

BOROUGH OF RARITAN
Planning Board Regular Meeting
MINUTES
July 27, 2017

CALL TO ORDER

Vice Chairman Brown called the meeting to order at 7:04 p.m. in the Raritan Municipal Building. He read the Open Public Meetings statement as follows: This meeting is called pursuant to the provisions of the Open Public Meetings Act. Notice of this meeting was sent to the Courier News on January 19 and Star Ledger on January 26, 2017. In addition, copies of the notices were posted on the bulletin board in the Municipal Building, on the Raritan Borough website and filed in the Office of the Borough Clerk. They were also sent to those people who have requested and paid the cost for mailing same. Notices on the bulletin board have remained continuously posted. Proper Notice having been given, the Board Secretary was directed to include this statement in the Minutes of this meeting.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present:	Vice Chairman Brown	Also Present:	Susan Rubright, Board Attorney
	Mr. Cunningham		Stan Schrek, Board Engineer
	Mr. Gausz		Lou Gara, Construction Official/Zoning Officer
	Mr. Wilde		
	Mr. DeCicco	Absent:	Chairman Miller
	Mr. Fortkus		Mayor McMullin
	Mr. Krajewski		Councilman Bray
			Mr. Zack
			Ms. Thomas
			Ms. Goetsch

CONSTRUCTION/ZONING OFFICIAL REPORT

Mr. Gara advised that he had nothing new to report.

PLANNER'S REPORT

There was no report in the absence of Ms. Knowles.

TRC MEETING UPDATE

Mr. Brown advised that there had been no TRC meetings held and that there were none scheduled.

RESOLUTIONS

Bongiovi (Block 40, Lot 3) 100 Second Avenue – Interpretation of Minor Subdivision and Variances
Motion by Mr. Cunningham, **seconded** by Mr. Gausz to adopt **Resolution# 2017-13**.

ROLL CALL

Aye: *Vice Chairman Brown, Mr. Cunningham, Mr. Gausz, Mr. Fortkus*

Nay:

Abstain:

Fortitude Fitness LLC (Block 30, Lot 2) 251 West End Avenue - Site Plan and Variances
Motion by Mr. DeCicco, **seconded** by Mr. Fortkus to adopt **Resolution# 2017-14**.

ROLL CALL

Aye: *Vice Chairman Brown, Mr. Cunningham, Mr. Gausz, Mr. DeCicco, Mr. Fortkus*

Nay:

Abstain:

APPLICATION/HEARING

Singura (Block 46, Lot 18) 407 Bell Avenue - Certificate of Nonconformity

Steve Warner, Esq. of Ventura, Miesowitz, Keough & Warner appeared on behalf of the applicant. He provided an overview of the application and spoke to the need for relief, citing case law regarding pre-existing non conforming uses.

The applicant, **John Singura** and his mother, **Lucy Singura** were sworn in. Mrs. Singura explained that her son bought the property with the understanding that it was a two family home with the intent to rent out the second floor while residing on the first.

A handout of **Exhibit A-1** [14 tabs] was provided and marked into testimony.

Exhibit A-1, Tab 1 was identified as a series of four photographs from Trulia showing what the property looked like at the time of purchase. Mr. Singura described each one.

Exhibit A-1, Tab 2 was identified as a picture of separate electric meters on the outside of the building. Mr. Singura testified that according to the PSE&G Plainfield Customer Service Center, they were installed in 1974 and have remained separate since.

Exhibit A-1, Tab 3 was identified as the 1977 Borough Tax Assessor's property record card. Lucy Singura confirmed that her understanding was that it had been a two family home since 1977.

Exhibit A-1, Tab 4 was identified as the 2004 Borough Tax Assessor's property record card showing the property as a two family house according to the building description.

Lucy Singura testified that she had experience reading property record cards given prior work experience as a Tax Assessor. She confirmed that in her communications with both the County and the Borough during the course of her due diligence that both the 2016 and 2017 tax rolls showed the property as a two family in addition to the property record cards from 1977 and 2004. She confirmed that the County Tax Board also lists it as a two family.

Mr. Singura testified that the property was represented as a two family home by both the real estate agents as well as Fannie Mae and that he would not have purchased it otherwise. Mrs. Singura affirmed that the home was represented as a two family both in the Fannie Mae listing and the buyer's home inspection report.

