



BOARD OF ADJUSTMENT
TOWNSHIP OF BERKELEY HEIGHTS

BERKELEY HEIGHTS, NEW JERSEY 07922



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July 26, 2021

August N. Santore, Jr., Esq.
143 Summit Avenue
Berkeley Heights, NJ 07922

Re: **Amendment to Prior Approval:**
App.#17-20: 391 Springfield Avenue, LLC,
389-391 Springfield Ave, Bl. 208, L. 20 (DD-Zone)

By resolution memorialized on February 19, 2020, the Planning Board approved the conversion of the 2nd and 3rd floor commercial office space in this existing building into a total of 8 residential apartments, a permitted use. The applicant is now seeking approval to convert the 1st floor space into 3 residential apartments – all affordable housing units – which would require a use variance, as residential units are not permitted on the first floor in the DD-Zone. The applicant is also requesting approval to construct an addition over the existing parking deck for additional residential units. The increase in units exceeds the density limits for the zone and triggers a D-5 Density variance.

Dear Mr. Santore:

Attached you will find the resolution adopted by the Board of Adjustment of the Township of Berkeley Heights at its meeting on July 22, 2021. The resolution memorializes a motion which was adopted by the Board on June 24, 2021.

Please review the conditions that need to be satisfied before the project may proceed.

Very truly yours,

Connie Valenti, Secretary

Encl.

**BOARD OF ADJUSTMENT
TOWNSHIP OF BERKELEY HEIGHTS**

**391 SPRINGFIELD AVENUE, LLC
Case No. 17-20A**

RESOLUTION

WHEREAS, **391 SPRINGFIELD AVENUE, LLC** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Berkeley Heights (the “Board”), for an amendment of the prior approval for preliminary and final major site plan approval, subsection d(1) use, subsection d(5) density, and subsection (c) bulk variance relief, as well as a design waiver, all relating to the conversion of the ground floor of the existing building from commercial retail use into three (3) multifamily rental units, and the construction of an addition above the existing rear parking deck for an additional eight (8) multifamily rental units, for a total of eleven (11) multifamily rental units said approval having been memorialized on February 25, 2021 (the “February 2021 Approval”), relating to property located in the Downtown Development (“DD”) Zone and identified as Lot 20, Block 208 on the Township Tax Map, more commonly known as 389-391 Springfield Avenue (the “Property”); and

WHEREAS, the Applicant seeks to amend the February 2021 Approval to allow the Applicant to (1) obtain Certificates of Occupancy for the eight (8) residential units in the existing building, notwithstanding that the rear parking deck is not yet operational, and (2) clarify the staging component of the construction and occupancy to ensure that the three-bedroom affordable unit and commercial office space can be completed prior to the completion of the new addition (which includes the improvements to the parking deck). More specifically, the Applicant seeks to ensure that a Certificate of Occupancy can be issued for the existing building with proposed off-site parking and to ensure that permits may be issued for the

completion of the three-bedroom affordable unit on the first floor to complete renovation of the first-floor improvements and the commercial area in the existing building prior to the commencement of construction of the new structure/addition; and

WHEREAS, a public hearing on notice was held on such application on June 24, 2021, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, due to the Executive Orders signed by Governor Murphy relating to the current COVID-19 pandemic and in an effort to follow best practices recommended by the United States Center for Disease Control, the duly noticed public meetings were held virtually, through a web-based platform providing for remote public access. In accordance with the regulations governing Emergency Remote Meeting Protocol for Local Public Bodies, promulgated by the Director of the Division of Local Government Services of the New Jersey Department of Community Affairs, N.J.A.C. 5:39-1.1 through 1.7, all of the application materials and hearing exhibits were posted on the municipal website, and made available to members of the public, within the requisite timeframe, in advance of the hearing. Prior to the hearings, members of the public were provided with instructions on how to access said materials and participate in the scheduled hearings, both via the web-based meeting platform and telephonically, if necessary; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Property is a 24,314 square foot lot, with 100 feet of frontage along Springfield Avenue. The bulb of the Washington Street 50-foot-wide right-of-way extends from the southwest and terminates at the southern lot line of the Property. The Property is located in

the downtown area and is surrounded by a variety of commercial uses, including retail, pharmacies, medical offices, restaurants, and cafes. It is across the street from the Berkeley Heights Shopping Center and is adjacent to several other multi-tenant commercial strips. To the west of the Property, there are single-family residential neighborhoods.

