

DELRAN TOWNSHIP ZONING BOARD
OF ADJUSTMENT
RESOLUTION NO. ZZ-2000-12
IN THE MATTER OF THE APPLICATION OF
BERK & BERK at HUNTERS GLEN L.L.C.
BLOCK 9 LOTS 33, 34, 43, & 45
USE VARIANCE

GRANT

SECTION ONE. IDENTIFICATION OF PARTIES, PROPERTY, AND RELIEF SOUGHT.

The Delran Township Zoning Board of Adjustment at its meeting on November 29, 2000 heard an application with respect to the following:

- 1.1 PROPERTY: Route 130 South; Block 9 Lot 33, 34, 43, & 45
- 1.2 OWNER: Berk & Berk at Hunters Glen L.L.C., 2657 East 14th Street, Brooklyn, New York 11235
- 1.3 APPLICANT: Manhattan Management, 3001 Route 130 South, Delran, New Jersey 08075.
- 1.4 RELIEF REQUESTED: Use variance to permit and additional 132 apartments in an existing apartment complex.
- 1.5 ZONE DISTRICT: M-2 General Industrial Zone*

* At the time of the filing of the application, the zone was C-3 Multifamily. The M-2 designation was adopted and became effective prior to the hearing on this application. Under both designations, the expansion is non-conforming.

SECTION TWO. PRELIMINARY FINDINGS.

The Delran Township Zoning Board of Adjustment, after carefully reviewing the application, proof of service, and other evidence presented by the applicant, makes the following preliminary findings:

- 2.1 The applicant gave required notice, by service to those property owners within 200 feet and by publication in the legal newspaper.
- 2.2 The applicant supported its application with the following information:
 - a. A duly executed application on the form supplied by the Board which was fully completed in all pertinent respects.
 - b. Supplemental information consisting of:
 - (1) Concept Plan prepared by Thos. J. Scangarello and Associates dated March 31, 2000.
 - (2) Copies of awards and letters of appreciation for community involvement totaling 8 pages.
- 2.3 The applicant was represented by legal counsel, Michael McKenna, Esquire. The following parties were sworn in and gave testimony on behalf of the applicant with respect to the application:
Thomas Scangarello , PP; Kendra Lelie, PP

- 2.4 In addition the Board received reports consisting of:
- a. Report of Brian M. Guest, the Board's attorney dated June 21, 2000..
 - b. REport of Martin S. Sander, the Board's Engineer dated June 12, 2000.

SECTION THREE. TESTIMONY AND EVIDENCE PRESENTED.

The Delran Township Zoning Board of Adjustment received testimony from the applicant's witness as follows:

- 3.1 The hearing was held at a special meeting of the Board on November 29, 2000 immediately following the conclusion of the companion application ZZ-2000-10. Mr. McKenna, attorney for the applicant, submitted all relevant testimony from the prior application by reference. A summary of that testimony follows. In addition, Mr. McKenna argued that since a very substantial non-conforming use already existed on the site, the standard to be applied was less than that of a use variance on "virgin" ground.

Ms. Lelie testified that the proposal was an expansion of a non-conforming use. The applicant proposed 64 apartments in additions to existing buildings and 68 apartments in five new buildings. Twenty-six of the units would be restricted for low and moderate income renters. She further stated that it was her opinion that the areas chosen as expansion areas were not "functional" open space in that they were merely passive green areas. The mix of the market units is proposed to be half one bedroom and half two bedroom. There will be no three bedroom units.

In testimony on the prior application, Mr. Scangarello suggested that the Board should not look to the past reputation of the project but rather to the best use of the site.

Of the proposed units, 20% would be age restricted. He testified that in his opinion the approval of the proposed apartments would have no substantial impact on the neighborhood or the zone plan.

Mr. Scangarello further asserted that the Township was not certified by COAH and that this proposal was offering moderate income housing. He also indicated that there was a need for moderately-priced rental housing for young persons. He pointed to low vacancy rates as evidence of this fact.

Mr. Scangarello also testified that the applicant had made 3.8 million dollars in upgrades and improvements to the existing apartment units since 1986, the date the current managers took over the property.

Kendra Lelie testified that she had reviewed the Route 130 Corridor Plan. She stated that among its goals were the enhancement of diversified uses, respecting existing patterns, avoiding wholesale changes, and providing a full range of housing units. She stated that low vacancy rates are a sign of a stable community and good housing demand. She stated that the current vacancy rate for the existing apartments was running at one to two percent. The demographics of the existing apartments show 2.1 people per unit on average. In those units without children, the average is 1.6 persons per unit.

Michelle Coia, the Marketing Director for the applicant, testified that the existing apartments do not currently accept welfare or child support payments as income in rating their tenants. They also do not count SSI for children. The minimum required income for a one bedroom unit is \$450 per week. She further testified extensively regarding the applicant's efforts to upgrade the general level of tenants and outlined the applicant's community activities. In response to questioning, she stated that they cannot refuse to accept Section 8 housing, and that this category runs about 15% of the total occupancy of the existing units.

Mr. Scangarello reviewed his testimony and opinion regarding special reasons of providing senior low and moderate income housing, restated that he felt the positive and negative criteria had been met, and made specific reference to the *Medici* case. He further testified that several of the "open space" locations were actually sites where there had previously been apartments that were burnt out but never rebuilt.

A discussion ensued with the Board, during which the applicant offered to reduce the request to 74 market-rate units, all to be attached to existing buildings. The applicant suggested that an additional 16 senior citizen low and moderate income restricted units could be built in "burn out" areas if the Township desired.

The Delran Township Zoning Board of Adjustment received testimony and comments from the public as follows:

- 3.2 No members of the public spoke with respect to the application.

