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LAW OFFICES OF BIANCA P. PEREIRAS, LLC
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Our File No: 15031
Attorneys for Plaintiff, Palisades Vista, LLC

PALISADES VISTA, LLC

Plaintiff,

vs.

PLANNING BOARD OF THE CITY OF
UNION CITY

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION -HUDSON COUNTY

Docket No.

Civil Action

**COMPLAINT IN LIEU OF
PREROGATIVE WRIT**

Plaintiff, Palisades Vista, LLC, (“Palisades Vista” or “Applicant”) by way of Complaint against Planning Board of the City of Union City (“Board”), alleges as follows:

INTRODUCTION

1. The Union City Planning Board unanimously denied a fully conforming “variance free” site plan application in violation of the Municipal Land Use Law (“MLUL”) which states that a planning board “shall” grant site plan approval if the proposed development complies with all local ordinances.
2. The Union City Planning Board denied Palisades Vista’s application to subdivide an existing lot into two conforming lots to construct two variance free permitted uses. The resolution denying the application should be overturned as arbitrary and capricious and Palisades Vista must be permitted to develop its property in a manner that is fully consistent with all objective regulatory standards, local ordinances and the MLUL.

THE PARTIES

3. At all times mentioned herein, Plaintiff, Palisades Vista, LLC, was a limited liability company, with a principal place of business at 148 High Tor Drive in Watchung, NJ 07069 and duly existing under the laws of the State of New Jersey.
4. At all times mentioned herein, Plaintiff was the owner of a certain property known as 2113-2115 Palisade Avenue Union City, New Jersey, and further known as Block 112, Lots 15 and 16 on the Tax and Assessment Map of the City of Union City,
5. Defendant, Planning Board of the City of Union City (hereinafter “Board”) with offices at 3715 Palisade Avenue, Union City, New Jersey is a quasi-judicial Board created under and existing pursuant to the laws of the State of New Jersey and in accordance with the provisions of Chapter 223 of the Union City Municipal Code (hereinafter the “Ordinance”) and charged under these laws and ordinances with the duty to administer and interpret provisions of the Zoning Ordinances with powers authorized by N.J.S.A. 40:55D-1.

STATEMENT OF FACTS

6. On or about May 5, 2021, the Plaintiff submitted a variance free site plan application to subdivide the existing lot into two conforming lots and construct two new three family homes. Specifically, the Union City Zoning Ordinance requires each lot to be 2,500 square feet (25' x 100') while Plaintiff's lot measures 5,000 sq. ft. and is 50' wide and 100' deep.
7. The property is located in the R-Low Density Residential Zone. Currently existing on the Property is a 3.5 story residential building to be demolished.

8. The area is zoned for residential use where the “Ordinance” permits the construction of one, two and three family homes.
9. Plaintiff’s application calls for the construction of (2) three family homes, consisting of a four (4) story structure, with parking on the first story and three (3) residential units above (one unit per floor), all permissible under the “Ordinance.”
10. The proposed use of the property is a permitted use under the Ordinance.
11. The project is fully compliant as to the proposed structures and does not require any “Bulk” or “C” variances (N.J.S.A. 40:55D-70 c (1)) associated with the buildings.
12. Prior to the formal and public meeting; the applicant, through his counsel and architect, met with the City’s professionals at a technical review meeting. At said meeting; the board professionals recommended modifications to the proposed building that would trigger a minimum side yard variance and a parking variance. New drawings were submitted to the Board to reflect the modifications requested by the Board. The applicant reserved his right to proceed on the original and variance free application.
13. In accordance with duly provided public notice, the Board first considered the application at a regularly scheduled public meeting on July 27, 2021.
14. The Plaintiff presented testimony of Manuel Pereiras who was qualified as an expert in the field of architecture.
15. Mr. Pereiras described the physical features of the proposed project, including layout of apartments, parking, and landscaping and testified in support of the Application regarding the proposed use of the Property.
16. The testimony of the Plaintiff’s witness proved all elements required by statute and by the “Ordinance” for the approval of the requested relief relating to the proposed project.

17. Following the conclusion of the hearing, the Board voted to deny the requested application.
18. A memorializing Resolution was adopted by the Board on September 28, 2021. A copy of the Resolution is attached as Exhibit "A".
19. In the Resolution, the Planning Board failed to discuss the relevant statutory authority or relevant case law that address fully conforming, as of right applications.
20. In the Resolution, the Planning Board failed to address N.J.S.A. 40:55D-46, which provides that a planning board "shall" approve a fully conforming site plan application.
21. Notice of the Resolution was published in the Jersey Journal on October 5, 2021.