Exhibit A-1, Tabs 5 and 6 were identified as acknowledgements of service intended to show proof that the home was used as a two family residence in 2010 and 2011.

Exhibit A-1, Tab 7 was identified as the obituary for the prior owner, Mary Orlando demonstrating her residency there until her death in 2013.

Exhibit A-1, Tab 8 was identified as a foreclosure complaint summons containing a proof of mailing of tenants rights. Mr. Warner's Associate, **Amanda Wolfe** confirmed that she was intimate with foreclosure proceedings given her professional experience with foreclosure judges. She indicated that this summons is only sent when there is a tenant on the property.

Exhibit A-1, Tab 9 was identified as a foreclosure complaint making reference to the presence of tenants. Ms. Wolfe related that language on page 3 indicated that there were tenants on site at the time of foreclosure.

A brief discussion ensued about the manner and method in which foreclosure notifications are made.

Exhibit A-1, Tab 10 was identified as a Sherriff's Deed [Writ of Execution]. Reference was made to the tenant's acknowledgement of service.

Exhibit A-1, Tab 11 was identified as the deed in which property was conveyed to Mr. Singura.

Exhibit A-1, Tab 12 was identified as the property tax list from 2016 and 2017. Mr. Warner made reference to the property's description, designation and taxation as a two family on same, given both the property detail card from the County Tax Board website as well as the current property record card.

Exhibit A-1, Tab 13 was identified as an aerial photograph obtained from Google Earth showing the location of the subject property as it relates to other two family properties in the area which were identified by tax records and confirmed upon physical inspection as such.

Exhibit A-1, Tab 14 was identified as a floor plan of the property showing both floors. John Singura confirmed that he had no intention of changing the layout. He offered the Home Inspection Report which he had obtained prior to purchase as further proof of his case. Mr. Singura confirmed that there was one furnace and spoke to the location of the meters and water service/sewer lateral on site. He also confirmed that gas is one service and that there are two kitchens. Referencing one of the pictures in Exhibit A-1, Tab 2 Mr. Brown lamented on the difference between the two meters; one which he observed to be digital and the other, analog. Mr. Singura testified that both meters were present prior to his purchase.

John Singura testified that while PSE&G would not divulge usage information, they did confirm that it was a 200 amp meter/100 amps per floor but did confirm that both meters were installed in 1974 and that they had been separately metered with 100amps per floor.

Exhibit A-2 was identified as the Home Inspection Report and marked into testimony.

Exhibit A-3 was identified as the MLS listing showing the property as a two family. Mr. Singura confirmed that he had instructed his realtor to only show him two family properties.

Mr. Warner asserted that the property had been a two family home since 1977 and that there had been no abandonment of the use. He spoke to the burden of proof in showing that it was a two family when the ordinance changed.

The Board Attorney provided a legal analysis and spoke to the proofs of the case and property rights. Mr.

Warner offered that non conforming rights run with the land regardless of any change in ownership, citing the Berkley Square case and speaking specifically then to Section 68 of the MLUL and Section 207.91 of the Ordinance.

Mr. Singura confirmed that there is no access from the upstairs to the downstairs without going outside in response to a question from Mr. Gausz.

Mr. Schrek indicated that he had no comment on parking. Mr. Gara spoke to the presence of a letter from the Tax Assessor's files to Anthony Orlando which provided for a reduced assessment due to a reduction in the number of dwelling units in 1980. Mr. Warner indicated that this had not been given to him and that he had no prior knowledge of the document. Mr. Gara explained that in the absence of planning/zoning records, he looks at Tax Assessor records and that although it was listed as a two family in 1977, the letter from 1980 and a subsequent record from 1987 showed it as a one family. He indicated that while the front of the 2004 tax card delineated it as a two family, the back showed it as a single family. Mr. Warner advised that he had not been given a copy of the back of the 2004 card.

