

BOROUGH OF UNION BEACH UNIFIED PLANNING BOARD

RESOLUTION OF MEMORIALIZATION OF THE  
APPROVAL OF THE APPLICATION OF  
EVANGELINE GATMAITAN FOR  
PRELIMINARY & FINAL MAJOR SITE PLAN AND  
ANCILLARY BULK VARIANCES  
534 FRONT STREET  
BLOCK 21 LOT 9.03  
APPROVED APRIL 26, 2017  
MEMORIALIZED MAY 31, 2017

WHEREAS, the Applicant, Evangeline Gatmaitan (hereinafter referred to as the "Applicant") is the owner of property located at 534 Front Street and further known as Block 21 Lots 9.03 as shown on the Official Tax Map of the Borough of Union Beach; and

WHEREAS, the subject site is an existing 3,606 square foot (0.08 acre) tract located on the south side of Front Street and located in the new Water Front Commercial (WC) Zone District in the Borough of Union Beach; and

WHEREAS, the Applicant is proposing to remove the existing restaurant building and all other site improvements and to construct a new 1,180 square foot mixed use building with a dental office use on the first floor and a residence on the second floor; and

WHEREAS, Water Front Commercial (WC) Zone District permits the use configuration proposed by the Applicant; and

WHEREAS, an application has been filed for Preliminary and Final Site Plan Approval along with ancillary bulk variance relief and design waivers before Union Beach Unified Planning Board (hereinafter referred to as the "Board"); and

**WHEREAS**, the Applicant presented its application through its attorney, Paul N. Mirabelli, Esq. of the firm of Paul N. Mirabelli, P.C. with offices in Hazlet, New Jersey at a regular meetings of the Board on March 29, 2017 and April 26, 2017; and

**WHEREAS**, at the time of the hearings the Applicant presented the expert testimony of Richard Heuser, PE , PP & LS with offices in Matawan Jersey, Lou Moglino AIA with offices in Holmdel, New Jersey and Evangeline Gatmaitan as a fact witness and owner of the property in support of the application and the requested Preliminary and Final Site Plan, bulk variances and design waivers; and

**WHEREAS**, the Applicant presented the following submissions for consideration and review as part of the Applicant's application:

- Site Plan, prepared by Richard Karl Heuser, PE, PLS, of Richard K. Heuser, PC, dated November 18, 2016, revised through April 4, 2017, consisting of four (4) sheets.
- Drainage Report, prepared by Richard Karl Heuser, PE, PLS, of Richard K. Heuser, PC, dated November 21, 2016
- Proposed Floor Plans and Front Elevation prepared by Herminio O. Cruz, P.E., dated December 8, 2016, consisting of one (1) sheet.
- Denied Zoning Permit, dated December 29, 2016, consisting of one (1) sheet.
- Affidavit of Ownership, dated December 30, 2016, consisting of one (1) sheet.
- Aerial of the Site

**WHEREAS**, the Applicant has provided notice to all property owners within two hundred feet and has caused notice to be published regarding said application in accordance with N.J.S.A. 40:55D-1 et seq.; and

WHEREAS, a complete application has been filed, the fees as required by Borough Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, after proper public notice having been given according to law, the Unified Planning Board of the Borough of Union Beach held public meetings on March 29, 2017 and April 26, 2017 and after having given due consideration to the testimony and exhibits presented by the Applicant and its experts, and having given an opportunity for the public to be heard and after due consideration of the testimony and documents submitted, and having given careful consideration to all of the evidence, makes the following findings of fact and conclusions of law:

1. The Board has jurisdiction in this matter.
2. The subject property (hereafter referred to as the "site") is owned by Evangeline Gatmaitan and located at 534 Front Street and further known as Block 21 Lots 9.03 as shown on the Official Tax Map of the Borough of Union Beach.
3. The subject site is an existing 3,606 square foot (0.08 acre) tract located on the south side of Front Street 70 feet north of Pine Street in the new WC, Waterfront Commercial Zoning District of Union Beach with a vacant, one-story masonry building currently existing on the subject site.
4. The Applicant is proposing to remove the existing vacant restaurant building and all other site improvements on the site and to construct a new 1,180 square foot mixed use building with a

dental office use on the first floor and a residence on the second floor along with an attached garage that will provide 2 parking spaces and a driveway that will provide 2 additional parking spaces.

