

REVISED
ZONING BOARD OF ADJUSTMENT APPLICATION FORM
WOODCLIFF LAKE, NEW JERSEY

Filed October 8, 2020

Hearing October 21, 2020

NOTICE: This application must be filed within 30 days of the order from which the appeal is taken, accompanied by the required data together with two checks.

APPLICATION FOR A VARIANCE FROM THE TERMS OF THE ZONING
ORDINANCE OF THE BOROUGH OF WOODCLIFF LAKE, NEW JERSEY

To the Zoning Board of Adjustment of the Borough of Woodcliff Lake:

An appeal is hereby made for a variance from the terms of Articles and Sections:

380-41(1)(2)

of the Zoning Ordinance so as to permit the following:

Operation of Ray's Pizza (2,077 sf.) with outdoor dining on south side of building

requiring the following variances:

Variance relief from Ordinance # 19-08, Section 380-41(1)(2), prohibiting outside seating except in building front. See also Rider at Exhibit 1.

This appeal is based on the ~~decision rendered by order issued by the construction code~~ **CONSENT ORDER OF SETTLEMENT AND REMAND** ~~Official dated~~ **September 25, 2020** and reading as stated above. See Exhibit 2 attached.

NOTE: The law requires that the conditions set forth in the following three Sections 1, 2 and 3, **MUST** be established before a variance **CAN** be granted. Answers to these sections must be complete and full. Please attach these answers to a copy of the Construction Official's denial letter and Survey, and provide 16 copies:

1. That the strict application of the provisions of the Zoning Ordinance would result in practice difficulties or unnecessary hardships inconsistent with its general purpose and intent. (Explain in detail wherein your case conforms to this requirement.)
2. That there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood. (State fully wherein your case conforms to these requirements.)

NOTE: The Board of Adjustment is required to make a written finding of facts from the showing applicant makes that the three above enumerated conditions exist and, in addition thereto, must find that the granting of such variance will not be contrary to the objectives of the Zone Plan.

DESCRIPTION OF PROPOSED STRUCTURE OR USE

Premises affected known as 62 BROADWAY Woodcliff Lake, NJ.

Applicant: WCL Broadway Realty Associates, LLC Address: 270 SYLVAN AVE., ENGLEWOOD, NJ

Owner: SAME AS APPLICANT Address: _____

Lessee: _____ Address: _____

Zone: R-8.15, R-15, R-22.5, R-30, **B-1**, B-2, B-3, EAO, SO, Other _____

Last Occupancy: Existing 3-story mixed use (retail/residential)

Lot Size: 1.2664 AC/ 55,165 sf

Building Size (Feet): Front 8,288 square feet Depth 62' 0"

Percentage of Lot Occupied by Building: 63.33%

Height of Building: Stories 3 Feet 37.83 FT.

Setback from Front Property Line: Feet 158 FT.

Setback from Side (if Corner Lot): 45' (Columbus Avenue) and 50' (Lincoln Avenue)

Has there been any previous appeal involving these premises? YES

If so, state character of appeal and date of disposition: SEE RESOLUTIONS AT EXHIBIT 3.

AND CONSENT ORDER AT EXHIBIT 2.

(See transcripts submitted herewith.)

ATTACHED HERETO AND MADE A PART OF THIS APPLICATION,
I SUBMIT THE FOLLOWING:

/Revised
(A) Completed Application

(B) Twenty (20) copies of denial letter from the Zoning Official. N/A - BASED ON SETTLEMENT AGREEMENT

(C) Twenty (20) copies of a Certified Survey of the property. If a present building exists, the survey shall clearly indicate such building thereon with all front, side and rear yard dimensions, together with prevailing setback dimensions. N/A - BASED ON SETTLEMENT AGREEMENT

(D) Twenty (20) copies of a Plot Plan (if a new building), or Architectural Plans, clearly indicating such building thereon with all front, side and rear yard dimensions, together with prevailing setback dimensions. All plans to be folded, not rolled.

(E) ONE (1) copy of list of property owners served indicating method (Personal, Certified Mail) and date of service.

(F) Original, notarized Affidavit of Service with the following attached: original white certified mail slips stamped by the post office if served by certified mail, copy of Notice served, copy of Property Owners List:

ENCLOSED

AFFIDAVIT OF APPLICANT

STATE OF NEW JERSEY

COUNTY OF BERGEN

Jeff Kurtz of full age, being duly sworn according to law, on oath deposes and says that all of the above statements and the statements and the statements contained in the papers submitted herewith are true.