2. In January 2020, the Applicant received approval from the Planning Board (Application No. SP-1-20) to convert the second and third stories of the building from office use to eight (8) multifamily residential apartments (the “2020 PB Approval”). The Applicant did not propose changes to the exterior of the clocktower building, the building footprint or any other site improvements. The 2020 PB Approval, memorialized on February 19, 2020, approves the construction of four (4) dwelling units (2 studio units and 2 two-bedroom units) on each floor and 15% with two of the units being designated as affordable units.¹

3. As part of the Zoning Board’s February 2021 Approval, the Applicant received approval for the construction of a total of 16 dwelling units (8 of which were previously approved by the Planning Board). The Zoning Board also approved the designation of three (3) units, of the total 16 units, as affordable units. The Applicant also obtained approval to expand the parking deck to the rear of the building, as well as two new stairways and an elevator attached to the northeast corner of the structure, as part of the February 2021 Approval.

4. The Applicant now seeks to clarify that the February 2021 Approval allows the Applicant to obtain Certificates of Occupancy for the eight (8) residential units that were approved by the Planning Board notwithstanding that the parking deck is not yet completed. The Applicant also seeks to clarify the proposed phasing of construction, as previously referenced.

¹ The Planning Board’s affordable unit designations and unit locations were superseded by the February 2021 Approval based on the collective overall unit approval.

5. August N. Santore, Jr., Esq., entered his appearance on behalf of the Applicant. Mr. Santore provided a brief overview of the history of the Property and the recent approvals. He explained that the Applicant has entered into a parking agreement for sixteen (16) parking spaces (the number of parking spaces required for the proposed 16 residential dwelling units) with the adjacent business located at 369 Springfield Avenue (the eMedical Urgent Care and the Suburban Eye Institute). Mr. Santore further explained that the Applicant is not seeking to stage the construction over a series of years and noted that the plans have been completed and are ready to be submitted for permit review. He contended that it would take approximately two to three months for the plans to be reviewed for permits and then the construction can start in early Fall and should, thereafter, be completed within 18 months.

6. As to the proposed parking, Mr. Santore explained that Section 11.1.1.F of the Ordinance provides that, “[P]arking can be located on-site or can be within seven hundred and fifty (750) feet of the property or business, provided that a minimum of ninety (90) percent of the parking is provided either on site or at curbside, and that the remainder of the parking is secured by a renewable lease of at least twenty (20) years, or other assurance as is acceptable to the Planning Board.” He explained that the development will have a total of 36 parking spaces, 34 of which will be located within the existing parking deck, and that each residential unit will have one designated parking space, for a total of 16 parking spaces for the residential component of the development. Mr. Santore introduced into evidence, as **Exhibit A-1**, an executed Month-to-Month Parking Rental Agreement between 369 Springfield Avenue Assoc, LLC and the Applicant, dated May 13, 2021, which allows the Applicant the right to use between one (1) and sixteen (16) parking spaces at 369 Springfield Avenue. The Applicant stipulated, as a condition of approval, to maintaining the parking agreement until the parking garage has been completed

and made operational, and further stipulated that, if for any reason the Applicant was unable to continue using 369 Springfield Avenue for the provision of 16 off-site parking spaces before the parking deck is completed, then the Applicant would be required to immediately find an additional 16 off-site parking spaces within 750 feet of the Property. Mr. Santore noted that the Berkeley Heights Shopping Center (containing Stop and Shop and CVS) across the street is also within 750 feet of the Property and would likely provide a sufficient number of parking spaces as a backup to the 369 Springfield Avenue parking spaces.

7. On questioning by the Board, Mr. Santore confirmed that the Applicant also is seeking to obtain permits for the conversion of the front portion of the Site (i.e., the Clock Tower Building), notwithstanding that the on-site parking deck will not be completed and is, therefore, not suitable for pedestrians or automobiles. On discussion of completion of the on-site parking garage, Mr. Santore advised that he does not anticipate same taking more than 18 months and he stipulated, as a condition of approval, to returning to the Board if off-site parking spaces are still necessary 18 months after adoption of the resolution memorializing the within approval.