SECTION FOUR. FACTUAL FINDINGS.

The Delran Township Zoning Board of Adjustment makes the following factual findings with respect to the application:

- 4.1 The subject property is in the M-2 General Industrial Zone. Apartments are not a permitted use in the zone. There are over 1100 existing apartments in the Hunters Glen complex. The proposal as amended would add 74 units in additions to existing structures. The applicant offered to add 16 senior citizen low and moderate income restricted units in "burn out" sites if requested by the Township. The applicant contends that the site is a particularly suitable one for the use in question, due to the large number of existing apartments in the complex, and the fact that the new units would be scattered through the site.

SECTION FIVE. CONCLUSIONS OF LAW.

The Delran Township Zoning Board of Adjustment makes the following conclusions of law with respect to the application:

- 5.1 The proposed use is contrary to the zone plan as confirmed by Council in the very recent adoption of a new zoning ordinance. However, there are over 1100 existing units at the site. The proposal would add less than 10% to the total number scattered through the complex. The Board further notes that the Township Council has made other arrangements for satisfaction of its COAH requirements. Therefore,

the Board will approve additional low and moderate income units only if requested by the Township. The Board is satisfied that an addition of less than 10% in the total number of units will not be a significant detriment to the public good nor a substantial impairment of the zone plan and the neighborhood, provided that the applicant can fulfill reasonable and appropriate site plan design parameters.

- 5.2 The Board finds that the granting of the relief requested and the approval of the application presented, therefore, can be done in general conformity with the Municipal Land Use Act and the Ordinances of the Township of Delran, and there is sufficient evidence before the Board to support this determination, which evidence consisted of the submissions by the applicant as well as testimony at the hearing, and testimony from the objectors.
- 5.3 The Board has jurisdiction over the parties and the subject matter necessary for a decision in this matter.
- 5.4 The purposes of the Municipal Land Use Act and the local ordinance would be advanced by the grant of the requested variance and permitting the deviation from the strict requirements of the ordinance. There are sufficient special reasons that have been stated by the applicant, a showing of particular suitability of this site for the proposed use, and a showing that there will not be significant detriment to the public good nor a substantial impairment of the zone plan.

SECTION SIX. CONDITIONS APPURTENANT TO BOARD ACTION.

- 6.1 This action is subject to the approval of all other agencies having jurisdiction, including but not limited to:
 - a. Delran Sewerage Authority.
 - b. Delran Board of Health and/or the Burlington County Board of Health.
 - c. Burlington County Planning Board.
 - d. Burlington County Soil Conservation District.
 - e. NJ Council on Affordable Housing.
 - f. NJ Department of Environmental Protection (includes items such as Sewer Extension Permit, Stream Encroachment Permit, Waterfront Development Permit, and Wetlands Permit).
 - g. NJ Department of Transportation.
 - h. Public Service Electric & Gas Company.
- 6.2 This action by the Board is further subject to the following additional conditions:
 - a. Compliance with all conditions and provisions of the reports of the Board's professionals unless a specific contrary provision is set forth in this Resolution.
 - b. Compliance with applicable construction, fire code, health and other similar regulations.
 - c. Review and acceptance, as to form and sufficiency, of all maintenance and performance guarantees, if applicable.
 - d. Current payment of all municipal taxes, liens, charges, and assessments prior to issuance of construction permits or certificates of occupancy.
 - e. Variances shall expire and be void one year from the date of approval (or contemporaneously with the protection period set forth in NJSA 40:55D-52 if granted in conjunction with a site plan or subdivision) unless constructed or otherwise implemented within that time or an approved extension.

- f. Application for and receipt of site plan approval from the Zoning Board for the proposed improvements within one year of the date of the hearing of this matter. The applicant shall meet with the Board's engineer to establish appropriate site design parameters to be recommended to the Board at the site plan hearing.
- g. Submission of eight sets of plans, revised in accordance with all conditions of approval established by the Board, to the Board's engineer within 60 days of final approval.
- h. If requested by the Township, the Board will permit an additional 16 senior citizen low and moderate income apartments in "burn out" areas subject to the same site plan and other conditions as set forth above.

SECTION SEVEN. RESOLUTION.

IN CONSIDERATION OF THE FOREGOING, BE IT RESOLVED by the Delran Township Zoning Board of Adjustment in the County of Burlington, and State of New Jersey, that the above application for a use variance to permit 74 apartments in additions to existing buildings in the M-2 zone as described in the submitted application, plans, and testimony for premises described in Section One is hereby GRANTED.

Those in Favor of Approval:

Mr. Sadiq, Ms. McCurdy, Mr. Gatti, Mr. Taylor, Ms. McGonigle, Mr. Gazaway, and Mr. Fox

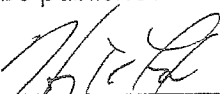
Those Opposed to Approval:

NONE

Those Abstaining from Voting:

NONE

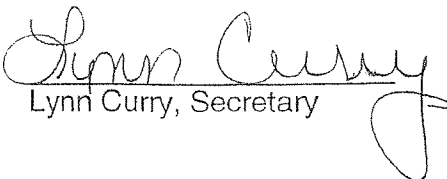
AND BE IT FURTHER RESOLVED that a copy of this Resolution shall be mailed within ten (10) days of the date of adoption of this resolution to the applicant, and a copy of this resolution shall be filed with the office of the Administrative Officer of Delran Township, and a brief notice of the decision shall be published in the official newspaper of Delran Township.



 Harry Fox, Chairman

This resolution of memorialization being adopted by action of the Board on December 27, 2000.

The foregoing is a true record of the action taken by the Delran Township Zoning Board at its regular meeting on November 29, 2000 at the Municipal Building.



 Lynn Curry, Secretary