



Law Office of Richard M. King, Jr.

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A Limited Liability Company in the Practice of Law

Richard M. King, Jr., Esq.
rking@richardkinglaw.com

TJ Mooney, Esq.
tmooney@richardkinglaw.com

Marisa J. Hermanovich, Esq.
mhermanovich@richardkinglaw.com

April 6, 2022

Joel M. Fleishman, Esquire
Fleishman Daniels Law Offices, LLC
646 Ocean Heights Avenue, Suite 103
Linwood, NJ 08221
joel@fdlawllc.com

RE: 207 Northfield Avenue, Northfield, NJ 08225; Block 106 Lot 8
Webster Property Management, LLC Planning Board Application
Our File No. RMK-(Boudreau)

Dear Mr. Fleishman:

This law firm has been engaged to represent the interests of several property owners impacted by the above referenced application, including Miriam Boudreau, Lisa Edwards, Donald Edwards and Robert H. Pattillo.

It is our position the Board should not increase the non-conformity of an existing church so as to permit a medical building in a residential zone.

However, this letter is intended to first address the true identity of the “property which is the subject of the hearing” N.J.S.A. 40:55D-12 “Notice of Applications”. This threshold issue must be addressed to prevent the entire process from being void upon appeal and restarted years from now.

The very well-prepared minutes of the March 3, 2022 meeting make clear that not only is Block 106, Lot 8 (“Church Property”) the subject of the hearing, but the existing medical office at Block 96, Lot 2 (“Original Office”) is also a property that is the subject of the hearing. The references to the Original Office and its relationship to the Church Property is not one made in mere passing, but rather has its foundation in the Resolution that granted a variance and permitted expansion of the Original Office in 1999.

The Resolution and Findings of Fact and Decision dated June 3, 1999 imposed a condition of approval regarding parking and reads as follows:

Mailing Address:

5 MacArthur Boulevard, Suite B
Somers Point, New Jersey 08244-1772

| P 609.904.5653 | F 609.904.5654 |

664 Washington Street, 1FL
Cape May, New Jersey 08204-2341

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Attorney at Law

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Based on the size of the building, as proposed, 34 parking spaces are required and the site provides for 33 spaces, including 6 new spaces added on site. Due to the fact that the professional use of the building generates about 15 staff occupants, Applicant entered into a lease agreement to use no less than 10 parking stalls at the Good Shepherd Church parking lot for required staff parking. If the Church parking is lost for any reason, Applicant testified that he shall find suitable replacement parking for the same number of stalls.

This clearly tied the Church Property to the Original Office for issues relating to zoning and parking.

The testimony of Ms. Carita at the hearing March 3, 2022, as reflected in the Minutes of the hearing, indicated the applicant uses “24 spots at the church now”^[1]. Ms. Carita then “added they may still have to use their lot for some parking, but they are trying to alleviate this.” There is then reference to the 1999 Resolution quoted above, but no accurate description of its actual terms.

Ms. Caritas then stated “she is not aware of a formal agreement.” Ms. Lynn Caterson, counsel for the church, then testified there is “no formal lease for a parking agreement”.

Importantly, the 1999 Resolution, and the parking concerns expressed therein, took place before an ordinance was passed that effectively prevented the employees from parking on the street. A 2005 ordinance limited parking on the street to 2-hour intervals in the daytime because the street was filled with employees of the Original Office. This increased the parking demand on the Original Office lot, and accentuated the importance of their condition of approval, even beyond that contemplated by the 1999 approval.

Given this testimony, it is clear the Church property is not the only property affected by this application, nor is it the only property that is the “subject” of the hearing.

Not only is the Original Property tied to the Church property by specific Resolution as a condition of a prior variance, but it is also clear from the testimony that the Condition was a continual Condition requiring a lease agreement with the Church which has not been satisfied, as the sworn testimony makes clear there is no lease agreement.

These issues raise two serious and fatal implications for the present application.

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The first is a jurisdictional issue relating to Notice. The Notices for this application, including the 200' List, originate only from Block 106 Lot 8 ("Church Property"). However, the law is clear that when a property is the subject of the hearing, and in this instance is intertwined specifically be Resolution and a Condition of Approval, all notices must include and originate from the other properties as well, in this instance Block 96, Lot 2 ("Original Office"), regardless of where the actual construction is taking place. *Cox, Zoning and Land Use*, § 18-1.2(4)(d); *Brower Dev. v. Planning Bd of Clinton*, 255 N.J. Super. 262 (App. Div. 1992).

The second issue is that there is sworn testimony on the record establishing no lease agreement exists, and therefore either the current use of the Original Office is being conducted in violation of the prior approvals, or the current application intends to modify the prior approval. If the existing office intends the latter (altering the prior approval, or "alleviating" it), then that needs to be a separate application and not accomplished in the Church Property application.

These issues, among others, will be presented at the upcoming hearing on April 7, 2022, but given the jurisdictional nature, it seemed appropriate to alert your counsel and the applicant of these issues in advance of the hearing, to the extent a hearing may even take place.

Under the circumstances, it would seem imprudent to move forward, and even the initial meeting is likely void as a matter of law.

Of course, the larger and more important issue is that this location is ill-suited for another busy medical office, and it has a direct negative impact on the nearby residents upon whom this expansion of the Tilton Road commercial corridor is being inflicted.

The good doctors, to their credit, have outgrown their present location, but the solution to their business issue should not be resolved on the backs of the residents of the adjacent residential zone.

Thank you.

Sincerely,

LAW OFFICE OF RICHARD M. KING, JR., LLC

Richard M. King, Jr. /s/

Richard M. King, Jr., Esquire

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⁽¹⁾ All quotes are quotes from the minutes, and may not be actual quotes of the individual speaking