

**CITY OF SOUTH AMBOY PLANNING BOARD**

**RESOLUTION PB- 09 -17**

**Case Number 374-17**

**Block 10 - Lots 1 and 10.01  
611 Bordentown Avenue  
City of South Amboy**

**Resolution approving settlement and granting use variance;**

**WHEREAS**, in 2017, pursuant to the applicable provisions of the City of South Amboy Land Use Ordinance an application has been submitted to the City of South Amboy Planning Board (the "Board") by **611 BORDENTOWN AVENUE, LLC** (the "Applicant") for a use variance, a (d)(6) height variance and bulk variances related to lot depth, front yard setback, rear yard setback, lot coverage and lot landscaping, for premises located at 611 Bordentown Avenue, also known as Block 10, Lots 1 and 10.01, located on the Tax Map of the City of South Amboy and situated in a B-2 Zone (hereinafter the "Subject Property" and the "Initial Application"); and

**WHEREAS**, the Initial Application reviewed by the Board consisted of those plans and documents as identified in the reports prepared by Angelo J. Valetutto, P.E., P.P. the consultant to the Planning Board dated May 16, 2017 and July 13, 2017 (hereinafter the "May 2017 Planning Report" and the "July 2017 Planning Report"); and

**WHEREAS**, the Initial Application was certified as complete on April 26, 2017 and public hearings with respect to the Application were held by the Board May 31, 2017, July 26, 2017 and August 23, 2017, as per public notice and personal notice pursuant to N.J.S.A. 40:55D-12; and

**WHEREAS**, as part of the Initial Application and based upon the initial plans submitted and reviewed by the professional staff, the Applicant required a use variance, as residential uses are not permitted within the B-2 Zone, a (d)(6) height variance, as the proposed building height of 47 feet, 8 inches/3 stories exceeded the maximum permitted height of 35 feet/ 2 stories by more than 10%, as well as bulk variances from the zoning requirements as set forth in the ordinance;

<b><u>Description</u></b>	<b><u>Required</u></b>	<b><u>Proposed</u></b>
Lot Depth	200 feet	114.2 feet
Front Yard Setback	50 feet	3 feet
Rear Yard Setback	25 feet	12.8 feet

Site Landscaping

10 feet

6.9 feet

**WHEREAS**, at the public hearings, the following reports were entered into the record in connection with the Initial Application:

<u>Description of Report</u>	<u>Date of Report</u>
Planning Report of AJV Engineering Inc.	May 16, 2017
Planning Report of AJV Engineering Inc.	July 13, 2017

**WHEREAS**, the Board, after carefully considering the evidence presented to it by or on behalf of the Applicant and upon the advice and recommendations of the advisory municipal personnel, agencies and consultants (including, without limitation, those set forth in the aforesaid Planning Report), denied the Initial Application which decision was memorialized in a written resolution dated September 27, 2017; and

**WHEREAS**, the Applicant appealed the decision of the Board by filing an Action in Lieu of Prerogative Writs with the Middlesex County Superior Court, Law Division (611 Bordentown Avenue, LLC v. City of South Amboy Planning Board, Docket No.: L-006832-17) (hereinafter the "Litigation"); and

**WHEREAS**, a Consent Order was entered by the Court on May 7, 2018 in the Litigation directing that a hearing pursuant to New Jersey law, including Whispering Woods at Bamm Hollow v. Twp. of Middletown Planning Bd., 220 N.J.Super. 161 (Law Div. 1987), be conducted on a settlement plan tendered by the Applicant which proposed modifications to the Initial Application (hereinafter the "Amended Application"); and

**WHEREAS**, the Consent Order further provided that the Applicant and the Board were entitled to rely upon the record created during the original hearings on the Initial Application previously conducted before the Board; and

**WHEREAS**, the Amended Application reviewed by the Board consisted of those plans and documents as identified in the reports prepared by Angelo J. Valetutto, P.E., P.P. the consultant to the Planning Board dated May 18, 2018 (hereinafter the "May 2018 Planning Report"); and

**WHEREAS**, a public hearing with respect to the Amended Application and the settlement of the Litigation was held by the Board May 23, 2018, as per public notice and personal notice pursuant to N.J.S.A. 40:55D-12; and

