

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2020-__
CASE NUMBER PZ-01-20**

WHEREAS, an application has been submitted to the Borough of Hillsdale Planning Board (the “Board”) by **Niza, LLC (the “Applicant”)** for a use variance pursuant to N.J.S.A. 40:55D-70(d)(2) to convert a commercial space to a residential space at premises commonly known as 330 Broadway, Hillsdale, New Jersey and identified on the Borough’s current tax assessment map as Block 1501, Lot 2 (the “Property”); and

WHEREAS, the Property is located in the “C” Commercial Zone district in the Borough of Hillsdale, County of Bergen, State of New Jersey; and

WHEREAS, the Property is owned by Niza, LLC and Ilda Beja (“Ms. Beja”) is the managing member and Edward Beja (“Dr. Beja”) is a member; and

WHEREAS, the Board determined that the application was complete and that a public hearing be conducted by the Board; and

WHEREAS, hearings were held on May 26, 2020; June 11, 2020 and June 23, 2020; and

WHEREAS, the Applicant was represented by Howard Siegel, Esq. (“Mr. Siegel”), 300 Route 4 East, P.O. Box 414, Teaneck, NJ 07666; and

WHEREAS, at the hearings Ms. Beja, having an address of 330 Broadway, Hillsdale, NJ 07642, was duly sworn and provided testimony on behalf of the Applicant in support of the application; and

WHEREAS, at the hearings the Board’s professionals, Christopher P. Statile, P.E. and Caroline Reiter, P.P., AICP were duly sworn and provided expert testimony; and

WHEREAS, at the May 26, 2020 hearing, Sean McClellan from Lantelme Kurens & Associates, 101 West Street, Suite 9, Hillsdale, NJ 07642, was present but did not provide expert testimony for the Applicant; and

WHEREAS, at the June 23, 2020 hearing, David Karlebach, PP (“Mr. Karlebach”), of David Karlebach, PP, PC, 38 East Ridgewood Avenue, Ridgewood, NJ 07450, was duly sworn and qualified as an expert planner and provided testimony in support of the application; and

WHEREAS, along with the application, the Applicant submitted the following:

1. Amended Application of June 11, 2020;
2. Photographs of the surrounding area;
3. Amended Application of June 23, 2020;
4. Exhibit A, map of surrounding land uses prepared by Mr. Siegel;
5. Exhibit B, Existing Conditions First Floor Plan, undated, prepared by Wayne J. Guskind, AIA of WJG Architects, LLC, 26 Central Avenue, Hillsdale, NJ 07642
6. Exhibit C, Certificate of Occupancy from the Borough of Hillsdale Construction Official dated November 28, 2006 for office and residential use on the Property;
7. Exhibit D, e-mail correspondence from the Borough of Hillsdale Zoning Officer dated January 28, 2020;

8. Revised Exhibit B, Existing Conditions First Floor Plan of the Property, dated May 29, 2020, prepared by Wayne J. Guskind, AIA of WJG Architects, LLC, 26 Central Avenue, Hillsdale, NJ 07642;
9. June 23, 2020 meeting – Document depicting Existing Land Uses within “C” Zone, prepared by Mr. Karlebach;
10. June 23, 2020 meeting – Three pages of photos of the Property and surrounding area, prepared by Mr. Karlebach; and

WHEREAS, the Board also considered the report of the Board Engineer, Christopher P. Statile, P.E. (“Mr. Statile”), dated February 25, 2020; and

WHEREAS, the Board also considered the report of Caroline Reiter, P.P., AICP (“Ms. Reiter”), dated May 18, 2020; and

WHEREAS, no members of the public appeared at any of the hearings either in support of or in opposition to the relief requested by the Applicant; and