Mr. Gara spoke to a June, 2017 tax appeal filed by John Singura showing the property type and use as a single family which resulted in a reduction. Mr. Warner indicated that he did not receive that either as part of his OPRA request. Mr. Singura testified that he filed the tax appeal based upon the purchase price. Ms. Rubright spoke to the basis for the appeal. Mr. Schrek offered that he accepted the reduction based upon the home being a single family. An extensive discussion ensued about the basis for the reduction. Mr. Brown offered that the recent letter from the Tax Assessor says that the tax records show that it has been a one family since 1987. Mr. Warner asserted that the card from 2004 shows it as a two family and that other factors such as separate metering, access, etc. were more evidentiary than tax records.

The Board Attorney provided a legal analysis and offered that the Board must look at the totality of the case as tax records are not zoning. She pointed out that Mr. Gara had presented one record which caused some conflict/confusion. Speaking to that particular record which he referred to as Exhibit A-1, Tab 4, Mr. Warner reiterated that he only received the front page of the 2004 tax card showing it as a two family and offered that the person who checked the box on the back of the card did not know what was inside because they did not enter the property according to their notes. Ms. Rubright offered that this is why it is considered indicia and why that the Board had to evaluate everything presented.

An extensive discussion ensued about who made the representation in the tax appeal application that the property was a single family. At the behest of Ms. Rubright, Mr. Singura testified that it was not his intention to have the value reduction based on it being a one family. He confirmed that he was not represented by Counsel on the tax appeal. Mr. Schrek asserted that the basis for the appeal was the house being a single family and that questions had to be answered at the [tax appeal] hearing. Ms. Rubright asserted that the basis was value. Mr. Singura confirmed again that he was not the one who identified the property as a single family during the appeal process. Ms. Rubright asked Mr. Singura who took the photo of the house on the third page of the appeal and where the listing in the appeal came from. At the behest of Mr. Warner, Mr. Singura testified that he did not identify the property as a single family on the paperwork (specifically, he did not write 'single family' on it) and that he did not take the picture that was included in the appeal paperwork.

Mr. Singura testified that he did not file the appeal with the intention of lowering the taxes because it was a single family and that that there was nowhere in the process that he represented that it was a single

family. He testified that he did not know where the photo and/or description included in the application came from. Mr. Gara indicated that it was from the Tax Assessor's file.

Mr. Warner asserted that the sworn and un rebutted testimony was that from 1977 forward, it had been a two family and that the use had never been abandoned.

The Chairman opened the floor to questions/comments at 8:27. There were none.

The Board Attorney offered that the Board had to decide whether a certificate of non conformity should be issued based on testimony and the evidence of it being a pre-existing non conforming use and whether it should be permitted to continue as such.

Motion by Mr. Gausz, **seconded** by Mr. Fortkus to approve the issuance of a certificate of non conformity.

ROLL CALL

Aye: *Vice Chairman Brown, Mr. Cunningham, Mr. Gausz, Mr. Wilde, Mr. DeCicco, Mr. Krajewski*

Nay:

Abstain: *Mr. Fortkus*

Mr. Gara confirmed that the applicant may proceed to permitting. Ms. Rubright asked Mr. Gara to provide copies of the documents that he referenced for the record. Mr. Gara spoke to the process for a Continued Certificate of Occupancy and explained how he determines legal use. He reiterated that his practice in these matters is to defer to the tax record in the absence of permits.

MISCELLANEOUS

Availability for the next meeting was discussed. The Board concurred to cancel the August 9 meeting. A discussion ensued about cancelling the first meeting of the month. The Board concluded to return to one meeting a month.

Mr. Gara advised that the owners of 600 Route 206 (liquor store denial) had applied for permits to return to an office use in the event anyone noticed activity there. A brief discussion ensued about Quick Check. Mr. Schrek advised that he had signed off on plans for the strip mall but that the applicant was working through issues with financing. He advised that finals had not been scheduled for the Barbieri site behind the post office and that Mr. Stires was ready to submit plan revisions on LabCorp. With respect to Block 81, Mr. Schrek advised that the TWA had been approved recently.

PUBLIC COMMENT

Mr. Brown opened the floor of public comment. There was none.

ADJOURNMENT

Motion by Mr. DeCicco, **seconded** by Mr. Fortkus to adjourn at 8:41.

Respectfully submitted,



Nancy Probst, Planning Board Secretary

APPROVED 09-27-17