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March 31, 2022

Via Regular & Electronic Mail

Zoning Board of Adjustment
City of Elizabeth
50 Winfield Scott Plaza
Elizabeth, New Jersey 07201
Attn: **Monae Whitehead, Board Clerk**
Monae.Whitehead@elizabethnj.org

Re: **Request for Extension of Vested Rights**
Application No.: Z-22-17
Applicant: 233 Broad LLC
Property: 233 Broad Street
Block 9, Lot 90
Our File No.: 50030031.000001

Dear Ms. Whitehead:

This office represents 233 Broad LLC (the “Applicant”), the owner of property located at 233 Broad Street, which is formally designated as Block 9, Lot 90 on the Tax Maps of the City of Elizabeth (the “Property”). Pursuant to N.J.S.A. 40:55D-52 (the “Statute”), the Applicant respectfully requests a retroactive one-year extension of the approvals granted by the Zoning Board of Adjustment (the “Board”) in connection with Application Number Z-22-17 (the “Approval”). The Approval, as previously extended, lapsed on January 11, 2022. **The Applicant’s request will extend the Approval to January 11, 2023.**

As you will recall, the Board granted AFC Property Management, LLC (“AFC Property Management”) preliminary site plan approval and variance relief to convert the upper floors of the existing building from office space to five (5) residential apartments (the “Preliminary Approval”). The Board subsequently granted AFC Property Management final site plan approval, which was memorialized in a written resolution of approval that was adopted on January 11, 2018. A copy of the Board’s resolution of approval granting AFC Property Management final site plan approval is

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annexed hereto as Exhibit A. Pursuant to the Statute, the Approval was protected from any changes in zoning for a period of two (2) years, or until January 11, 2020. On January 14, 2021, the Board extended the Approval for a period of two (2) years or until January 11, 2022. A copy of the Board's resolution of approval granting the two (2) year extension, which was adopted on February 11, 2021, is annexed hereto as Exhibit B. The Applicant now requests a third extension of the Approval as permitted by the Statute.

The Applicant acquired the Property on February 5, 2021. Extending the Approval to January 11, 2021 will allow 233 Broad LLC to complete any outstanding resolution compliance items, obtain building permits, and ultimately begin construction of the improvements. The Applicant respectfully submits that good cause exists to grant the requested extension, including but not limited to the ubiquitous impacts of the COVID-19 global pandemic to secure financing, materials, and required governmental agency approvals, and that same may be granted without substantial detriment to the public good or an impairment of the Master Plan or Zoning Ordinance.

The Applicant respectfully requests that the Board schedule a hearing on its request to extend the vesting period for the Approval at its next regularly scheduled meeting. If you have any questions regarding this matter or if additional information is requested, please contact this office. Thank you for your assistance with this request.

Respectfully submitted,

/s/ Matthew P. Posada
Matthew P. Posada

MPP/JJK

Attachments

cc: 233 Broad LLC
Joshua J. Koodray, Esq. (*JKoodray@sillscummis.com*)

EXHIBIT A

RESOLUTION
City of Elizabeth
Zoning Board of Adjustment
In the Matter of AFC Property Management, LLC
Application No. Z-22-17
Decided on December 14, 2017
Memorialized on January 11, 2018
Final Site Plan Approval

WHEREAS, AFC Property Management, LLC (hereinafter the “Applicant”) has made an application to the City of Elizabeth Zoning Board of Adjustment for final site plan approval, following approval by the Board by Resolution adopted December 14, 2017 for bulk variances and preliminary site plan approval to convert the upper floors of a two/four story building from office space to five apartments at property located at 223 Broad Street, in the C-5 Commercial Zone, at Property Tax Account number 9-90; and

WHEREAS, a public hearing was conducted on December 14, 2017.