8. Mr. Santore confirmed that the Applicant would stipulate to the three (3) affordable units being designated for income restriction purposes as follows: one two-bedroom unit will be designated very low income, one two bedroom unit will be designated low income, and the three bedroom unit will be designated moderate income, in accordance with the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.)(“UHAC”).

9. Robert Forst, Managing Member of the Applicant LLC, having a business address of 81 Industrial Road, Berkeley Heights, New Jersey, was duly sworn according to law. Mr. Forst confirmed that the Applicant would comply with the income distribution designations referenced above. Mr. Forst clarified that he has multiple separate permits for the project

construction. He explained that he did not want to have people in the rear of the building while the parking deck is being constructed and, therefore, entered into the parking agreement with the owner of 369 Springfield Avenue. Mr. Forst confirmed that the Applicant would maintain the required number of parking spaces within 750 feet, whether at 369 Springfield Avenue, across the street at the Berkeley Heights Shopping Center, or some other sufficiently proximate site, subject to the review and approval of the Zoning Official.

10. The Board Attorney explained that the construction of an inclusionary development, which includes both market rate and affordable units, is generally phased such that the affordable units are completed prior to the last market rate units being completed. On discussion, the Applicant stipulated that Certificates of Occupancy for the last five (5) market rate units in the rear building would not be issued unless the last of the affordable units are completed prior thereto, or at least simultaneous therewith. Mr. Santore advised that he anticipates all of the units being completed at the same time, such that the Applicant could stipulate to the condition of approval.

11. On questioning, Mr. Santore confirmed that both 369 Springfield Avenue and the potential alternative location for offsite parking across the street are located within 750 feet of the Property. He further confirmed that the use of sixteen parking spaces at either development would not result in such development having insufficient parking for its current use.

12. Mr. Forst explained that there are 36 parking spaces in the rear of 369 Springfield Avenue and that he has never seen more than six (6) vehicles in that lot at any given time. Mr. Forst also explained that there is a door that opens to the side of the building facing 369 Springfield Avenue and that a pathway would be constructed from said door to the proposed

parking area in the rear. He contended that the pathway would be more convenient for the residents parking at the temporary 369 Springfield Avenue location.

13. On questioning as to whether the clock on the 'Clock Tower' building would be repaired, Mr. Forst explained that the repair was a condition of the 2020 PB Approval. He explained that the Applicant had gotten the clock motor repaired, as well as the clock hands re-coated, and that same had been installed approximately two months ago. Mr. Forst noted that the clock is not operational yet because the clock shares the same power source as the building. He testified that the clock will be operational by the time the proposed improvements are completed.

14. No member of the public questioned the Applicant's witnesses or commented on the Applicant's proposal.

DECISION

15. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has demonstrated an entitlement to the requested modification of the 2021 Approval.

16. Preliminarily, the Board notes that the February 2021 Approval included d(1) use and d(5) density variance relief, therefore the subject modification of the material conditions of said approval also requires five (5) affirmative votes of the Board for passage.

17. Here, the Board finds that the Applicant has demonstrated good cause exists for the Board to amend the February 2021 Approval and grant the Applicant's request to allow the Applicant to provide temporary parking at the proposed offsite location until the improvements to the parking deck are completed. In this regard, the Board concurs with the Applicant that requiring the Applicant to complete the construction of the parking deck prior to the issuance of

any of the Certificates of Occupancy for any of the residential units would result in undue hardship upon the Applicant, particularly since same would result in eight (8) of the total sixteen (16) units remaining vacant notwithstanding that Certificates of Occupancy could otherwise be issued. The Board finds that the temporary provision of sixteen (16) parking spaces (the number of parking spaces designated for the residential use portion of the development) at 369 Springfield Avenue is an appropriate alternative, particularly since Section 11.1.1.F of the Ordinance provides that, with certain other conditions admittedly not satisfied herein, parking may be provided offsite so long as said parking area is within 750 feet of the Property, and 369 Springfield Avenue complies with such proximity limitation. Additionally, the Board recognizes that the Applicant has stipulated to obtaining, if necessary, an alternative parking arrangement at another location within 750 feet of the Property, and such alternative locations appear to be available.