COUNT ONE
(Arbitrary and Capricious)

22. The Plaintiff repeats and realleges Paragraphs 1 through 17 above as if fully set forth herein.
23. The proofs presented by Plaintiff incontestably satisfied the requisites for the site plan approval.
24. The board unreasonably rejected the unrebutted testimony of the expert witnesses presented by Plaintiffs.
25. The Board's denial of Plaintiff's application was arbitrary, capricious, and unreasonable and not justified by the facts on the record, contravene the intent and purpose of Ordinances and State-Laws, and is a detriment and causes hardship to plaintiff in disregard of its property rights.
26. The proposed building will not unduly or unreasonably change the present pattern of the

surrounding neighborhood, nor will it create any undue burden or hazard to the surrounding neighborhood.

WHEREFORE, plaintiff request judgment:

(a) reversing and vacating the City’s Planning Resolution, declaring it void and of no force and effect,

(b) directing the City to issue to Plaintiff the requested permit,

(c) awarding costs of suit,

(d) awarding attorneys fees, and

(e) granting such other relief as the court may deem proper.

COUNT TWO

(Violation of N.J.S.A. 40:55D-10 (g):

Failure to Make Adequate Findings of Fact and Conclusions of Law)

1. The Plaintiff repeats and realleges Paragraphs 1 through 26 above as if fully set forth herein.
2. The MLUL, N.J.S.A. 40:55D-10(g), requires municipal agencies to make “findings of fact and conclusions based thereon” on applications for development.
3. The Resolution is devoid of clear and specific findings of fact concerning the fully conforming application.
4. The Planning Board failed to properly analyze the record before it, as required by the MLUL and relevant judicial decisions.

WHEREFORE, plaintiff request judgment:

(a) For an Order setting aside the Resolution as contrary to law;

(b) For an Order declaring that the Resolution is null, void and without legal effect;

- (c) For an Order approving the site plan application
- (b) directing the City to issue to Plaintiff the requested permit,
- (c) awarding costs of suit,
- (d) awarding attorneys fees, and
- (e) granting such other relief as the court may deem proper.

Law Offices of Bianca P. Pereiras, LLC
Attorney for Plaintiff

By: 
Bianca P. Pereiras

DATED: November 16, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Bianca P. Pereiras, Esq., is hereby designated as trial counsel for plaintiff in the above matter.

Law Offices of Bianca P. Pereiras, LLC
Attorney for Plaintiff

By: 
Bianca P. Pereiras

DATED: November 16, 2021

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1 I hereby certify that to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any State Court or any pending Arbitration proceeding. I further certify that to the best of my knowledge, no other action or Arbitration is contemplated, and I know of no other persons who should be joined in this litigation.

Law Offices of Bianca P. Pereiras, LLC
Attorney for Plaintiff

By: 
Bianca P. Pereiras

DATED: November 16, 2021

EXHIBIT A

**CITY OF UNION CITY
PLANNING BOARD
RESOLUTION NUMBER 2021-21**

**PALISADES VISTA, LLC
2113-2115 PALISADE AVENUE
BLOCK 112, LOTS 15 & 16**

WHEREAS, an application has been filed by **PALISADES VISTA, LLC**, regarding property located at Block 112, Lot 15 and 16, commonly known as 2113-2115 for subdivision and site plan approval to demolish the existing structure and construct a new three-family dwelling; and

WHEREAS, along with the application, applicant submitted a site plan and architectural drawings dated July 16, 2021, prepared by Pereiras Architects Ubiquitous, 1116 Summit Avenue, Union City, New Jersey 07087; and

WHEREAS, the applicant has submitted proof that notification by mail or personal service at least 10 days prior to the date set forth for public hearing within 200 feet from the extreme limits of the property in accordance with the Zoning Ordinance of the City of Union City as amended and supplemented and N.J.S.A. 40:55D-1 et seq. has been completed and that the application has been deemed complete for review; and

WHEREAS, the Planning Board of the City of Union City has considered the site plan request with reference to the objectives set forth in the applicable zoning ordinance of the City of Union City as amended and supplemented; and

WHEREAS, the request for subdivision and site plan approval was also reviewed by the Planning Board of the City of Union City with reference to sound and prudent zoning and planning principles reviewed in conjunction with the aforementioned City Ordinance

objectives, including but not limited to, the configuration of the site, character of the area as based upon information and evidence presented; and

WHEREAS, a public hearing was conducted on July 27, 2021 at which time the Planning Board heard testimony from the applicant's architect, Manuel Pereiras, Alexander Alicea, the owner of the property and the presentation of applicant's attorney, Bianca P. Pereiras, Esq., and after due deliberation did find and determine that:

1. The property is a 5,000 square foot parcel located on the southwestern corner of Palisade Avenue and 22nd Street. The parcel currently consists of a 3.5 story residential dwelling, which is to be demolished..

