

RESOLUTION 2023-01

IN THE MATTER OF THE APPLICATION

OF

MARVE DEVELOPMENT CORP.

**BOARD OF ADJUSTMENT
TOWNSHIP OF VERONA
ESSEX COUNTY, NEW JERSEY**

WHEREAS, the Appellant, Marve Development Corporation ("Marve"), owner of a property located at 251½ Grove Avenue, Verona, New Jersey ("Property"), said Property also being known as Block 1201, Lot 12 which property is situate in the Township's "C-2" Zone (Professional Office and Business) has submitted a Notice of Appeal pursuant to N.J.S.A. 40:55D-72 and Township of Verona Code Chapter § 30-19 of the Verona Zoning Official's Zoning Determinations dated August 30, 2019 to the Verona Zoning Board of Adjustment; and

WHEREAS, the Property is a 5.54 acre irregularly shaped lot with dimensions including a northerly lot line of 625.47 feet along the rear of single family homes located on Grove Avenue, 50-foot frontage on Grove Avenue with a single common driveway accessed from Grove (Essex County Route 639), easterly lot lines of 296.02 and 150.25 feet, a westerly lot line of 543.35 feet and southerly lot lines of 415.00 and 153.97 feet adjacent to the Peckman River with a multi-tenant office building to the east and single family homes on Ann Street to the west; and

WHEREAS, the Property includes numerous tenants located in five industrial structures on the site with outdoor parking and storage of trucks, buses and other vehicles, moveable containers and dumpsters, equipment and materials; commercial vehicle and bus repairs; fabrication and welding of vehicles, equipment and materials; and warehousing of equipment and vehicles; and

WHEREAS, on August 30, 2019, the Township of Verona's Zoning Official ("Township") issued twenty-eight (28) zoning violations ("Zoning Violations") to Marve alleging expansion of non-conforming uses for outdoor vehicle and equipment parking and storage, vehicle repairs and storage of moveable containers at the Property; and

WHEREAS, on September 20, 2019, Marve contested the Zoning Violations, filed an appeal of the Zoning Official's Determinations to the Verona Zoning Board of Adjustment (the "ZBA"), and contended, among other things, that the uses cited in the Zoning Violations were pre-existing, non-conforming uses and that the Superior Court of New Jersey previously determined that the uses cited in the Zoning Violations were legally protected non-conforming uses; the Appeal was subsequently added to the Verona Zoning Board of Adjustment's docket as Case 2019-12 and scheduled for a hearing on December 12, 2019,

- where the Appellant requested adjournment to the February 13, 2020 ZBA Meeting,
- where the Township requested adjournment to the March 12, 2020 ZBA Meeting,
- where the Appellant requested adjournment to the April 9, 2020 ZBA Meeting; and

WHEREAS, immediately following the March 12, 2020 ZBA Meeting all public gatherings were cancelled in compliance with government orders reacting to the burgeoning worldwide COVID-19 Pandemic, requiring the cancelation of the April, May and June 2020 ZBA Meetings; and

WHEREAS, the Verona ZBA resumed public meetings using the Zoom Meeting platform in accordance with the New Jersey Department of Community Affairs' Division of Local Government Services detailed guidance documents for remote land use public meetings on July 9, 2020,

- where the Appellant requested adjournment to the August 13, 2020 ZBA Meeting,
- where the Appellant requested adjournment to the September 10, 2020 ZBA Meeting,
- where the Appellant requested adjournment to a Special ZBA Meeting on October 28, 2020; and

WHEREAS, at the Special Verona ZBA Meeting on October 28, 2020, Township Zoning Officer Michael DeCarlo summarized the Zoning Violations from his August 30, 2019 Notice Letter to Marve; then Joshua Zielinski, Esq. of O'Toole Scrivo, representing the Appellant, summarized their appeal of the Zoning Official's Determinations as outlined in their September 20, 2019 Appeal Letter and February 4, 2020 summary of prior legal proceedings and rulings. Township Attorney Brian Aloia, Esq. contested the Appellant's claims alleging that the violations are non-conforming uses, wrongful expansions of pre-existing non-conforming uses and wrongful continuation of pre-existing non-conforming uses that should be brought into compliance. The ZBA requested both parties to submit briefs concisely summarizing their positions—the Appellant within 20 days and then the Township within 15 days of receipt of the Appellant's brief and concluded with the Case being adjourned to the December 10, 2020 ZBA Meeting; and

WHEREAS, at the Verona ZBA Meeting on December 10, 2020, the Board reviewed Marve's Brief In Support Of Motion To Dismiss Zoning Decision And Zoning Violations (21 pages) and the Township of Verona's Brief In Opposition To Marve's Motion To Dismiss Zoning Decision And Zoning Violations (13 pages) and, after hearing from opposing counsels, determined it would not be in the interests of all involved to dismiss the Verona Zoning Official's Zoning Decision dated August 30, 2019 in its entirety and agreed it would like to address the violations cited individually after obtaining input from a Professional Planner engaged directly by the Board and concluded with the Case being adjourned to the February 11, 2021 ZBA Meeting; and

