

**PLANNING BOARD
BOROUGH OF RUTHERFORD**

RESOLUTION

Applicant: 18 Rutherford, LLC
Property: 51 Union Avenue
Block 76, Lot 32
Rutherford, New Jersey 07070

WHEREAS, Applicant, 18 Rutherford, LLC, has made application to the Planning Board of the Borough of Rutherford for preliminary and final major site plan approval to construct a four-story multi-family residential building on the property located at Block 76, Lot 32, commonly known as 51 Union Avenue, Rutherford, New Jersey 07070; and

WHEREAS, Applicant has submitted a site plan and architectural drawings in connection with the application; and

WHEREAS, the property is located in the Borough of Rutherford's Redevelopment Plan entitled, "West Erie Avenue, Union Avenue, Agnew Place and Chestnut Street Redevelopment Plan Area B", dated April 18, 2019 (the "Redevelopment Plan"); and

WHEREAS, proof of publication and service of notice of the hearing upon appropriate property owners and entities entitled to notice has been supplied; and

WHEREAS, a public hearing was held by the Planning Board (the "Board") on September 19, 2019, at which time exhibits were introduced into evidence, and testimony and arguments were presented in support of the application; and

WHEREAS, this Resolution memorializes a determination made by the Board on September 19, 2019, pursuant to the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-10(g).

FINDINGS OF FACT

NOW, THEREFORE, be it RESOLVED, that the Board, after careful deliberation, hereby makes the following findings of fact:

1. The Board incorporates by reference the above recitals or "Whereas" clauses into its findings of fact.
2. Applicant, 18 Rutherford, LLC, has filed an application for preliminary and final major site plan approval and bulk variance and waiver relief from site plan and Zoning

Code requirements with respect to the property designated on the official tax map of the Borough of Rutherford (the "Borough"), as Block 76, Lot 32, commonly known as 51 Union Avenue, Rutherford, New Jersey 07070 (the "property" or the "site"). Applicant is the owner and redeveloper of the property.

3. The property is located in the Redevelopment Area under the provisions of the Redevelopment Plan, pursuant to Ordinance No. 3496-19, adopted on February 25, 2019 by the Borough Council. The property is also located in the B-3 (Three Story Office-Retail) zoning district.

4. The property consists of a conforming corner lot in the Redevelopment Area and is subject to the regulations of the Redevelopment Plan and the Borough Code, where applicable.

5. Applicant proposes to construct a four (4) story multi-family residential building consisting of 21 apartments at the site. The building would contain 13 one-bedroom units and eight (8) two-bedroom units with an elevator. The proposed multi-family residential building is a permitted use under the provisions of the Redevelopment Plan. The project would produce affordable housing units.

6. The following exhibits were introduced into evidence:

A-1 Application, dated June 26, 2019.

A-2 Proof of publication and service of notice of the hearing.

A-3 Certification of payment of real estate taxes.

A-4 Aerial photograph of the site prepared by Stonefield Engineering and Design, LLC ("Stonefield"), dated September 19, 2019.

A-5 Architectural rendering (Sheet A-001) contained in the architectural drawings (the "drawings") prepared by Environetics Group Architects, P.C. ("ENV"), dated June 18, 2019.

A-6 Site plan entitled, "Preliminary & Final Major Site Plan for 18 Rutherford, LLC Proposed Multi-Family Development," prepared by Stonefield, last revised June 20, 2019 (the "plans").

A-7 Traffic & Parking Assessment Report prepared by Stonefield, dated June 20, 2019.

A-8 Stormwater Management Statement prepared by Stonefield, dated June 20, 2019.

A-9 Letter from Reach Associates Inc., dated August 30, 2019.

A-10 Lower level parking plan (Sheet A-100) contained in the drawings.

- A-11 First floor lobby/upper level parking plan (Sheet A-101) contained in the drawings.
- A-12 2nd-4th floor plans (Sheet A-102) contained in the drawings.
- A-13 Roof plan (Sheet A-103) contained in the drawings.
- A-14 Union Avenue & Chestnut Street elevations (Sheet A-201) contained in the drawings.
- B-1 Report of the Board's engineering consultant, T & M Associates ("T & M"), dated August 2, 2019.
- B-2 Report of the Board's planning consultant, T & M, dated August 1, 2019.

7. The property consists of a conforming commercial corner lot at the intersection of Union Avenue and Chestnut Street with the following approximate dimensions, as indicated in the plans (Exhibit A-6):

- a. Area: 8,100 square feet (0.19 acres).
- b. Frontage and width: 90 feet.
- c. Depth: 90 feet.