5. The newly created WC Zone District permits professional (dental) offices and conditionally permits single family, two-family and multi-family dwellings provided that they are located entirely above the first floor in a building which contains a permitted use on the first floor and therefore the subject proposed use complies with the use requirements of WC Zone District.

6. Based on the proposed use being a permitted use in the WC Zone an application was filed for Preliminary and Final Site Plan approval to the Board along with approval for bulk variances to allow lot area of 3,606 sq. ft. where 5,000 sq. ft. is required, 30 ft. frontage where 50 ft. frontage is required, a side yard setback of 5 ft. where 8 ft. is required, a rear yard setback of 26 ft. where 30 ft. is required, a combined side yards of 10 ft. where 20 ft. is required (9 ft. combined is pre-existing), a 10-13 ft. buffer in the rear and south side of the property where a 20 ft. wide buffer along all side and rear property lines is required, a wall mounted sign of 1 sq. ft. in area at an approximate height of 8.25 ft. where 4 ft. is allowed and two parking stalls where 14 parking spaces area are required.

7. The application was presented to the Board by the Applicant's attorney Paul N. Mirabelli, Esq. of the firm of Paul N. Mirabelli, Esq. PC along with the testimony of the Applicant, Evangeline Gatmaitan, and the professional testimony of Richard

Heuser, PE, PP & LS and Lou Moglino, AIA. Mr. Mirabelli started the presentation by providing an overview of the application and the requested variances and design waivers and indicated the names of the witnesses he intended to introduce to the Board in support of the application.

8. At the March meeting Dr. Evangeline Gatmaitan was sworn in and testified in support of the requested Preliminary and Final Site Plan and proposed variances. Dr. Gatmaitan testified generally with respect to the proposed operation of the site, the proposed limited office hours and her vision of the practice at the site. Dr. Gatmaitan testified that the office would be in operation one or two days a week and was intended to be open for senior citizens. She further testified that other than herself there would be no employees at the site and the second floor residence will be occupied by her as her residence when she was staying in New Jersey on the days she saw patients.

9. Richard Heuser, PE & LS was sworn in and accepted as an expert in engineering, planning and surveying and testified generally about the application and the engineering issues, the site plan, the requested design waivers and site conditions. Mr. Heuser described the surrounding area and indicated the adjoining lot to the southeast is Lot 9.02 which is a 70 ft. by 79 ft. lot with house No. 538 on it and noted that the dwelling is close to the common property line with lot 9.03. He indicated that to the rear of the subject lot is lot 9.01 fronting on Pine Street and noted this lot is a small lot approximately 30.6 ft. by 60 ft. with an area of

approximately 1,836 sq. ft. and that to the rear of Lot 9.03 is lot 10, a corner lot at Pine & Second Streets, and lot 11, a 50 foot wide lot fronting on Second Street. He testified that to the north of Lot 9.03 are lots 7 & 8 which encompasses the American Legion building and its parking lot and the parking lot is approximately 5 ft. from the common property line with Lot 9.03 and is approximately 100 ft. long. He described the neighborhood generally surrounding lot 9.03 as a mixed use made of mixed sized lots, the municipal parking lot, residential dwellings, and the American Legion building. Mr. Heuser reviewed and testified as to the requested design waivers and engineering issues articulated in the T & M engineer review letters and indicated there was agreement to comply with all conditions not agreed to be unnecessary at the hearings or not encompassed by requested and agreed upon site and design waivers. In response to the T & M letter of March 21<sup>st</sup>, Mr. Heuser stated that there will not be any trucks for deliveries to the site and one car owned by the Applicant will be in the garage. In response to a question from Bonnie Heard of T&M concerning medical waste Dr. Gatmaitan testified she will dispose of the medical waste or sharps at her other dental office in Manhattan and the refuse and recycling will be stored indoors. The Board was satisfied that granting the requested design waivers consistent with the recommendation of Bonnie Heard PP the Board engineer was appropriate and granted the requested waivers and completeness of the application to the extent not agreed to compliance by the Applicant.