WHEREAS, at the Verona ZBA Meeting on February 11, 2021, the Appellant requested adjournment to the March 11, 2021 ZBA Meeting,

- where the Appellant requested adjournment to the April 8, 2021 ZBA Meeting,
- where the Appellant requested adjournment to the May 13, 2021 ZBA Meeting,
- where the Appellant requested adjournment to the June 10, 2021 ZBA Meeting,
- where the Appellant requested adjournment to the July 8, 2021 ZBA Meeting,
- where the Appellant requested adjournment to a Special ZBA Meeting on July 29, 2021

WHEREAS, during this time, the ZBA, working with Secretary Neale, Attorney Gaccione, Town Manager Cavallo and others, developed a Professional Planner Search Summary document, interviewed Planners, accepted a proposal from, and engaged, George Wheatle Williams, PP, AICP of the Nishuane Group, LLC, to prepare a written report and provide Expert Witness testimony specifically delivering:

- General Education information to address the definitions for Permitted Use, Primary Use, Ancillary Use, Permitted Accessory Use, Protected Non-Conforming Use, etc.; explain how properties affected by Zoning changes are expected to continue/conform; explain and give examples of expanded non-conforming uses.
- Case Specific information to address the zoning history and expectations for this specific property; identify the impact and expectations of Zoning Board, Planning Board and Court decisions for this specific property; identify any currently cited violations clearly protected by Municipal Land Use Law and/or Zoning Board, Planning Board and Court decisions for this specific property; provide a current "baseline" of protected and permitted uses for this property along with examples of changes that would result in violations; and

WHEREAS, The Nishuane Group, LLC submitted their report entitled "Appeal (A) of the Zoning Officer's Decision" on July 22, 2021 and copies were distributed to the ZBA and attorneys for Marve and the Township on July 23, 2021 by Secretary Neale in preparation for discussion at the Special ZBA Meeting on July, 29, 2021; and

WHEREAS, on July 27, 2021, Lawrence Cutalo, Esq. of O'Toole Scrivo, representing the Appellant, submitted Marve's Planning Report entitled "Planning Report for Marve Development Corp." by Burgis Associates, Inc dated July 26, 2021 and advised that "Marve reserves the right to rely on this Planning Report at the continued virtual hearing scheduled for July 29, 2021"; and

WHEREAS, at a Special ZBA Meeting on July, 29, 2021 the Board was informed by ZBA Attorney Robert Gaccione that he had received a call from the Appellant's attorney stating that they had reached a settlement agreement with the Township. He advised that once the Township

Attorney and Marve's attorney finalize the agreement it will be forwarded to the ZBA for review. ZBA Chairman McGinley stated the review would be put on the agenda for the next regular meeting of the ZBA scheduled for August 12, 2021; and

WHEREAS, for the ZBA Meeting on August 12, 2021 the Appellant's Attorney, Lawrence Cutalo, Esq. of O'Toole Scrivo, provided a letter advising that the Settlement Agreement has not yet been finalized and requested adjournment to the September 9, 2021 ZBA Meeting,

- where the Appellant requested adjournment to the October 14, 2021 ZBA Meeting,
- where the Appellant requested adjournment to the November 18, 2021 ZBA Meeting,
- where the Appellant requested adjournment to the December 9, 2021 ZBA Meeting,
- where the Appellant requested adjournment to the February 11, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the March 3, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the April 14, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the May 12, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the June 9, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the July 14, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the August 11, 2022 ZBA Meeting,
- where the Appellant requested adjournment to the September 8, 2022 ZBA Meeting; and

WHEREAS, the Verona Municipal Council adopted Resolution No. 2022-163 - Authorizing A Township Manager to Execute Settlement Agreement With 251½ Grove Avenue, In The Township Of Verona, New Jersey, Block 1201, Lot 12 at their meeting on August 22, 2022 authorizing a settlement agreement that does the following:

1. Cause the removal of all self-storage pods from the Property by December 31, 2022
2. Cause any landscapers to vacate the Property by December 31, 2023
3. Cause any fabricators and vehicle repair contractors to vacate the Property by December 31, 2023
4. Not permit any new Tenants to utilize the Property in any manner that is in violation of the current zoning for the Property
5. Cause the Zoning Violations to cease and any non-conforming uses to be brought into compliance with the current zoning for the Property by December 31, 2023; and

WHEREAS, Lawrence Cutalo, Esq. of O'Toole Scrivo, representing the Appellant, submitted a letter dated September 8, 2021 requesting that this Appeal be dismissed at the September 8, 2022 ZBA Meeting without prejudice to the rights of the Appellant in view of the settlement pertaining to the Zoning Violations approved by the Township Council by Resolution dated August 22, 2022 between and among Marve and the Township of Verona the right of the Applicant to submit applications for projects in the future, pursuant to the normal land use application process in accordance with the Township of Verona Land Development Ordinance and the Municipal Land Use Law; and

