

Minutes of the
ZONING HEARING BOARD
Regular Meeting
April 19, 2018

ATTENDANCE: Present: Albert Champion, Vice Chairperson
Barbara M. Kirk, Solicitor
Ronald Gans, Township Engineer
Michael Brill, Member

Absent: Angeline Domanico, Secretary
Joanne Redding, Chairperson
George Seymour, Member

ITEM 1 Meeting opened at 7:00 P.M. with the Pledge of Allegiance

ITEM 2 Introductions of Board Members and Statement of Rules and Procedures by the Solicitor.

ITEM 3 **Continued hearing for Mittal and Sons LLC**
Appeal #2017-570
Location: 3179 Hulmeville Rd
Tax Parcel: 02-033-088
Request: Use variance to allow mixed use on property.

DISCUSSION

Solicitor states Notice was posted on the door of the meeting room door on March 6th, 2018 explaining cancellation of Meeting on door. This posting is marked as Exhibit B-4.

Mr. Marlier, attorney for the Township, calls Ronald Gans. Mr. Gans is sworn in. Mr. Gans states he works for O'Donnell Naccarato. He has been a Bensalem Township Engineer for 27 years. His duties entail shepardizing development in Township. Exhibit T-1 is referenced. The Zoning Certification Application submitted by the Applicant stated January 11, 2016. Mr. Gans confirms this was submitted as a commercial use, which was the reasoning for the denial. Mr. Marlier explains after this application was denied, Applicant changed the use to residential. Township's attorney references Exhibit T-2, the Zoning Certification issued by the Township dated January 13, 2016. Mr. Marlier shows Mr. Gans the Certification application and asks about the handwritten note on the application. Mr. Gans states it lists the owner and proposed buyer, the applicant. The Township issued Certification based on the application and note, which was no statement of existing use. It only stated proposed use. Mr. Gans states he did not think

residential use should be permitted. Mr. Marlier references Exhibit T-9, the second certification and permit application submitted to the Township. This is dated February 1, 2016. The proposed use on this application was office and residential and the prior and existing use was dental office and residence. The floor plan within the application shows proposed office with a residential area (does not say proposed residential). Applicant signed the application on February 1, 2016. Mr. Gans reads “declare” section on the application. Mr. Gans states he relied on the Applicant’s honesty on the application.

Mr. DiBias cross examines Mr. Gans. Mr. DiBias asks Mr. Gans if he is the acting Township Engineer. He states previously Mr. Takita called him the Plans Examiner. Mr. Gans said that is another name for his job title. Mr. DiBias states the Applicant and Township will rely on the zoning certification that is issued by Township Engineer. He asks Mr. Gans if he reviewed this application. Mr. Gans states he did. Mr. DiBias asks if he conducted examination of property? Mr. Gans stated he did. He determined it was business professional. Mr. Gans states he did check the township map, but did not check the file or fire department records. Mr. DiBias references Exhibit T-2. Mr. Gans states he asked his secretary to send to the owner. He states based on his knowledge, if an email address if provided, it was sent via email. Exhibit T-9 is referenced. Mr. DiBias states it was signed by application on page 1. It shows it was an existing dentist, proposed professional and residential. The Applicant spent about \$30,000 for renovations. Mr. DiBias references the February 2nd, 2016 handwritten zoning certification application. The first page signature does not count for second page. The third page, plot plan is signed by the Applicant. All three documents states he was requesting to use it a residence. Mr. DiBias states his client did not conceal it. Mr. DiBias asks Mr. Gans if the Township has more resources to look into matter. Mr. Gans states the Township maintains files for most properties and does have a file for the subject property. The Township has many zoning applications, it’s difficult to go through all files to review property. Mr. Gans states he reviewed plans and application, but did not the check file or township records. He says he relies on the honesty from the applicant. He had no doubt to second guess the Applicant. Mr. DiBias asks if the application has a phone number and email. Mr. Gans states it does, but he did not contact him because he trusted his honesty. Mr. DiBias references Exhibit A-15, the plans of the Applicant from July 13, 2016. He asks if Mr. Gans is familiar with this document. Mr. Gans states not really, but he did sign the document. He then states after reviewing, he remembers that there were no issues with the drawing. Mr. Gans again relied on the applicant that the plans showed what was inside of the building. Mr. DiBias asks if he is aware if the Township ever revoked the zoning certification from February 2016. Mr. Gans isn’t aware.