8. Matthew Seckler, P.E., a licensed New Jersey civil engineer and planner with Stonefield, testified for Applicant as an expert in those fields. His firm prepared the plans in connection with the application (Exhibit A-6). Mr. Seckler described the site and area, and the various features of the proposal and plans. The building would have a pedestrian entrance on Union Avenue that would be ADA (Americans with Disabilities Act) accessible. An entrance for vehicles would be located on Chestnut Street.

9. The following bulk variance is required in connection with the application: Parking stall size: The Zoning Code requires a minimum parking stall size of 9 feet in width and 19 feet in length, pursuant to Section 131-14F. The New Jersey Residential Site Improvement Standards ("RSIS") require a minimum size of 9 feet by 18 feet. The proposal provides for nine (9) spaces that are eight (8) feet in width.

10. Mr. Seckler stated that two (2) side-by-side garage doors would be located on the side of the of the property facing Chestnut Street. Ramps would lead to interior garages for residents on two (2) levels as shown on the plans (Exhibits A-10, 11). A total of 28 parking spaces would be provided. On-street parking would also be available on Chestnut Street. The garage entrance would have an awning that would extend into the Borough's right-of-way.

11. The following waivers from site plan requirements are requested (Exhibits A-10, 11; B-1, 2):

a. Parking spaces: The Redevelopment Plan requires a minimum of 1.5 parking spaces per unit, or a minimum of 32 spaces. See Section B (a)(11). As indicated above, 28 parking spaces are provided. The RSIS require 39 spaces at the site. In addition, the plans provide for compact parking spaces, while the Redevelopment Plan is silent on that issue. Therefore, a waiver is required for that condition.

b. Drive aisle width: The Zoning Code requires a minimum drive aisle width of 25 feet, pursuant to Section 131-14F. The proposal provides for a range between 19 and 23 feet.

c. Buffer: A buffer area 20 feet in width is required along lot and street lines, pursuant to Section 4A of the Redevelopment Plan. No buffer is provided.

12. Applicant submitted a traffic report in support of the application (Exhibit A-7). The report stated that approval of the project would result in an increase of nine (9) vehicle trips during the peak evening hours, and therefore the project's impact on traffic would be minimal. See Exhibit B-1.

13. Mr. Seckler testified as to the proposed landscaping plan (Exhibit A-6). Applicant has proposed four (4) shrubs at the corner of the building. Landscaping is also proposed at the community entrance. Two (2) street trees are proposed, one on each of the intersecting streets.

14. Applicant presented a Stormwater Management Statement for the purpose of addressing the project's impact on drainage at the site (Exhibit A-8). The proposal involves minimal site disturbance and only a slight increase in impervious surface coverage. Mr. Seckler stated that stormwater runoff that would be less than that which previously existed. Applicant acknowledged that it has the responsibility to ensure that drainage does not increase as a result of construction of the proposed development. See Exhibit B-1.

15. Lighting within the parking garage should be reviewed by the Borough's Construction Department as recommended by the Board's engineer (Exhibit A-1). The lighting of the exterior of the building would be provided by mounted lights and was adequate (Exhibits A-6, B-1).

16. Mr. Seckler provided testimony from a planning perspective. He stated that the project meets the objectives contemplated by the Redevelopment Plan, and complies with the Redevelopment Plan's requirements. In his opinion, the bulk variance should be granted under the MLUL, since the benefits of such approval outweigh any detriment. He testified that the proposal advances the purposes of zoning and satisfies the positive and negative criteria for a variance under the MLUL, since the construction involves a visually attractive building, which meets density regulations and promotes the free flow of traffic. Mr. Seckler stated that the proposal complies with the Redevelopment Plan and Master Plan.

17. Applicant acknowledged that it is required to provide affordable housing at a maximum rate of 15% of the total number of the residential units, or 3.15 units, pursuant to Section 8 of the Redevelopment Plan. The affordable housing obligation shall be addressed in a Redeveloper's Agreement (Exhibit B-2).

18. The property was previously occupied by a gasoline service station which was the subject of an investigation by the New Jersey Department of Environmental Protection (the "NJDEP"). The investigation revealed contaminated soil and groundwater at the site. Remediation of the contamination was completed by Reach Associates Inc, a chemical and environmental engineering firm. The licensed site remediation professional ("LSRP") filed remedial action reports with the NJDEP stating that no further action ("NFA") is required with respect to the areas of concern at the site (Exhibit A-9). Response Action Outcome ("RAO") letters should be issued by the LSRP shortly.*

19. Noah Adler, a licensed architect in New Jersey and project manager with ENV, testified for Applicant as an expert in that field. His firm prepared the drawings in connection with the application (Exhibits A-5, 10 to 14). Mr. Adler stated that the design of the building has a "transitional style" that involves a combination of traditional and modern architectural features. The building would have a total of 21 units, with seven (7) apartments on each floor. Each unit would have a terrace. Mr. Adler also reviewed the parking areas with the Board. There would be five (5) bicycle spaces. There would be an awning at the driveway on Chestnut Street which would extend 2.6 feet. Each unit would be assigned one parking space. The remaining spaces would be available to residents on a first-come, first-serve basis. A plaque-style sign consisting of nine (9) square feet in area would be mounted at the front of the building. The building would have a fire protection sprinkler system.