WHEREAS, the Verona ZBA Members, Municipal Staff, pertinent Commission and Committee members and concerned members of the public have reviewed the following materials, including all interim revisions, in detail during the last three years:

- Letter of Zoning Determination prepared by Michael C. DeCarlo, Verona Zoning Officer (46 pages) dated August 30, 2019;
- Notice of Appeal of Zoning Officer's Determinations Letter submitted by Joshua Zielinski, Esq. of O'Toole Scrivo, representing the Appellant, (5 pages) dated September 20, 2019;
- Letter Summarizing Prior Legal Proceedings and Rulings submitted by Joshua Zielinski, Esq. of O'Toole Scrivo, representing the Appellant, (185 pages) dated February 4, 2020;
- Letter Recommending Dismissal/Hearing Procedure submitted by Joshua Zielinski, Esq. of O'Toole Scrivo, representing the Appellant, (2 pages) dated August 10, 2020;
- Brief In Support Of Motion To Dismiss Zoning Decision And Zoning Violations submitted by Joshua Zielinski, Esq. and Lawrence Cutelo, Esq. of O'Toole Scrivo, representing the Appellant, (21 pages) dated November 20, 2020;
- Brief In Opposition To Marve's Motion To Dismiss Zoning Decision And Zoning Violations submitted by Brian J. Aloia, Esq and Victoria A. Lucido, Esq of the Aloia Law Firm, LLC representing the Township of Verona, (13 pages) dated December 3, 2020;
- Professional Planner Search Summary document prepared by Daniel J. McGinley, Verona Zoning Board of Adjustment Chair, (1 page) dated March 10, 2021;
- Appeal (A) of the Zoning Officer's Decision prepared by George Wheatle Williams, PP, AICP of the Nishuane Group, LLC, (80 pages) dated July 22, 2021;
- Planning Report for Marve Development Corp. prepared by Burgis Associates, Inc (54 pages) dated July 26, 2021;
- Settlement Agreement made by, between, and among Marve Development Corporation and the Township of Verona (10 pages) unsigned and undated;
- Verona Municipal Council Resolution No. 2022-163 - Authorizing A Township Manager To Execute Settlement Agreement With 251½ Grove Avenue, In The Township Of Verona, New Jersey, Block 1201, Lot 12 (2 pages) adopted at the Council Meeting on August 22, 2022;
- Request to Dismiss Appeal Letter submitted by Lawrence Cutelo, Esq. of O'Toole Scrivo, representing the Appellant, (1 page) dated September 8, 2022; and

WHEREAS, the Verona ZBA Members have received valuable input from Municipal Staff, pertinent Commission and Committee members and concerned members of the public at the two public hearings which highlighted numerous concerns and issues with this appeal; and

WHEREAS, the Verona ZBA Members have reviewed a dozen (12) detailed documents of more than 400 pages, listened to more than six (6) hours of testimony and endured lengthy delays of ten (10) months between the initial hearing scheduled for December 12, 2019 and the Appellant's first appearance before the ZBA on October 28, 2020 and then seven (7) months between the Appellant's second appearance at the ZBA Meeting on December 10, 2020 and their written notification of a settlement agreement presented at the July 29, 2021 ZBA Meeting and, finally, fourteen (14) months between that settlement notice and the written provision of the Settlement Agreement the day of the September 8, 2022 ZBA Meeting; and

WHEREAS, the Verona ZBA Members, after carefully considering the Appellant's Request to dismiss this Appeal at the September 8, 2022 ZBA Meeting without prejudice to the rights of the Appellant in view of the Settlement Agreement approved by the Verona Township Council by Resolution 2022-163, concur with the Appellant;

NOW THEREFORE, be it resolved by the Board of Adjustment of the Township of Verona, in the matter of Case #2019-12, to dismiss the Appeal of the Verona Zoning Official's Zoning Decision dated August 30, 2019 submitted to the Verona Zoning Board of Adjustment by Marve Development Corporation, owner of the property located at 251½ Grove Avenue, Verona, New Jersey also known as Block 1201, Lot 12 pursuant to N.J.S.A. 40:55D-72 and Township of Verona Code Chapter § 30-19 without prejudice, as requested.

**IN THE MATTER OF THE APPLICATION OF
MARVE DEVELOPMENT GROUP
251 ½ GROVE AVENUE
BLOCK 1201 LOT 12**

VOTE : TO MEMORIALIZE

AYES

Patrick Liska
Genevieve Murphy-Bradacs
Christy DiBartolo
Vice Chairman Weston

NAYS

ABSTENTIONS



Dan McGinley, CHAIRMAN

The foregoing is a true copy of a resolution adopted by the Board of Adjustment at their meeting on January 12, 2023.



Ashley Neale,
Board of Adjustment Secretary