WHEREAS, the Applicant submitted proof of notification, by mail or personal service at least 10 days prior to the date set forth for public hearing on all persons owning properties within 200 feet from the extreme limits of the subject premises of the subject application, as set forth on a certified list of said owners furnished to the Applicant by the Tax Assessor of the Borough of Hillsdale and provided proof of service of such notice in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the Municipal Land Use Law (the “MLUL”), N.J.S.A. 40:55D-1 to -163; and

WHEREAS, the Applicant has submitted proof that a copy of said notifications have been published at least 10 days prior to the date set forth for public hearing in the official newspaper of the Borough of Hillsdale in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the MLUL; and

WHEREAS, the Board gave due consideration to all individuals desiring to be heard and after due deliberation, did find and determine that:

A. The Property

1. The Property is located at 330 Broadway, designated as Block 1501, Lot 2.
2. The Property is situated in the Commercial (C) Zone district, which does not permit residential uses as of right or as a conditional use.
3. The Property is improved with a mixed-use rectangular building that is one story and two and one-half stories containing four (4) units. The first floor of the building presently contains two (2) commercial units. The first unit on the first floor is presently occupied by a doctor's office. The second unit on the first floor is presently unoccupied (the "Subject Unit") and includes a full-size kitchen and bathroom with a shower. The Subject Unit had previously been occupied by several commercial businesses, including an arts and crafts store, photo studio and granite showroom. The second floor presently contains two (2) residential apartment units that are presently occupied by tenants. The Property also has fifteen (15) parking spaces.

B. The Application

4. The Applicant proposes to convert the Subject Unit from a commercial space to a residential apartment. The proposal will result in a total of three (3) residential units and one (1) commercial unit on the Property. The Applicant proposes to only make interior, aesthetic

improvements and renovations to the proposed residential apartment but will not make structural changes. The proposal does not increase the building footprint or impervious coverage. The proposal will utilize existing services and access.

5. The Applicant seeks a use variance pursuant to N.J.S.A. 40:55D-70(d)(2) to permit the expansion of the existing non-conforming residential use. The Property will remain mixed-use with three (3) residential units and one (1) commercial unit.

C. The Hearings

6. The Board heard testimony from Ms. Beja, managing member of the Applicant. Ms. Beja testified that the Property contains a total of four (4) units, with two (2) residential apartments on the second floor that are presently occupied, one (1) active doctor's office on the first floor and one (1) vacant commercial unit on the first floor.

7. Ms. Beja testified that the Property contained residential apartments since approximately 1971. In 1996, a certificate of occupancy was issued permitting business use and two apartments. In November 2006, the Property was renovated and obtained a certificate of occupancy from the Borough of Hillsdale Construction Official to permit office use on the first floor and one (1) two-bedroom apartment and one (1) studio apartment on the second floor of the Property.

8. Ms. Beja testified that the entrance to the Subject Unit will remain unchanged and will be located in the rear of the building. The proposed residential unit will be painted but the structure will not change.

9. In response to questions from the Board about residential parking, Ms. Beja testified that the current tenants of the second-floor apartments do not own cars. However, if the

new residential tenants have a car, there are enough spaces in the parking lot and an arrangement for assigned parking can be made.

10. The Board heard testimony from Mr. Karlebach, the Applicant's expert planner. Mr. Karlebach stated that in order to prepare for his testimony, he reviewed the Application, Zoning Regulations and Master Plan of the Borough of Hillsdale, visited the Property and surrounding area, and prepared two exhibits in support of the Application for the Board's review.

11. Mr. Karlebach testified that the neighborhood surrounding the Property is comprised of commercial, residential and mixed-use developments. The residential uses in the surrounding area include single-family and multi-family. In support, Mr. Karlebach referenced the exhibits he prepared, the first exhibit depicted existing land uses within the commercial zone and the second exhibit included recent photos of the Property and surrounding area.

12. Mr. Karlebach testified that the Property contains an existing non-conforming use because residential uses are not permitted in the "C" Commercial Zone district. The Applicant proposes to expand the non-conforming residential use to the Subject Unit, which requires a d(2) variance. Mr. Karlebach testified that this proposed expansion is unique because there are no increases or changes to the building footprint, impervious coverage, access, services, or parking and no renovations are required for residential use of the Subject Unit.