18. As to the phasing of the renovation of the existing building and the construction of the parking deck to the rear thereof and the new structure above it, the Board finds good cause exists to modify the February 2021 Approval to permit same, given the stipulated to conditions set forth below. In this regard, the Board recognizes that the Applicant has stipulated to providing 16 parking spaces offsite for the duration of the construction of the parking deck and associated improvements thereto, such that the completed residential units will have sufficient parking in an immediately adjacent parking lot and can then be leased notwithstanding that the entire project will not yet be complete. The Board further finds that the stipulation by the Applicant to complete the balance of the market rate units prior to, or at least simultaneous with, the completion of the balance of the affordable units renders the requested modification all the more reasonable. In this regard, the Board notes the importance of completing the proposed

affordable units as quickly as practicable. The Board further recognizes that the Applicant stipulated, as a condition of approval, to complying with the proposed income distribution designation for each of the three affordable units, and to returning to the Board after 18 months from the date of this approval to address the status of the parking deck to the extent same has not yet been inspected and approved. Given the stipulated to conditions, the Board finds that allowing the Applicant to construct the project in phases will ensure that the Applicant will be able to complete the project and will allow the residential units (including the three affordable units) to be occupied as quickly as practicable. As such, the Board finds that the Applicant has demonstrated good cause exists to grant the requested relief.

WHEREAS, the Board took action on this application at its meeting on June 24, 2021, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Berkeley Heights, that the application of **391 Springfield Avenue, LLC**, for modification of the February 2021 Approval, as aforesaid, be and is hereby granted, subject to the following conditions:

1. Any and all outstanding taxes and escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
2. The Applicant shall comply with all prior conditions of approval set forth in all prior approvals issued by both the Planning Board and the Zoning Board of Adjustment to the extent not inconsistent herewith;
3. The Applicant shall comply with the income distribution designations for the three affordable units as follows: one two-bedroom unit shall be designated very low

income, one two bedroom unit shall be designated low income, and the three bedroom unit shall be designated moderate income, in accordance with the UHAC;

4. The Applicant shall maintain an agreement for the provision of sixteen (16) parking spaces within 750 feet of the Property and same shall remain in place until the parking deck is constructed, inspected, and approved for use. If the proposed agreement with 369 Springfield Avenue is terminated or otherwise rendered invalid, the Applicant shall submit proof of a parking agreement for the provision of sixteen (16) parking spaces on another property located within 750 feet of the Property until the parking deck has been approved by the Township;
5. If the parking deck is not completed by the Applicant and approved by the Township within 18 months from the date of the memorialization of this approval, the Applicant shall return to the Board to provide an update as to the status of the construction and the Board shall retain jurisdiction as to same;
6. The Applicant shall not obtain Certificates of Occupancy for the last five (5) market rate units unless, and until, all three (3) of the proposed affordable units have been completed and approved for occupancy. Additionally, the Applicant, or its duly designated assignee, shall notify the Township Clerk of the completion of each affordable unit prior to the issuance of the Certificate of Occupancy for each unit;
7. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State;
8. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, including, but not limited to, all prior approvals of this Board and/or the Planning Board, to the extent same are not inconsistent with the terms and conditions set forth herein.

ROLL CALL VOTE

ON 6/24/2021:

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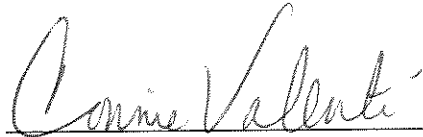
Those in Favor:

Mr. Sullivan, Mr. Nappi, Mr. Delia, Mr. Sylvester,
Mr. Ringwood, and Mr. Pereda

Those Opposed:

None

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Berkeley Heights at its meeting on July 22, 2021.



Connie Valenti, Secretary
BOARD OF ADJUSTMENT
TOWNSHIP OF BERKELEY HEIGHTS,
STATE OF NEW JERSEY

Dated: July 22, 2021