20. Paul Goldman, the owner of a commercial building on 71 Union Avenue, testified with respect to the application. He was concerned that the nonconforming parking plan could cause guests to park in his lot. He stated that there is usually insufficient on-street parking in the area of the site. No other members of the public spoke at the hearing.

21. Applicant stipulated to the following as conditions of approval:

a. The plans and drawings shall be amended to comply with the comments contained in the T & M engineering report (Exhibit B-1). All revisions to the plans and drawings shall be subject to the review and approval of the Board's engineer.

b. The lighting plan with respect to the proposed garage shall be submitted to the Borough's Construction Department for its review and approval. Applicant shall confer with the Board's engineer regarding the exterior lighting plan to ensure that it is satisfactory.

*RAO letters issued by the LSRP dated September 22 and 29, 2019 were submitted to the Board subsequent to the hearing.

c. The Stormwater Management Statement shall be revised to correct a typographical error. The revised report shall be submitted to the Board's engineer for review and approval (Exhibits A-8).

d. The plans and drawings shall be revised to provide the specific number of compact parking spaces, and the turning templates for the parking spaces nearest to the walls within the parking garage to show that cars can safely get into and out of the parking spaces (Exhibit B-1).

e. The plans shall be revised to relocate the proposed depressed curb for the ADA ramp currently situated at the existing inlet at the corner of Chestnut Street and Union Avenue.

f. New curbing and sidewalks shall be installed at the site, and Applicant shall comply with the Borough's streetscape requirements.

g. The plan for the fire protection sprinkler system to be installed at the building shall be subject to the review and approval of the Borough's fire safety code official.

h. Applicant's proposal for removal and storage of refuse and recycling materials at the site shall comply with all requirements of the Borough's Department of Public Works, and be subject to the DPW's approval.

i. The plans for installation of any and all landscaping at the site shall be subject to the review and approval of the Board's engineer. The plans for installation of the awning at the site that would extend into the Borough's right-of-way shall be subject to the review and approval of the Borough (Exhibit A-1).

j. The amount of \$50,000.00 shall be contributed by Applicant for the deficient number of parking spaces proposed, pursuant to 3B(a)(11), n. 1 of the Redevelopment Plan (Exhibit B-2). This amount is subject to negotiation with the Borough.

k. The plans and drawings shall be revised to provide an open space/outdoor recreation area to comprise a minimum of 20 percent of the lot area as required by the Redevelopment Plan. The location and square footage of the open space and recreation areas shall be specified. See Redevelopment Plan, Section 3B(a)(12) and Exhibit B-2.

l. Applicant shall submit an affordable housing proposal, which will indicate the number of low- and moderate-income units (Exhibit B-2). The affordable housing proposal shall be subject to the review and approval of the Borough.

m. Applicant shall enter into a Redeveloper's Agreement as required by the Redevelopment Plan, Section 7J.

CONCLUSIONS OF LAW

NOW, THEREFORE, be it RESOLVED, that the Board, after careful deliberation, hereby makes the following conclusions of law:

1. Approval of the application would result in the construction of a residential multi-family apartment building on the property located in the Redevelopment Area, as stated in the application and shown on the plans (Exhibits A-1, 6).
2. The application has been filed pursuant to the provisions of the Redevelopment Plan, and the New Jersey Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40 A:12A-1, et seq. The provisions of the Borough's Zoning Code (Section 131-1, et seq.) are superseded by the Redevelopment Plan. See Redevelopment Plan, Section 2C; L, N.J.S.A. 40A:12A-7(c).
3. The proposed multi-family residential apartment building is a permitted use in the Redevelopment Area. See Redevelopment Plan, Section 3A(1)(a).
4. The application promotes the purpose and vision of the Redevelopment Plan, pursuant to Section 1B. It also promotes the purposes of zoning under the MLUL, N.J.S.A. 40:55D-2. Specifically, the proposed development promotes the public, health, safety and general welfare, and the establishment of appropriate population densities that contribute to the well-being of persons, neighborhoods, and the community; provides sufficient space in an appropriate location for residential and recreational uses and open space; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement.
5. The Redevelopment Plan represents an outline for the planning, development, redevelopment, or rehabilitation of the Redevelopment Area in which the property is located. The Redevelopment Plan establishes the proposed land uses, land use regulations and building requirements in the Redevelopment Area. N.J.S.A. 40A:12A-7(a)(2); Redevelopment Plan, Section 3A, B. However, the Redevelopment Plan authorizes the Board to grant deviations from such regulations. Redevelopment Plan, Section 7G. Applicant has requested deviations from the regulations of the Redevelopment Plan in the form of a bulk variance for parking stall size and site plan waivers.
6. The Board concludes that the requested bulk variance would advance the purposes of zoning described above, and the benefits of the deviation would substantially outweigh any detriment, pursuant to the MLUL, N.J.S.A. 40:55D-70(c)(2). The variance can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the Redevelopment Plan, zone plan and zoning ordinance, pursuant to N.J.S.A 40:55D-70(d).
7. The Board concludes that the waivers for parking, driveway aisle width, and buffer are reasonable, de minimus, and within the general purpose and intent of the