13. The Board heard testimony from Mr. Karlebach and Ms. Reiter, which explained that for a planning board to grant a d(2) variance, an applicant must establish positive and negative criteria. To establish positive criteria, an applicant must prove that there are "special reasons" to grant the variance that advance the purposes of zoning. To establish negative criteria, an applicant must prove that the variance can be granted (1) without substantial detriment to the

public good; and (2) will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

14. Mr. Karlebach testified that the Applicant can establish positive criteria because the application promotes the general welfare because the Property is particularly suitable for the proposed use. Mr. Karlebach highlighted that there is ample parking presently available to accommodate the proposed residential use and no exterior or interior renovations are required for the residential use. Mr. Karlebach also testified that the Property is not conducive of commercial use of the Subject Unit because the sidewalk is not connected to a nearby retail continuum. The proposed use does not interrupt a retail walk.

15. Mr. Karlebach testified that the Applicant can prove special reasons to grant the variance because the application advances the purposes of the MLUL, including: N.J.S.A. 40:55D-2(g) by providing sufficient space for a variety of uses to meet the needs of the community; N.J.S.A. 40:55D-2(h) by providing sufficient parking for the mixed uses; N.J.S.A. 40:55D-2(i) by maintaining the current visual environment of the site; N.J.S.A. 40:55D-2(m) by replacing a vacant storefront with an active use; and N.J.S.A. 40:55D-2(c) by preserving the current building footprint.

16. Mr. Karlebach testified that the Applicant can establish negative criteria because there is no substantial detriment of the public good and no substantial impairment of the zone plan and zoning ordinance. The negative criteria should be viewed with greater liberality for expansions of pre-existing non-conforming uses because they are less likely to involve substantial impairment of the zoning plan than the creation of a wholly new non-conforming uses. Burbridge v. Mine Hill, 117 N.J. 376, 389 (1990). First, the proposal is strictly a change in tenancy, no other proposed changes are requested. The proposal actually corrects an existing

detriment of having a vacant storefront at the Property. Second, the proposal advances the Borough's Master Plan because it allows mixed use in the commercial zone within walking distance of the train station. In addition, the Master Plan included concerns regarding traffic and removal and replacement of buildings in the commercial zone. However, this application does not generate those concerns.

17. Finally, Mr. Karlebach testified that the Board previously approved variances for mixed uses and multifamily development in the commercial zone on the basis that such development did not negatively impact the zone. In those matters, the Board also recognized the need for multifamily housing in the commercial zone, which this application provides.

18. Ms. Reiter testified that in the commercial zone there are usually no residential uses on the first floor. In response to questions from the Board, Mr. Karlebach testified that, in the commercial zone, one mixed use property located nearby has a hair salon and residential apartment on the first floor and at least one multifamily development includes residential units on the first floor.

19. Ms. Beja testified that the Subject Unit has been advertised for rent as a commercial unit for nearly two years. Ms. Beja testified that the prior tenant of the Subject Unit unsuccessfully advertised the unit for rent prior to the lease termination. After the prior tenant left, Ms. Beja testified that she has received approximately three inquiries from businesses interested in renting the Subject Unit as a commercial space. Ms. Beja testified that the businesses determined that the Subject Unit was not a good fit for their needs despite the Dr. Beja and Ms. Beja's willingness to renovate the Subject Unit to fit their needs.

20. The Board questioned Ms. Beja as to why the Subject Unit was not renovated to be more business-friendly, such as removing the kitchen and shower. In response, Ms. Beja testified that prior commercial tenants in the Subject Unit utilized the kitchen as an employee break area and utilized the shower as storage. In addition, when showing the Subject Unit to potential commercial tenants, Dr. Beja and Ms. Beja's expressed willingness to renovate the Subject Unit to fit their business needs. However, renovations of the Subject Unit are limited because it is divided into room and several walls are load-bearing and cannot be easily removed.