WCL BROADWAY ASSOCIATES, LLC

[Signature]
(Applicant's Signature (s))

Sworn to and subscribed before me this 7th day of October 2020

Notary Public

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY

COUNTY OF BERGEN

Jeff Kurtz of full age, being duly sworn according to law, on oath deposes and says that the deponent resides at 270 Sylvan Ave Englewood Cliffs, NJ 07632

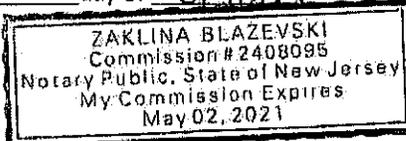
in the County of Bergen and State of New Jersey, that WCL BROADWAY REALTY ASSOCIATES, LLC is the owner in fee of lot, piece of parcel of land situated, lying and being in the municipality aforesaid and known and designated as Block 2708 Lot 1

[Signature]
Owner's Signature(s)

Sworn to and subscribed before me this 7th day of October 2020

Notary Public

Zaklina Blazeuski



AUTHORIZATION

(If anyone, other than above Owner, is making this application, the following authorization must be executed.)

To the Board of Adjustment: _____ is hereby authorized to make the within application.

Dated: _____

(Owner's Signature (s))

SEE TAX CERT. ATTACHED AT EXHIBIT 4.

CERTIFICATE OF TAXES PAID

DATE: _____

TO: TAX ASSESSOR OF THE BOROUGH OF WOODCLIFF LAKE

RE: _____
(Address of Subject Premises)

Dear Sir:

Please provide a property owners list for the above premises. I have enclosed my check in the amount of \$10.00, payable TO THE Borough of Woodcliff Lake.

Kindly forward the list to me at the following address:

Name: _____

Address: _____

Tel. No: _____

Thank you for your cooperation.

(Applicant)

SEE EXHIBIT 5.

NOTICE OF HEARING TO OTHER PROPERTY OWNERS

To _____

Address _____

PLEASE TAKE NOTICE:

That the undersigned has appealed to the Zoning Board of Adjustment of the Borough of Woodcliff Lake, NJ for a variance from:

of the Zoning Ordinance so as to permit the following:

Requiring the following variances:

On the premises _____ which is within 200' of property owned by you. This appeal is on the Board's calendar and a public hearing has been ordered for _____, 20____ at 7:30 p.m. in the Borough Hall, 188 Pascack Road, Woodcliff Lake, New Jersey at which time you may appear either in person, or by agent or attorney and present any objections which you may have to the granting of this appeal. Copies of the application and drawings are available for review at Borough Hall in Woodcliff Lake between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday.

Respectfully,

Applicant

SEE EXHIBIT 6.

NEWSPAPER NOTICE

OBTAIN ORIGINAL AFFADAVIT OF PUBLICATION FROM NEWSPAPER

BOROUGH OF WOODCLIFF LAKE

NOTICE

PLEASE TAKE NOTICE that the undersigned has appealed to the Zoning Board of Adjustment of the Borough of Woodcliff Lake, NJ for a variance from:

of the Zoning Ordinances so as to permit the following:

on the premises _____

resulting in the following variances _____

This appeal is now on the Board's calendar and a public hearing has been ordered for:

_____, 20____ at 7:30 p.m. in the Borough Hall of Woodcliff Lake, 188 Pascack Road, NJ at which time anyone interested may appear either in person or by agent or attorney and present any objection which he or she may have to the granting of this appeal.

Copies of the application and drawings are available for review at Borough Hall in Woodcliff Lake between the hours of 8:30 a.m. and 3:30 p.m. Monday through Friday.

Applicant

Exhibit 1

Rider to Revised WCL Broadway Realty application.

62 Broadway.
Block 2708, Lot 1
B-1 business district.

This is a Rider to the Revised Application for Amended Site Plan, variance and waiver approval previously granted by the Zoning Board in its Resolution of October 23, 2018 ("Previous Approval") as modified in a certain document entitled "Consent Order of Settlement and Remand" dated September 25, 2020 and entered in the Superior Court of New Jersey, Law Division, Bergen County in a case captioned WCL Broadway Realty Associates, LLC v. Zoning Board of Adjustment of the Borough of Woodcliff Lake (caption L-8727-18) (the "Settlement").