**WHEREAS**, as part of the Amended Application and based upon the amended plans submitted and reviewed by the professional staff, the Applicant required a use variance, as residential uses are not permitted within the B-2 Zone, a (d)(6) height variance, as the proposed building height of not to exceed 45 feet/2 stories exceeded the maximum permitted height of 35

feet/ 2 stories by more than 10%, as well as bulk variances from the zoning requirements as set forth in the ordinance;

<u>Description</u>	<u>Required</u>	<u>Proposed</u>
Lot Depth	200 feet	114.2 feet
Front Yard Setback	50 feet	3 feet
Rear Yard Setback	25 feet	5 feet
Site Landscaping	10 feet	3 feet

**WHEREAS**, at the public hearings on May 23, 2018, the following reports were entered into the record in connection with the Amended Application:

<u>Description of Report</u>	<u>Date of Report</u>
Planning Report of AJV Engineering Inc.	May 18, 2018

**WHEREAS**, the Board, after carefully considering the evidence presented to it by or on behalf of the Applicant and upon the advice and recommendations of the advisory municipal personnel, agencies and consultants (including, without limitation, those set forth in the aforesaid Planning Report), makes the following findings of facts:

#### FINDINGS OF FACT

1. The Applicant is the contract purchaser of the Subject Property.
2. At the hearings, the Applicant was represented by Kenneth L. Pape, Esq. of the firm of Heilbrunn Pape of Millstone, NJ.
3. At the initial hearing on May 31, 2017, Mr. Pape, on behalf of Applicant, acknowledged receipt of the May 2017 Planning Report.
4. At the initial hearing, on May 31, 2017, the Applicant's engineer, Mr. Andrew L. French, P.E.; the Applicant's Architect, Sang-Yee K. Rummeler; and the Applicant's Traffic Engineer, John Rea, P.E., appeared on behalf of the Applicant. These witnesses supplied testimony in support of the application and responded to inquiries from the Board and the public.
5. Initially, Mr. Pape provided a summary of the application. He noted that the Subject Property is adjacent to Florence Avenue, an orphaned street, which the Applicant will seek to have vacated and annexed to the Subject Property. Mr. Pape advised that the Applicant was proposing to construct a three story building

13. Upon inquiry from the Board concerning the ability of emergency vehicles to access the Subject Property and the proposed improvements thereon, Mr. French advised that the 25 foot aisle width would be sufficient. Further, he stated that any subsequent site plan application would be subject to review by the City Fire Department.
14. Prior to commencing her testimony, Ms. Rummler proffered several exhibits on behalf of the Applicant; which were entered into the record by the Board. Specifically, these exhibits were identified as follows:
  - Exhibit A-5 Colorized Architectural Building Footprint
  - Exhibit A-6 Elevation views from surface parking lot and Route 35
  - Exhibit A-7 Elevation views from Bordentown Avenue and Parker Avenue
  - Exhibit A-8 Colorized highlights of elevations from Bordentown Avenue and Parker Avenue
15. Ms. Rummler testified that in developing the architectural style for the project, the Applicant utilized elements from both New Jersey shore communities, as well existing structures within the City. She acknowledged that, if the present application were approved, the Applicant would develop a full architectural plan for the project prior to the site plan application.
16. Ms. Rummler confirmed that the height of the structure, at its highest portion, would be 47 feet, 8 inches.
17. Ms. Rummler advised that each of the two residential floors of the structure would contain twenty-five (25) units for a total of fifty (50) residential units. She indicated that twenty-six (26) of the units would be one-bedroom units; while twenty-four (24) of the units would be two-bedroom units.
18. Upon inquiry from the Board, Ms. Rummler confirmed that the no HVAC units were planned for the roof of the building. She indicated that the residential units would have individual HVAC units which vented directly to the outside. Mr. Rummler confirmed that the vents were not shown on the plans; but that they would be approximately 30 inches by 24 inches and painted to match the building façade.
19. Mr. Rea thereafter reviewed the site parking, site circulation and traffic impacts of the Applicant's proposed development. He opined that the Subject Property was desirable location from a transportation perspective. Mr. Rea acknowledged the City railroad station, the park-and-ride facility and the roadway network supply numerous avenues for a resident to travel to and from the Subject Property.
20. Mr. Rea reviewed the on-site parking; noting that the Applicant is proposing 100 parking spaces; a rate of 2 parking spaces per residential unit. He indicated that