21. Ms. Beja testified that several individuals have inquired about renting the Subject Unit for residential use. Ms. Beja has placed four individuals on a wait list but informed them that she had not yet received approval from the Borough for residential use of the Subject Unit.

22. Ms. Reiter stated that affordable housing considerations must be taken for each new residential unit created in the Borough. The Applicant agreed to follow affordable housing trust fund requirements for the new residential unit as a condition of approval of the application.

D. Justification for Relief

23. A (d)(2) variance is required to permit the expansion of a non-conforming use, as the existing residential use is not permitted in the "C" Commercial Zone district. As set forth in Burbridge v. Mine Hill, 117 N.J. 376, a (d)(2) variance applicant does not need to meet the "enhanced quality of proof" set forth in Medici v. BPR Co., 107 N.J. 1 (1965). Rather, the applicant must show that there are "special reasons" to grant the variance that advance the purposes of zoning. In addition, the applicant must show that the variance can be granted (1) without substantial detriment to the public good; and (2) will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

24. The Board makes the following findings and conclusions with respect to this application:

- a. A. The Board finds that the application as presented will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Borough's Zone Plan and Land Use Ordinance.
- b. The removal of the vacant storefront, maintenance of the building footprint and visual character go toward the positive criteria. The Board further determined that the Property can accommodate the use and the site will be adequately parked.
- c. Further the Board finds that using prudent zoning and planning principles, the request for a variance for occupancy alone will not negatively impact the existing neighborhood nor the community as a whole.
- d. The Board hereby determines that the overall objectives of sound and prudent zoning and planning principles are advanced by the granting of the application.
- e. The Board hereby determines that the Applicant has met its burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicant.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Hillsdale, as follows:

1. The Applicant is granted a variance pursuant to N.J.S.A. 40:55D-70(d)(2), subject to the following terms and conditions:

- a. The variance for residential use is limited to a one-bedroom apartment on the first floor of the Property as described in the architectural plan provided to the Board.
- b. All municipal departments shall, to the extent required, conduct the necessary inspections prior to the issuance of permits to the Applicant, including, but not limited to the Borough of Hillsdale Fire Department.
- c. The Applicant shall comply with all requirements and recommendations of the Planning Board Engineer as set forth in the Engineer's report dated February 25, 2020.
- d. The Applicant shall comply with all requirements of the New Jersey Affordable Housing Trust Fund and the Borough of Hillsdale's residential development fees.
- e. Any other conditions identified in prior Resolutions specific to the Property shall remain in effect and shall not be affected by virtue of the subject application.
- f. That the Applicant shall comply with any and all federal, state, County and local rules and regulations with regard to the granting of this application, including, but not by way of limitation, the applicant's payments of all fees and charges established by the Borough of Hillsdale for review of the subject application.

- g. Before any permits are applied for, it is the responsibility of the owner to see if there are any open permits or violations and address these before a new permit can be issued.
- h. The Applicant shall maintain an adequate escrow account for the review and construction process, as determined by the Municipal officials.

BE IT FURTHER RESOLVED that the Chairman, Vice Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution granting a variance pursuant to N.J.S.A. 40:55D-70(d)(2) 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 copies of this Resolution to the Construction Code Official and to the Applicant's counsel, Howard Siegel, Esq.

MOVED BY: Joanne Miano
 SECONDED BY: Ed Alter

VOTE: FOR 5 AGAINST 2 ABSTAIN _____

MEMORIALIZATION VOTE:
 MOVED BY:
 SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

APPROVED
 Attest:

 Meredith Kates, Secretary

 Michael Giancarlo, Chair

 Joanne Miano, Vice-Chair

I certify that the foregoing is a true copy of the Resolution adopted on _____,
2020.

Dated: July ____, 2020