This Revised Application is brought under Whispering Woods v. Middletown Township, 220 N.J. Super 161 (App Div. 1987) which provides, in pertinent part, for the authority to settle disputes between an applicant and a land use Board during the pendency of litigation concerning that dispute so long as said settlement is approved by the Board only after conducting a public hearing wherein any interested party may hear the terms of the settlement, any testimony related thereto and to ask questions or make comments and otherwise participate as in any other application held under the Municipal Land Use Law. This Revised Application seeks the Board's final approval under the terms of the Settlement which will modify the Previous Approval as specifically outlined therein, including but not limited to the following modifications and/or stipulations:

1. As is now authorized under ordinance 2019 – 08, codified in chapter 380, Article VI and section 41, entitled "Permitted Uses," restaurants are now expressly listed as a permitted use in the B – 1 district. While the previous approval did grant a variance under N.J.S.A. 40:55D-70(d)(1), the Settlement now acknowledges that the restaurant is now permitted under that Ordinance.
2. Under the aforementioned section 380 – 41 of the Woodcliff Lake Zoning Code, outdoor dining is now deemed as an accessory use and is permitted so long as such the outdoor dining is located within the front yard of the property. The settlement seeks to confirm that outdoor dining no longer requires a use variance under N.J.S.A. 40:55D-70(d) but is instead an accessory use. This request may, subject to this Board's interpretation, require the granting of a variance under section 380 – 41.1 (2) because under the Borough's definition of "front yard" as set forth in section 380-6 ("Definitions"), when a building is located on intersecting streets the front yard is deemed to be on the street which the building faces. This is discussed, *infra*.
3. All restaurant employees and, to the extent practical, employees of the other commercial tenants of the property shall use an off-site parking location as is described, below.
4. Seating at the restaurant may be increased from the total maximum of 36 indoor seats as granted in the Previous Approval to a maximum of 48 indoor seats and a maximum of 16 outdoor seats. The applicant proposes no changes or alterations from the original site plan introduced, as modified, during the Previous Approval and prepared by RL Engineering, Inc. dated March 12, 2008.

5. The applicant shall provide a minimum of five off-site parking spaces to be used for all retail tenant employees excluding the restaurant use and so long as a restaurant use exists at the property.
6. The applicant will provide available off-site parking within 1 mile of the restaurant use and show proof of same which will allow for a minimum of 14 off-site parking spaces for the restaurant in addition to a minimum of five (5) off-site parking spaces required in paragraph 5, above
7. If the applicant does not provide off-site parking its restaurant shall be limited to 36 in total, whether they be indoor or outdoor.
8. Notwithstanding the availability of off-site parking and other conditions contained in the requested revised approval, the applicant will upon certain conditions existing as defined in the Settlement provide valet service to provide transport of customer and tenant employee vehicles to the off-site parking location and so as at all times to eliminate any overflow parking on Columbus Avenue at Lincoln Avenue. While there are standards and procedures set forth in the Settlement which will require valet service, the applicant or owner of the building will also have a general responsibility to avoid overflow parking and the need for valet service by anticipating certain occasional events scheduled at the premises. The applicant currently does not plan on or anticipate any such events but this provision is nevertheless a general responsibility on the part of the property owner
9. As future change in use applications occur for the balance of the retail building, it will be stipulated and agreed that as to the 38 parking spaces existing in the building front, 12 of them shall be attributed to the restaurant and 26 shall be deemed provided for purposes of the balance of the 5065 square feet of retail space.
10. As a modification contained in the previous approval, the prohibition against higher intensity non-restaurant uses in the balance of the retail building, referred to as "group style uses" shall be defined as more than 10 individuals attending at any one time after 6:30 PM for the purpose of participating in such things as yoga classes, gym, Pilates, Soul Cycle, Orange Theory, Pure Barre Health clubs or similar uses. This applies only for so long as a restaurant occupies the premises.
11. The Settlement does not alter or change previous conditions established in the Previous Approval and which are restated under the Settlement and are reconfirmed as part of the revised application.