the Residential Site Improvement Standards (hereinafter the "RSIS") require 1.8 parking spaces per one-bedroom unit; and 2 parking spaces per two-bedroom unit; concluding that the Applicant was proposing on-site parking which exceeded the RSIS standards. Mr. Rea added that, based upon his experience with similar projects, the maximum peak parking demand would be approximately 1.5 parking spaces per unit.

21. Mr. Rea then examined the ingress and egress to the Subject Property, as well as the site circulation. He confirmed that right-in/right-out access to the underground parking area was being supplied from Bordentown Avenue; while two-way access to the underground parking area was being provided from Parker Avenue. Finally, Mr. Rea advised that two-way access to the surface parking area would be provided from Portia Street. He opined that the surface parking area would be underutilized based upon the anticipated parking demand from the project.
22. Mr. Rea testified that trash removal could be accomplished through the access driveway from Portia Street. He opined that fire trucks could access the Subject Property in a similar manner as the trash removal trucks. Mr. Rea confirmed that the Applicant would supply a site plan demonstrating how emergency vehicles would access the Subject Property, to the satisfaction of the Fire Official, if the application were approved.
23. Upon inquiry from the Board, Mr. French confirmed the dimensions of the proposed refuse and recycling area; and indicated that trash and recycling removal would occur approximately three to four times per week. He noted that the number of pickups could be increased if necessary.
24. Upon inquiry from the Board, Mr. French advised that there is an existing storm sewer line servicing the Subject Property; but that new water lines were proposed. He opined that there was sufficient capacity in the utilities to services the proposed improvements on the Subject Property.
25. Upon inquiry from the Board, Ms. Rummler confirmed that no balconies were proposed for the residential units. She indicated that the entire structure would be ADA compliant. Ms. Rummler confirmed that security gates were proposed for access to the enclosed parking area. She further advised that the interior plans for the residential units had not yet been developed. Finally, Ms. Rummler testified that the units would be offered for rental, rather than for sale.
26. Upon further inquiry from the Board, Ms. Rummler advised of the proposed square footages for the residential units; indicated that the one-bedroom units would contain 710 square feet; the one-bedroom units with den would contain 800 square feet; and the two-bedroom units would contain 1,065 square feet.

27. Upon inquiry from the Board, Mr. Rea advised that one assigned parking space in the enclosed parking area would be supplied for each residential unit. Mr. Pape confirmed that any lease for the residential units would confirm the assignment of the parking space and identify the parking space assigned to the unit.
28. Upon further inquiry from the Board, Mr. Rea indicated the manner in which the traffic study for the Subject Property was conducted. He advised that anticipated traffic generated by the Applicant's proposed residential use would be significantly less than the traffic generated by a use permitted within the B-2 Zone.
29. At the hearing on May 31, 2017, members of the public made inquiries of the Applicant and its professionals, as well as supplied testimony concerning the Applicant's proposal. Specifically, the following comments were received:
  - A. In light of the number of proposed units and the number of proposed parking spaces, there will be insufficient on-site parking to handle holiday parking conditions.
  - B. The first floor of the structure should be used for a commercial purpose in conformity with the B-2 Zone with the residential use being confined to the upper floors.
  - C. Despite the fact that water lines have been recently replaced, there is insufficient water pressure within the neighborhood in which the Subject Property is located. A conforming use would not demand as much water as the proposed residential use.
  - D. There will be insufficient screening of the Subject Property from the adjoining residential properties, as well as loss of privacy due to the windows in the proposed building which overlook the rear yards of the adjoining residential properties.
  - E. There is a significant traffic condition on Parker Avenue which will only be exacerbated by the Applicant's proposed development.
  - F. The size of the proposed structure is too large for the Subject Property.
  - G. The Subject Property is not a proper location for a fifty (50) unit apartment complex.
30. At the hearing on July 26, 2017, Mr. Pape again appeared and acknowledged receipt of the July 2017 Planning Report on behalf of the Applicant.
31. The Applicant's professionals from the prior hearing, as well as the Applicant's

representative, Mr. Felix Bruselovsky; and the Applicant's Professional Planner, James W. Higgins, P.P., appeared on behalf of the Applicant. These witnesses supplied testimony in support of the application and responded to inquiries from the Board and the public.