NOW THEREFORE, the Zoning Board of Adjustment makes the following findings of fact, based upon evidence presented at its public hearing. The Applicant obtained bulk variances and preliminary site plan approval by resolution of December 14, 2017 to convert the upper floor of a two/four story building from office space to five apartments. The Applicant has now submitted an application for final site plan approval. Harbor Consultants, engineers for the Board, have reviewed this application, including building elevations required by the Board at preliminary site plan approval, and determined that the Applicant has met all of the conditions of the preliminary site plan approval, so as to justify final site plan approval. The Board finds the Applicant is making its desired improvements while retaining the historic appearance of the structure.

NOW THEREFORE, the Zoning Board of Adjustment makes the following conclusions of law, based upon the foregoing findings of fact. The Applicant previously obtained, bulk variances and preliminary site plan approval to convert the upper floors of a two/four story building from office space to five apartments at property known as 223 Broad Street, in the C-5 Commercial Zone. The Applicant has now submitted an application for final site approval. The Board engineer has advised and testified that the Applicant has met the conditions of the preliminary site plan approval, thereby justifying final site plan approval.

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment the City of Elizabeth that the application of AFC Property Management, LLC, requesting final site plan approval, is determined as follows:

1. Final site plan is approved pursuant to N.J.S.A 40:55D-50.

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved.
2. This approval is granted strictly in accordance with the plans submitted, including but not limited to plans entitled "Proposed Apartment Conversion for AFC Property Management, 233 Broad Street, Elizabeth, NJ" prepared by Evans Architects A1A, last revised November 13, 2007 (one sheet), and prior plans reviewed by this Board and its professionals.
3. The Applicant shall comply with all requirements of the Harbor Consultants reports, including but not limited to the report of December 7, 2017. The Applicant shall

also comply with all applicable requirements of City Codes and Ordinances, all of which are incorporated herein by reference.

4. Payment of all fees, costs, and escrows due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary.
5. Certification of taxes have been paid to the date of approval, if required.
6. Union County Planning Board approval, if required.
7. Somerset – Union County Soil Conservation District approval, if required.
8. Municipal Board of Health approval, if required.
9. New Jersey Department of Environmental Protection Sewer Extension and any other permits required by the NJDEP, if required.
10. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official an affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply a copy of any approvals received.
11. Subject to all other applicable rules, regulations, ordinances and statutes of the City of Elizabeth, County of Union, State of New Jersey or any other jurisdiction.
12. The variances granted expire nine (9) months from the notice to the Applicant of this resolution or the end of final site plan approval whichever is later unless the Applicant has commenced construction of same pursuant to Section 17.28.090c of the Code of the City of Elizabeth.
13. If applicable, the Applicant shall enter into an escrow agreement with the City of Elizabeth into which sufficient funds shall be placed to address and resolve the Counsel on Affordable Housing (“COACH”) obligation that is triggered by this development, in

accordance with the applicable rules related to same. The escrow agreement shall that all such funds to be tendered shall be paid to the city no later than the date of issuance of the certificate of occupancy or certificate of completion for the proposed development.

The undersigned secretary certifies that this decision was adopted by this Board on December 14, 2017 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 11, 2018.



Marta Rivera-Sullivan, Secretary ZBA

FOR: 6

AGAINST:

Board Member(s) Eligible to Vote:

G. Castro, E. Cano, R. Sosa, J. Donahue, A. Goncalves;

F. Fernandez

EXHIBIT B

RESOLUTION
City of Elizabeth
Zoning Board of Adjustment
In the Matter of AFC Property Management, LLC, Clip Acquisitions, LLC
Application No. Z-22-17
Decided on December 14, 2017
Memorialized on January 11, 2018
Final Site Plan Approval
Application of Extension of Approval
Decided on January 14, 2021
Memorialized on February 11, 2021

WHEREAS, Clip Acquisitions, LLC, successor in interest to AFC Property Management, LLC (hereinafter the “Applicant”) has made an application to the City of Elizabeth Zoning Board of Adjustment for an extension of time for the previously granted final site plan approval, following approval by the Board by Resolution adopted January 11, 2018 to convert the upper floors of a two/four story building from office space to five apartments at property located at 223 Broad Street, in the C-5 Commercial Zone, at Property Tax Account number 9-90; and

WHEREAS, the Applicant was represented by Stephen Hehl, Esq.; and

WHEREAS, a public hearing was conducted in accordance with DCA/DLGS regulations and guidance for virtual meetings of this Board on January 14, 2021.