Redevelopment Plan and the Borough's site plan ordinance, Section 50-1, et seq. The literal enforcement of such site plan requirements is impracticable or will exact undue hardship because of peculiar conditions pertaining to the site, pursuant to N.J.S.A. 40:55D-51(b).

8. Approval of the application is subject to the stipulations made by Applicant on the record of the hearing, and any and all conditions imposed by the Board.

9. Approval of the application is subject to the approval of all appropriate governmental agencies, including, but not limited to, the NJDEP, the Bergen County Planning Board, the Bergen County Conservation District and the provisions of a Redeveloper's Agreement to be entered into by Applicant and the Borough, pursuant to the Redevelopment Plan, Section 7D.

10. The Board concludes that approval of the application, as revised, represents sound redevelopment, design, zoning and planning principles.

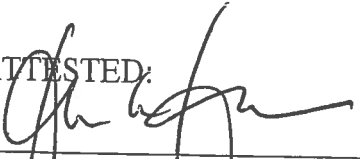
11. This approval is based upon the special and unique circumstances of this application. This approval is granted with the specific understanding that under no circumstances shall this approval have any precedential effect for any other site plan application presented to this Board.

DETERMINATION

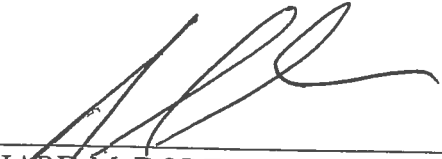
NOW, THEREFORE, be it RESOLVED and DETERMINED by the Board as follows:

Applicant's request for preliminary and final major site plan approval, and bulk variance and waivers in connection therewith, with respect to the property located in the Redevelopment Area and designated as Block 76, Lot 32, commonly known as 51 Union Avenue, Rutherford, New Jersey 07070, is hereby APPROVED, subject to the findings of fact, stipulations, conditions and conclusions of law set forth above; the plans, reports and exhibits submitted; the record of the hearing; the provisions of the Redevelopment Plan; the payment of any and all fees and escrows required by the Borough and its officials; and any and all federal, state, county and local requirements and approvals.

ATTESTED:



THOMAS KURUC, Secretary
Dated: November 21, 2019

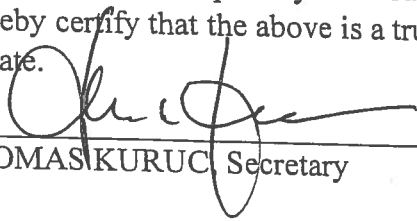


RICHARD M. DOREN, Chairman

CERTIFICATION

I hereby certify that I, the undersigned, the Secretary of the Planning Board of the Borough of Rutherford, am duly authorized to certify a Resolution adopted by the Board at a regular meeting held on November 21, 2019, and I hereby certify that the above is a true copy of the Resolution adopted by the Board on said date.

Dated: November 21, 2019



THOMAS KURUC, Secretary

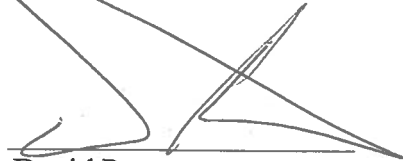
**NOTICE OF DETERMINATION
of the Planning Board of the
Borough of Rutherford, New Jersey**

PLEASE TAKE NOTICE, that the Planning Board, at a meeting held on September 19, 2019, made the following determination:

Application of 18 Rutherford, LLC for preliminary and final major site plan approval, and bulk variance and waiver relief, with respect to the property located at Block 76, Block 32, commonly known as 51 Union Avenue, Rutherford, New Jersey, is hereby GRANTED.

This determination or resolution has been filed in the office of the Secretary of the Board and is available there for inspection.

Dated: November 21, 2019

A handwritten signature in black ink, appearing to read 'David Porter', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'D'.

David Porter,
Planning Board Recording Secretary