32. Initially, Mr. Pape advised the Board that revised plans had been prepared and submitted in response to the comments received from the Board and the public at the hearing on May 31, 2017.
33. Mr. Pape also advised that the Applicant had investigated whether the water utility could supply sufficient capacity to service the improvements proposed for the Subject Property by the Applicant.
34. Prior to commencing his testimony, Mr. French proffered Exhibit B-1 on behalf of the Applicant, consisting of a colorized version of the landscaping plan; which was entered into the record by the Board.
35. Referring to Exhibit B-1, Mr. French confirmed the revisions to the plan which were made by the Applicant in response to the comments received from the Board and the public at the hearing on May 31, 2017. Specifically, Mr. French indicated:
  - A. The number of residential units was reduced from 50 to 46; with a corresponding reduction in the size of the second and third floors by approximately 2,100 square feet.
  - B. The number of on-site parking spaces was increased from 100 spaces to 109 spaces. The increase in the number of spaces combined with the reduction in the number of units resulted in 2.36 spaces per unit. Similarly, the number of parking spaces required is now 88 spaces and 109 spaces are being proposed.
  - C. The enclosed parking area and the surface parking area have been connected.
  - D. The access driveway from Portia Street has been redesigned.
  - E. Middlesex Water Company was contacted regarding the sufficiency of the water service available for the proposed improvements. The company confirmed that there is a 12 inch water main on Parker Avenue. Applicant supplied a copy of the plans to the company which issued a "will-serve" letter confirms that have facilities to serve the proposed development. Finally, the company conducted a hydrant flow test which indicates that there is sufficient capacity to serve the proposed development.

36. Mr. French advised that apart from the aforementioned modifications the remainder of the Applicant's proposed remains the same as previously presented at the hearing on May 31, 2017.
37. Upon inquiry from the Board questioning why the number of units was only reduced by 4, Mr. Pape advised that the Applicant believed that the size of the structure was never an issue, only the proposed parking. He indicated that the Applicant attempted to address the parking issue with the plan revisions; and now the project is "over-parked."
38. Upon inquiry from Angelo J. Valetutto, P.E., P.P., Mr. French advised that the reduction in the square footage of the structure had been accomplished by removing the four units within the building nearest Parker Avenue. This area measured approximately 33 feet by 63 feet. Mr. French noted that the parking area below the area of the structure which was removed still remains on the first floor.
39. Mr. Bruselovsky stated that the Applicant is a family owned enterprise. He advised the Board that he was the managing member of the Applicant. Mr. Bruselovsky noted that the Applicant intends for the Subject Property to be a business asset.
40. Mr. Bruselovsky thereafter provided testimony concerning the identification of the Subject Property by the Applicant and the decision to develop it in the manner proposed. He testified that initially the Applicant explored the development of the Subject Property for a conforming commercial use. Mr. Bruselovsky noted that the Applicant has business relationships with 7-Eleven and other retail chains; but that none of these entities was interested due to the limited traffic flow at the Subject Property. He advised that the Applicant decided to pursue the present residential use as a result of its inability to identify a commercial tenant for a conforming use.
41. Mr. Bruselovsky testified that the Applicant currently owns a number of buildings throughout the State of New Jersey. He indicated that, as a result, the Applicant has a maintenance team on staff which is available 24 hours per day, 7 days per week. Mr. Bruselovsky also advised that trash and recycling removal would be handled by a private hauler; allowing the Applicant to control the time and frequency of trash and recycling removal.
42. Mr. Bruselovsky stated that the Applicant intends to construct the project with high end materials and amenities; including: stainless steel appliances, washer/dryer in each unit; and granite countertops.
43. Upon inquiry from the Board, Mr. Bruselovsky confirmed that the Applicant had pursued a variety of commercial and professional businesses for the Subject