NOW THEREFORE, the Zoning Board of Adjustment makes the following findings of fact, based upon evidence presented at its public hearing. The Applicant in 2017-2018 secured variance approval, preliminary and final site plan approval to convert the upper floors of a two/four story building which housed offices to build five apartments on the second floor. Apparently, due to the inability of the original Applicant to move matters forward, the two-year time period on the approval expired on January 11, 2020. Revisions of Section 52 of the Municipal Land Use Law do allow retroactive application to seek further extensions, which can be up to three one-year extensions under this provision of the Municipal Land Use Law. The

Applicant is seeking an extension retroactively and to carry forward through and including January 11, 2022 to allow Clip Acquisitions, LLC as Applicant and as the contract purchaser to secure the other necessary permits and approvals needed to commence work on this project. These representations were set for in a January 8, 2021 letter from counsel for the Applicant, and were reiterated to the Board by counsel at its Hearing on January 14, 2021. There were no objections to this request by the Board Planner or from any of the members of the Board. There were no members of the public wishing to come forward to address the Board or counsel for the Applicant with regard to this request.

NOW THEREFORE, the Zoning Board of Adjustment makes the following conclusions of law, based upon the foregoing findings of fact. The Applicant previously obtained, bulk variances and preliminary site plan and final site plan approval in 2017 and 2018 to convert the upper floors of a two/four story building from office space to five apartments at property known as 223 Broad Street, in the C-5 Commercial Zone. The Applicant has now submitted an application to extend the final site approval to January 11, 2022.

Based upon the Application before the Board, the Board finds that the Applicant has met the minimum requirements under Section 52 of the Municipal Land Use Law, case law and City Ordinances to grant the relief requested. There is no evidence before the Board indicating that granting this extension of the previous approval would result in any substantial detriment to the public good or would substantially impair the intent and purpose of the zoning ordinance or the Master Plan of the City. The Applicant is looking to move forward with a property that has been listed on the abandoned properties list and this action will result in the removal of same for the Applicant to proceed with the redevelopment of this property. The restoration of this property from its currently abandoned condition will allow for new ratables and new housing to be provided in the City.

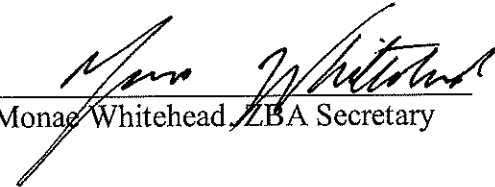
NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment the City of Elizabeth that the application of Clip Acquisitions, LLC, requesting three-year extension of final site plan approval, is determined as follows:

1. Extension of preliminary site plan with variances and final site plan through January 11, 2022, is approved pursuant to N.J.S.A 40:55D-52.

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. All conditions set forth in the 2017 and 2018 Resolutions of this Board remain in full force and effect and are incorporated herein by reference.
2. Payment of all fees, costs, and escrows due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary.
3. Certification of taxes have been paid to the date of approval, if required.
4. Subject to all other applicable rules, regulations, ordinances and statutes of the City of Elizabeth, County of Union, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies that this decision was adopted by this Board on January 14, 2021 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on February 11, 2021.


Monae Whitehead, ZBA Secretary

FOR: 6

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

E. Falcone; A. Goncalves; E. Cano; F. Fernandez; F. Horta;
 G. Castro; J. Donahue; J. Nunes; M. Silva-Afonso; R. Sosa;
 Y. Eady-Perkins