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June 28, 2022

Via Email to joel@fdlawllc.com

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

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:

Please accept this as an objection to the Applicant's request to proceed in a bifurcated proceeding.

I am not sure any application could be less conducive to a bifurcated hearing, and the request for such a hearing should be denied.

First, the statute calls for "separate consecutive applications." The Applicant has already submitted a single application. If the present application was withdrawn, and a new application submitted, a determination could then be made whether bifurcation is appropriate. In the instant case, it has not been applied for separately, and should not be considered separately.

Second, the application seeks a use variance for a lot THAT DOES NOT YET EXIST. The proposed use is to be on a proposed lot that, by its mere creation, will render the remaining lot (a conditional use church) to be non-conforming in several respects (triggering a d(2) variance). There is no authority provided for the proposition that a zoning application can seek a use variance for a lot that has not been created and will leave the remainder lot a non-conforming conditional use. It is impossible to consider the use variance implications without also addressing the subdivision and the implication on the lot from which the use is, presumably, to be separated as a result of the future subdivision.

Even if the request was associated with a separate application for a use variance on a lot that actually existed, the request should be denied. As stated by Cox and the authorities referenced therein:

Where the site plan issues are central to resolving the problems which cause the proposed use not to satisfy the negative criteria, the variance application and the site plan review should not be

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bifurcated. *See Scholastic Bus Co. v. Zoning Bd.*, 326 N.J. Super. 49 (App. Div. 1999). Stated differently, bifurcation is not appropriate where the variance and the site plan issues are highly interrelated. *See House of Fire v. Clifton Bd. Of Adj.*, 379 N.J. Super. 526, 539-540 (App. Div 2005).

Cox (2020), §17-9

In *House of Fire Christian Church v. Zoning Bd. Of Clifton*, the Appellate Division found that bifurcation was inappropriate and “problematic where factors such as traffic flow, traffic congestion, ingress and egress, building orientation, and the nature of the surrounding properties are highly relevant to both the determination of whether to grant a use variance and the later decision to approve the site plan.”

In the instant case, the property and use at issue (or at least the lot to be created) (1) is on a street that leads to a public bike path; (2) will encourage traversing a residential street between the two associated businesses; (3) will be used for parking for both the new building and the building across the street (4) will still require parking on the church lot based on historical volume; (5) will involve a parking lot and other hard surfaces not traditionally associated with a residential use, and (6) has stormwater implications to the surrounding properties and an associated drainage basin. Also, the “nature of the surrounding properties,” as referenced in the case above quoted, is the exact negative criteria implicated by the use variance, and was already the topic of substantial testimony.

This application is entirely inappropriate for a bifurcated proceeding, and the request should be denied.

Further, upon receipt of this correspondence, please immediately provide the undersigned with a copy of the Applicant’s Affidavit of Notice submitted in this matter.

Sincerely,

KINGBARNES

/s/Richard M. King, Jr.

Richard M. King, Jr., Esquire

RMK/alp

cc: Charles Gemmel, Esquire (via email at charlesgemmel@comcast.net)