10. At the April meeting Paul Mirabelli introduced two pages of Architectural plans marked as A-4 and dated April 20<sup>th</sup>. Lou Moglino, AIA was then presented and accepted as a professional in architecture, sworn in and testified generally with respect to the architectural aspects of the proposed project. Mr. Moglino testified that the proposed structure is a two story mixed use building with the first floor consisting of a dental office and medical storage and the second floor a living quarters with two bedrooms and two baths and briefly described the details of the architectural plans introduced to the Board.

11. Richard Heuser then testified in his capacity as a professional planner with respect to the requested bulk variances. He testified, inter alia, that the site has a pre-existing non-conforming lot width of 30 feet where 50 feet is required, non-conforming lot frontage of 30 feet where 50 feet is required and non-conforming lot area of 3,606 sq. ft, where 5,000 square feet is required. He testified that these non-conformities are pre-existing and cannot be reduced or rectified. Lot 9.02 to the south is developed and has a dwelling close to the property line, rear lot 11 has a lot depth of 100 feet which is the minimum in the WC Zone and to the north and lots 7 & 8 are developed with the American Legion Building and parking lot. Mr. Heuser testified that it is impossible to increase the size of the subject lot and therefore the compliance with the minimum standards of the WC Zone or Section 13-.4 of the Ordinance is not possible. Mr. Heuser indicated that the new footprint will be smaller than the old footprint, there will be a 25

ft. set back and then described and testified in support of the additional bulk variances requested. Mr. Heuser opined that much of the relief in question is rooted in limitations created by pre-existing conditions at the site and that the proposed variances advance the purposes of zoning and in particular the intent of the new WC Zone District. He further opined that the benefits substantially outweigh any detriments and that granting the relief here at issue will have no negative impact upon neighboring properties and can be granted without causing substantial detriment to the public good and without causing substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

12. Paul N. Mirabelli, Esq. summarized the application and concluded to the Board that the proposed bulk variances were in furtherance of the Municipal Land Use Law and conducive to the orderly development of the site and the general area in which it is located and the Applicant has met the requisite proofs to be granted the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70 c(1) and c(2) and that all the requirements for granting of Preliminary and Final Site Plan had been met and therefore approval was appropriate.

13. The Board acknowledged that members of the Board were familiar with the subject property and the impact of the requested variances and that the proposed improvements would have a positive impact on newly created WC District, that the positives substantially outweighed any negative impacts and that the proposed



improvements did not appear to have a negative impact on the adjoining properties or the neighborhood. The Board agreed and finds that much of the relief in question is rooted in limitations created by pre-existing conditions at the site, that the proposal advances the purposes of zoning, and that the benefits substantially outweigh any detriments. For the reasons set forth below, the Board finds that no adverse impacts result from this project and that granting the relief here at issue will have no negative impact upon neighboring properties. The Board further finds that this relief can be granted without causing substantial detriment to the public good and without causing substantial impairment of the intent and purpose of the Borough of Union Beach Master Plan, Zone Plan or Zoning Ordinance.

14. After due deliberation, the Board finds that the applicant has satisfied all requirements of the Borough of Union Beach's Site Plan Ordinances and therefore Preliminary and Final Site Plan approval pursuant to N.J.S.A. 40:55D-47 & 50 et seq. and related statutes thereto is therefore appropriate. The Board further finds the purpose of the Municipal Land Use Law would be advanced by granting the requested bulk variances and that the benefits substantially outweigh any detriments and the granting of the variances will not substantially impair the intent and purpose of the Union Beach Master Plan, Zone Plan or Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the Unified Planning Board of the Borough of Union Beach that the application of Evangeline Gatmaitan for Preliminary & Final Site Plan Approval and

the ancillary bulk variances for lot area of 3,606 sq. ft. where 5,000 sq. ft. is required, lot width 30 ft. where 50 ft. is required, 30 ft. frontage where 50 ft. frontage is required, side yard setback of 5. ft where 8 ft is required, rear yard setback of 26 ft. where 30 ft. is required, combined side yards of 10 ft. were 20 ft. is required (9 ft. combined is pre-existing), a 10-13 ft. buffer in the rear and south side of the property where a 20 ft. wide buffer along all side and rear property lines is required, wall mounted sign 1 ft. sq. in area at an approximate height of 8.25 where 4 ft. is allowed and two parking stalls where 14 parking spaces area are required be and is hereby granted in accordance with the plans filed herein and the presentation and representations of the Applicant and the Applicant's professionals and is granted subject to and conditioned upon the following:

**SPECIAL CONDITION:**

1. Should the dental office become a full time dental office or should the current limited proposed dental use increase beyond the intensity presented in testimony to the Board the Applicant shall be required to return to the Board for re-examination and approval of the parking requirement.

