

**RESOLUTION OF THE BOARD OF ADJUSTMENT OF NORTH BERGEN
FOR USE, SITE PLAN AND OTHER VARIANCES
#13-12 SUBMITTED BY 6233 KENNEDY BOULEVARD, LLC
FOR PROPERTY LOCATED AT
6231-6233 KENNEDY BOULEVARD, TOWN OF NORTH BERGEN, NEW JERSEY,
BLOCK 204, LOT 11**

WHEREAS, an application has been made by 6233 Kennedy Boulevard, LLC for the issuance of a Minor Subdivision and Conditional Use Variance (D-3) to approve the subdivision of the subject lot into two (2) lots and construct a three-story structure on each subdivided lot with commercial space on the lowest floor and a three-bedroom residential unit on each floor above. The application was presented by Carolyn Corrado, Esq. on behalf of the applicant 6233 Kennedy Boulevard, LLC for the property located at 6231-6233 Kennedy Boulevard, Block 204m Lot 11, in the Township of North Bergen, New Jersey; and

WHEREAS, the Board of Adjustment has reviewed the application for use and other variances in the C-1A General Commercial District at the subject premises at its meetings of October 3, 2012; and

WHEREAS, it appears that due notice of a hearing in the above application before the Board of Adjustment of the Township of North Bergen on October 3, 2012 at 8:00 P.M., at the Municipal Building of the Town of North Bergen, was duly served upon the property owners within a two hundred (200) foot radius of the above described premises as prescribed in the Municipal Land Use Law; and

WHEREAS, the applicant has submitted proof that it has complied with the applicable procedural requirements including payment of fees and public notices; and

WHEREAS, the Board did consider the evidence presented and the testimony of Demetrios Kaltsis, Architect, and received Exhibit ZB-1, the five-page planning report of Ms. Jill Hartmann, dated 10/3/2012 along with one-page of pictures, and also received Exhibit A-1, a one-page 1997 tax map of North Bergen with highlighted indication of the properties in the area with existing nonconformity as a result of preexisting conditions, and such other information as presented to the Board by Carolyn Corrado, Esq.. After careful consideration of this application the Board of Adjustment has made the following findings of fact and reached the following conclusions:

- (1) The subject property is currently a vacant lot, which fronts on Kennedy Boulevard

at the corner of 62nd Street. It contains 2,554 square feet. There was an existing building on the property developed with a mixed commercial and residential use that appears similar to the proposed use. The existing lot will be subdivided into two new lots – Lot 11.1 and Lot 11.2. Each lot will be developed with a three-story structure with one (1) commercial/retail space on the ground floor, one (1) three-bedroom residential unit on the second floor, and another three-bedroom residential unit on the third floor. The two three-story structures will be separated by the required party wall with an interior side-yard setback of 0'. The façade of the two three-story structures will be uniform and appear as one structure.

The use of the property is permitted in the C-1A General Commercial District zone with a conditional use of up to two (2) dwelling units for every 25' of lot frontage occupied by the subject building and may also have a ground-floor commercial use. As proposed, this property does not meet the conditional requirements and so the application requires the approval of a conditional use variance and associated bulk variances.

(2) There was testimony for the application by an expert. Mr. Kaltsis, the architect, testified on behalf of the application. Mr. Kaltsis generally explained the architectural features of the proposed buildings. The proposed building will have a commercial/retail space on the ground floor. The south side of the commercial space will measure 910 square feet and the north side will measure 971 square feet. At the rear of the commercial space, there will be a bathroom with handicap access and a mechanical room. There will be aluminum and glass storefront glazing in the front on Kennedy Boulevard. The main entrance will be at the front of the building. A second means of egress will be located on the rear wall with a walkway with steps leading down to a street directly south of this property.

The residential units will be on the second and third floors of the structures. All of the residential units consist of three (3) bedrooms, a full bathroom, and a combination of living/dining room and kitchen. The south side of the residential units will measure 910 square feet and the north side will measure 971 square feet. There will be a combination of brick and stucco at the front façade. There will be double-hung windows with decorative cornice details on the stucco. There will be separate entrances for the residential units.

With respect to the C-2 bulk variances, Mr. Kaltsis testified and produced evidence of existing properties in the area that have existing nonconformities as a result of preexisting conditions. Therefore, these similarly undersized properties also required the same number of

bulk variances. There are nine (9) bulk variances associated with the proposed subdivision:

(3) The standard for the grant of a conditional use variance is set forth in Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285 (1994). The Court determined that generally, a conditional use is suitable to a zoning district but not to every location within that district. A conditional use applicant's inability to comply with some of the ordinance's conditions need not materially affect the appropriateness of the site for the conditional use. However, in order for the applicant to obtain a conditional use (D-3) variance, the applicant has the burden of showing both the positive and negative criteria. The Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-70(c)(2), requires the applicant to show that the variances requested benefit the community in that they represent a better zoning alternative for the property, that the proposed variance relief sought will not have a substantial detriment to the public good, and further, that the proposed variance relief sought will not impair the intent and purpose of the zone plan and Zoning Ordinance.

The Board is fully satisfied that applicant has demonstrated the requisite proof as required by the MLUL, Coventry Square v. Westwood Zoning Bd. of Adjustment, as well as the Zoning Ordinance requirements of the Township of North Bergen has been satisfied. The record amply shows that the subject property is suitable and appropriate for the conditional use of mixed commercial and residential use and has been used as such before. The Board specifically finds that the property's proposed use as mixed commercial and residential use is consistent with the surrounding area, which has a number of properties with similar existing nonconformity with the conditional use requirement. The Board specifically finds that there is no detriment to the surrounding area by allowing the subdivision and granting the conditional use. Further, the Board finds that there is no harm to the master plan or the zoning ordinance because the surrounding existing uses are similarly nonconforming. The Board finds that the applicant has sustained his burden of establishing the enhanced proofs and further finds that there will be no detrimental impact to the master plan and the surrounding area.

Now, therefore, be it resolved, that the Board of Adjustment of the Township of North Bergen approves the issuance of a conditional use variance, permitting the subdivision of the existing lot into two (2) new lots, permitting the construction of two (2) three-story building of mixed commercial(ground floor) and residential use(2 additional apartments) in this C-1A General Commercial District, and granting such bulk variance relief as provided for in the

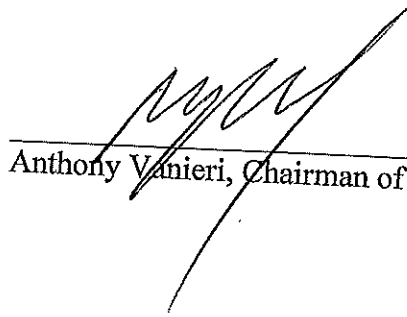
testimony and application.

Subject further to all statements, representations, reports, plans and material offered and/or reviewed by The North Bergen Board of Adjustment.

Being further subject to any federal, state or county approval or conditions as may apply

CERTIFICATION

I certify that this Resolution is a true copy of a Resolution GRANTED By the Board of Adjustment on October 3, 2012 and memorialized on November 13, 2012.



Anthony Vanieri, Chairman of the Board