2. The site is located in the R, Low Density Residential District.

3. The applicant proposes to demolish the existing structure, subdivide the property into two lots and construct a new three-family residence on each lot.

4. The construction of the new three-family residences will require a variance for minimum side yards where 2 feet/5 feet combined is required, the interior structure will have side yards of 3 feet and 1 foot and the corner structure will be developed to the lot line on 22nd Street and will provide a side yard of 2 feet on the southerly side yard and parking where 6 parking spaces are required for each structure, 5 parking spaces for each are proposed.

5. Manuel Pereiras, the applicant's architect, testified subsequent to the technical review meeting some revisions were made to the plans. He indicated that vehicular access to the property is now going to be from the side street rather than Palisade Avenue, which will allow for a more residential feel to the front of the property. He indicated that balconies and porches are proposed along the front of the structure. Mr. Pereiras testified that

parking is critical in Union City and to that end the side yard between the buildings is proposed at 3 feet and one of the structures is situated closer to the property line which will create a wider space for parking. He indicated that vehicles will enter the property within the 15 foot rear yard setback. He stated that the total parking spaces for the dwelling will be 5 spaces with two in tandem along the front with room for a compact car on the corner. Mr. Pereiras testified that one of the apartments will have one parking space and the two remaining units will have two spaces each. He stated that the main pedestrian entrance is located on Pallsade Avenue. Each of the structures have a similar layout with each unit consisting of three bedrooms with an open floor plan for kitchen, living room and dining room. Mr. Pereiras stated that the building to the south is fully bricked with cast stone detailing and a cornice on top, which the corner building will be bricked everywhere that is visible with an octagonal tower in the corner as an architectural feature. He noted that the owner will occupy the top floor of the corner structure.

6. The Board voiced its concerns with the size of the project indicating that parking was insufficient and that the structures will block light and air from the surrounding properties.

7. The Board then took testimony from many residents, who all voiced their objections as to the size of the development, the look of the structures proposed, the issue with parking, and the stress it will create on the sewer system.

8. Mr. Pereiras then was given an opportunity to address the objections. He indicated that a stormwater management system will be installed to prevent the rain runoff from entering into the sewer system. He also indicated that new developments like this actually reduce the impact on the sewer system and creates fees that help in repairing the

problems. Mr. Pereiras commented that the development is in complete conformance with the height that is permitted pursuant to the current ordinances. He stated that even though the City has passed an ordinance to reduce the height of structures to three stories, this application was made prior to that and projects like this will happen in the future. He indicated that he met with the City multiple times to modify this project to fit the character of the neighborhood as much as possible.

9. The Board finds that the area where the proposed three-family houses is located substantially consists of two-family houses that are lower in height than what is being proposed. Further, the Board finds that the proposed development is too dense for the area and the parking issues would be detrimental to the neighborhood. The Board also considered the testimony of the neighboring property owners in evaluating the application.

10. The Board specifically finds that the applicant has failed to demonstrate that the benefits of granting the requested variances outweigh the benefits pursuant to N.J.S.A. 40:55D-70c(2). The Board specifically determined that the project as a whole is detrimental to the neighboring properties.

11. The Board also finds that the variances requested due to the size of the development cannot be granted without substantial detriment to the public good or impairment to the zoning ordinance or master plan for the City of Union City for the reasons set forth herein. Specifically, the benefits do not outweigh any detriments and the variances only provide a benefit to the applicant.

12. The Planning Board hereby determines that the applicant has not met its burden of proof to satisfy the Planning Board for site plan approval for this application.

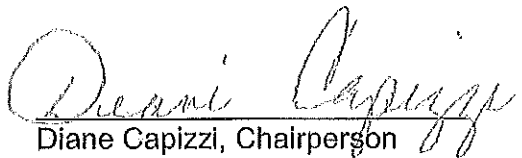
NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the City of Union City hereby denies the final site plan approval relating to the application of Palisades Vista, LLC, 2113-2115 Palisades Avenue, Block 112, Lots 15 and 16.

BE IT FURTHER RESOLVED that the Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution denying subdivision and site plan approval, and the applicant is authorized to advertise the action taken by way of this Resolution in a local newspaper, and further the Secretary of the Board is authorized to send certified copies of this Resolution to the Construction Code Official and to the applicant through applicant's attorney, Bianca P. Pereiras, Esq.

MOTION TO DENY:
MOVED BY: Mr. Velazquez
SECONDED BY: Ms. Capizzi

VOTE: FOR 6 AGAINST 0 ABSTAIN 0

APPROVED


Diane Capizzi, Chairperson

I certify that the foregoing is a true copy of the Resolution adopted on September 28, 2021.


Carlos Vallejo, Secretary to the Board

Dated: September 28, 2021