**GENERAL CONDITIONS**

1. Subject to all the terms, conditions and requirements of all T & M Associates Review letters specifically the conditions found in the T & M review letter #1 dated March 21 and review letter # 2 dated April 20, 2017.

2. Contribution by applicant to Borough trust account for sidewalk construction and tree planting in accordance with Borough Ordinances in the amounts calculated by the Borough Engineer, as is applicable.

3. Applicant will comply with all representations made during the testimony and will address the comments and conditions of the Board professional reports.

4. The Applicant shall comply with the Planning Regulations of the Borough of Union Beach to the extent that they are consistent with this resolution and shall comply with all the requirements of the Construction Code and the Fire and Health Code Officials.

5. The Applicant shall procure all state, county and local government approvals required by law.

6. The Applicant shall pay of all taxes, fees, professional fees, and costs due to the Borough of Union Beach and the posting of all bonds required by law and by ordinance.

7. The Applicant shall obtain all necessary building permits and other construction permits required by any local, county or state law, rule or regulation.

8. The Application is granted only in conjunction with the conditions noted herein and but for the existence of same the application would not be approved.

9. The action of the Planning Board in approving this application shall not relieve the applicant of the responsibility of any damage caused by this project, nor does the Planning Board or its reviewing professionals and agencies accept any responsibility

for the structural design of the proposed improvements or for any damage caused by the project.

10. All representations made by the Applicant or the Applicant's professionals at the time of the Planning Board Hearing on this matter or in any documents submitted pursuant to this application are considered specific conditions of the approval. Any deviation or misrepresentation therefrom shall be considered a material breach of the facts upon which the conclusions of the Board were made and shall be considered a violation of this approval.

11. This Resolution reflects a summary of the conditions, facts, findings, determinations and conditions determined at the hearings in this matter and is not to be deemed all inclusive. The hearing minutes and transcripts are incorporated by reference in this Resolution and are made a part hereof and are deemed to be in augmentation or clarification of the within Resolution.

**BE IT FURTHER RESOLVED,** that nothing stated in the within approval shall be interpreted to excuse compliance by the Applicant with any and all other requirements of the Borough of Union Beach or any other governmental entity, agency or subdivision as set forth in any laws, ordinances, regulations or fee ordinances.

**BE IT FURTHER RESOLVED,** that the Chairman and the Secretary of the Borough of Union Beach Planning Board be and are hereby authorized to sign any all documents necessary to effectuate the purpose of this resolution, provided that the Applicant has complied with all of the above stated conditions.

BE IT FURTHER RESOLVED, that a copy of this resolution, certified to be a true copy by the Secretary of the Planning Board be forwarded to the Borough Zoning Officer, Borough Construction Official, Borough Tax Assessor, Borough Tax Collector, and the Applicant within ten (10) days from the date hereof.

BE IT FURTHER RESOLVED, that the Board Secretary is hereby authorized and directed to cause a notice of this Resolution to be published in the Asbury Park Press at the Applicant's expense.

Dated: *April 26, 2017*

Moved By: *Mr. Frank Wells*

Seconded by: *Councilman Louis Andruzzi*

Those in Favor: *Steiner, Wells, Coffey, Durio, Coenross, Andruzzi, Catallo and Moritz*

I hereby certify that on the *26<sup>th</sup>* day of May , 2017 the Unified Planning Board of the Borough of Union Beach adopted the foregoing Resolution by the aforementioned vote which memorializes an action adopted by the Unified Planning Board of the Borough of Union Beach at its meeting of April 26, 2017.

*Madeline Russo*

**Madeline Russo, Secretary  
Union Beach Unified Planning Board**