Variance Application and Request for Interpretation

In addition to the request for approval of the Settlement and its terms, the adoption of section 380 – 40. 1 (G) during the pendency of the appeal has resulted in the need for a technical variance from its provisions, which permit outdoor dining under certain conditions, one of which is contained in subparagraph two (2), which requires that it be located within the **front yard** of the property. The variance is technically invoked by the definition of "front yard" as set forth in section 380-6 of the Borough Code and when determining what is a front yard when a building is on two intersecting streets.

Under those circumstances, the front yard is deemed to be on the street which the building faces. As there is no dispute that the technical building face exists on Broadway, the reading of the definition would dictate that the building front yard is on Broadway.

However as the record shows, there has been previous applications regarding this property before both this Board and the Planning Board. One such application before the Planning Board is described in Resolution 2011 – 04, approved on December 11, 2011 and which granted variance relief to permit the construction of this mixed retail and residential use building. Under the Borough bulk standards for the B – 1 zone, there is no required side yard for any building, as bulk “mass” standards are generally limited to front and rear yards only. Nevertheless, and as is typical for most zoning codes, the Borough requires front yard setback distances as to any building that is located on intersecting streets. The more restrictive requirement for a setback of any commercial building located within the B-1 district is 70 feet from the centerline of the street. This is required under section 380 – 46.A (6).

As set forth in paragraph 21 of Resolution 2011-04, the applicant specifically requested a front yard variance from the provisions of section 380-46.A(6) as the building was located 45 feet from the centerline of Columbus Avenue as opposed to 70 feet. The basis for the variance was that this building is uniquely located within three intersecting streets, as its northern property line borders along Lincoln Avenue. It was argued that it was virtually impossible to comply with the 70 foot setback requirements for multiple (and inopposite) street frontages as no meaningful structure could be built in full compliance with those sections. Thus, that portion of the yard between the south side of the building and Columbus Avenue was deemed to be a front yard for purposes of that application. As set forth in paragraph 31 of the aforementioned resolution 2011 – 04, the Planning Board granted the variance.

There thus appears to be both an inconsistency in the plain reading of the code which requires front yard setbacks for any building located on a public street, compared to the definition of "front yard" which labels as a front yard that portion of the property that the building faces. There is a further issue as it pertains to the need for a variance as to whether or not same is required based upon the fact that a prior land-use Board expressly deemed the Columbus Avenue frontage to be a front yard with all its attending setback, landscape and buffering requirements as customarily imposed on municipal land-use applications.

Request for Interpretation. For this reason, and prior to any decision to be made on the applicant's variance request, the applicant requests the Board exercise its jurisdiction to interpret the ordinance or to pass upon this "special question" under the authority of N.J.S.A. 40:55D-70(b). The statute provides authority to the zoning Board to hear and decide such requests. In this case the request does not deal with an actual code section but rather an interpretation of whether one section applies (the definition of front yard) when inconsistent with another section of the ordinance which labels any yard fronting on the street as a front yard. One can see the inconsistency in applying two different standards to the same portion of property that exists between the centerline of Columbus Avenue to the building and it is respectfully submitted that the Board should determine that to the extent that section 380 – 46 of the code requires front yard treatment for any building located on a public street within the B – 1 zone, that shall override any reading or interpretation of the definition section of "front yard" of section 380 – 6. Indeed, it is submitted that the borough has historically interpreted just that and has disregarded the definition of "front yard" for any commercial building fronting on the public

street and located within the B – 1 zone. It has opted for the more restrictive code section which is the more appropriate methodology under any circumstance.

Definition sections are just that-- they are meant to provide a standard definition of a less than typical term as contained in the zoning ordinance. They are not, themselves, executory and provide no direction or standard other than the definition, itself. Clearly a definition should be subordinate to an executory portion of the ordinance such as section 380-46, which mandates that any yard fronting on a public street in the business district be deemed a front yard. It is specific and more direct in its application and is not advisory.

Furthermore, there has been no change planned in the building setback as part of the application associated with the previous approval or anything else after the 2011 approval. In 2011, relief was granted under the minimum front setback requirements and since there is actually no change being made to the building, the variance should survive and not require separate variance relief because of what is now deemed an accessory use. Often an accessory use will have bulk standards and setback requirements. The most typical within this community are detached garages, pool cabana and sheds. Each have their setback requirements but in this case the borough has chosen not to provide any separate independent setback requirement for outdoor dining. As such, the previous variance relief granted at the building setback is not altered or affected in any way by location of four dining tables in the south side of the building.