Mr. Marlier asks how many zoning applications the Township gets per month. Mr. Gans states there are about 8-10. Mr. Champion agrees the Township Engineer can’t check on records like township and fire departments. There are over 65,000 Township residents and about 20,000 properties. The volume is too great to review each Township file. The Township relies on applicants’ honesty. Mr. Marlier states the first application from January was denied and the

second was approved based on information given.

All exhibits from Mr. Marlier and Mr. DiBias are submitted into evidence. The audience is asked if anyone is for or against this application. Dr. Aziz Ur Arehman is sworn in. In favor of application for mixed use. He believes there was a lack of due diligence done by the Township.

Mr. Brill motions to close testimony, Mr. Seymour seconds, and all favor.

Applicant's Closing Statement - Mr. DiBias explains their zoning requests has two parts. One was an appeal of the November 2017 approval and second was a variance for use for a residence and office. He explains the residence was not permitted use. The Township issued a violation in September of 2017. His client wanted to purchase, so his 5 employees could rent and live in it. There was an occupancy permit issued in July 2016. Then, a renewal application was sent out by the Township. Mr. DiBias states no one from the Township contacted his clients with concerns. When his client requested a variance for mixed for professional and residential, it was done with due diligence and good faith. His client spent significant funds. The appeal period for the variance was over at the time of the issued violation. Mr. DiBias states his client does not know about zoning application rules and relied on the Township to make sure his application was correct. The Applicant stated he wouldn't have purchased the property if he couldn't use the property for what he wanted. He states the Township should have done more due diligence before issuing the variance. Mr. DiBias states he thinks highly of Mr. Gans and his client was upfront with what he wanted with this property and his application. Mr. DiBias states Mr. Takita did state that the applicant was upfront with anything the Township needed. His client spent \$230,000 to purchase the property and \$35,000 to remodel. There are other properties in the area similar to this use. Mr. DiBias requests to sustain the appeal and grant the variance to use the property as a mixed use of professional and residential.

Township's closing statement - Mr. Marlier states he has been before the Board many times. The Applicant is not telling the truth. He references Exhibit T-3 and states the June 21, 2017 application was signed by Mr. Mittal. Attorney for the Township asked for names of tenants, and the Applicant did not know their names and they did not have leases. These people work at his restaurant. Mr. Mittal wanted this property as a mixed use, so he submitted his application in January 2016 requesting for mixed use, which was denied. The Applicant then resubmitted adding to the application the prior use of property was residential with proposed office. Mr. Marlier references Exhibit T-9, showing the map of the floor plan has residence and proposed office like the residence was already existing. When a mistake was realized by the Township, the violation was issued by the Township, which is why the hearing is now occurring. The general rule of the use variance is there is no mistake of fact for permit creates vested right. Landowners have the obligation to be truthful. Applicant's vested rights did not attach where the owner deviates from the approved purpose. Mr. Marlier states the Applicant did what he needed to get what he wanted. The Township took action based on original zoning certification based on

the Applicant's information given. The Township relied on the Applicant's honesty. Mr. Marlier states the owner uses the property as hotel or boarding house. The Applicant did not tell the Township about all the people that would live in property.

Cases from Mr. Marlier that were referenced and Mr. DiBias Memorandum of Law are submitted to the Board.

Mr. DiBias states he wanted to correct Mr. Marlier that the realtor submitted the first application and the application referenced in Exhibit T-3 was submitted by Applicant's representation.

Mr. Champion states the first certification was issued and was turned down, and that was correct. This property was never a residence and was never a non-conformity before. Both applications were signed by Mr. Mittal. The Township can't dig any further due to the amount of applications that come in and expect the applicant to be honest. The January 11th application was correct and should have been denied. There was conflicting information from the Township to Mr. Mittal.

MOTION Mr. Champion motions for the hearing for Mittal and Sons, LLC; Appeal #2017-570; Location: 3179 Hulmeville Rd; Tax Parcel: 02-033-088 as follows: Section 232-781(e) - Appeal of determination of zoning officer/violation notice regarding permitted use - DENIED; Section 232-781(e) - Use of property for mixed use of residential/commercial/office use - DENIED

VOTE	Ayes:	Mr. Champion, Mr. Seymour, Mr. Brill
	Nays:	None
	Abstain:	None
	Absent:	None

MOTION CARRIED 3-0

ITEM 4 - CORRESPONDENCE - None.

ITEM 5 - ADJOURNMENT - 8:30 p.m.

Respectfully submitted by Danielle Campbell.
Court Reporter - Susan Singular