie:

Please be advised that my office has been retained to represent Pedro Calvo in connection with the above referenced application. It is my understanding that the West New York Board of Adjustment recently voted to dismiss the application without prejudice for failure to prosecute same. Please accept this letter as a formal request that the Board rescind its prior action and reinstate this matter to the agenda.

It appears that the lack of prosecution was a result of miscommunication with Mr. Calvo's prior attorney. Since being retained, I have reviewed this matter with Mr. Calvo and Orestes Valella, the client's architect, who has since provided me with revised plans which I need to file with the Board's Secretary. However, I need a determination by the Board with respect to my request so that I know if I need to file amended plans or an entirely new application. From a procedural and pragmatic perspective, I believe that rescinding the Board's prior action would be the most efficient way to proceed.

Although I am ready to proceed, it is my understating that no action will be taken by the Board for atleast 90 days.

Please feel free to contact me should you have any questions.

Very truly yours,



J. Alvaro Alonso

JAA/mc