Variance. Should the Board through the exercise of its authority under N.J.S.A. 40:55D-70(b) determine that a variance is required, same is hereby applied for as a bulk variance under N.J.S.A. 40:55D-70(c) and under both subsection 1 and/or 2. This property is unique in its frontage along three public streets, has been the subject of a prior approval with regard to the Columbus Avenue setback, and has a building face located a rather short distance from the building parking lot and vehicular access way that are not suitable for outdoor dining. Uniqueness is defined in many ways, including the fact that this applicant has previously been directed to construct a building, albeit with a variance, abiding by the Borough's front setback requirements and it should be entitled to avail itself to an accessory use within that front yard as well. Furthermore, other conditions and allowances set forth in section 380-41.I. might not necessarily be the most suitable for the front sidewalk at this location either. The code permits the installation of canopies, lighting, dividers and other types of structures that while historically have been shown to work at many outdoor dining locations, may be more suitable and better situated in what will be the side of the building in a quiet corner in on a 7' x 35' pad just outside the restaurant. The more appropriate location does, under the circumstances, provide for a greater degree of open space and the maintenance of visual and safety standards, all of which unequivocally further the purposes and intent of zoning and would be of significant benefit under the code

As to the negative criteria, the applicant will rely upon the previous record and testimony offered, as well as conditions imposed and accepted regarding landscape, hours of closure and lighting which, it is submitted, minimize any impact that the outdoor dining will have. Lastly, it is submitted that the settlement has been entered into between the parties based upon the aforementioned engineering drawings and the plan as originally proposed. The settlement also contemplates all of the conditions, restrictions and other provisions within the settlement which are clearly designed for the protection of surrounding residents in the community in general.

Exhibit 2

Price, Meese, Shulman & D'Arminio, P.C.
JOHN L. MOLINELLI, Esq. (Attorney ID No. 026391982)
50 Tice Boulevard
Woodcliff Lake, New Jersey 07677
(201) 391-3737
Attorneys for Plaintiff, WCL Broadway Realty Associates LLC

FILED

SEP 25 2020

GREGG A. PADOVANO, J.S.C.

WCL Broadway Realty
Associates LLC,

Plaintiff,

vs.

Zoning Board of Adjustment of the
Borough of Woodcliff Lake

Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: L-8727-18

CIVIL ACTION

**CONSENT ORDER
OF SETTLEMENT AND REMAND**

WHEREAS, this matter was opened by Plaintiff WCL Broadway Realty Associates, LLC ("Plaintiff" and/or "Applicant") by its attorneys Price, Meese, Shulman & D'Arminio, PC by way of Complaint in Lieu of Prerogative Writs against Defendant Zoning Board of Adjustment of the Borough of Woodcliff Lake (the "Board"); and

WHEREAS, Plaintiff is the owner of the property located at 62 Broadway, Woodcliff Lake, New Jersey and designated as Block 2708, Lot 1 on the Woodcliff Lake Tax Map (the "Property"). The Property is located in the B-1 Business Zone and currently developed with a mixed use building consisting of approximately 8,288 square feet of retail on the first floor and 14 apartments on the second and third floors; and

WHEREAS, Plaintiff submitted an Application to the Board for approval to use 2,077 square feet of the first floor retail space as a pizzeria known as Ray's Pizza (the "Application"). Plaintiff proposed a total of 64 seats, consisting of 48 seats inside in what was called the "pizza store" where the counter space and pickup area would be located, and 16 outdoor seasonal seats; and

WHEREAS, the Application requested a variance pursuant to N.J.S.A. 40:55D-70(d)(1), as restaurants are not a permitted use in the B-1 Zone. The Board also considered the outdoor patio to require a separate variance pursuant to N.J.S.A. 40:55D-70(d)(1), a request the Plaintiff opposed as there is no provision in the Woodcliff Lake Zoning Ordinance (the "Ordinance") or the Municipal Land Use Law (the "MLUL") defining it as a use apart from the restaurant that would require relief; and

WHEREAS, the Application also requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) for (1) minimum parking spaces, as 38 spaces are required for a 64 seat restaurant (1

space for 2 seats plus 6 spaces for employees) and 29 spaces are required for the balance of the 5,065 square feet if used for retail space pursuant to the Ordinance, for a total of 67 required spaces wherein 38 spaces are provided; and (2) maximum impervious coverage, as 50% is permitted, 62.89% had been previously approved, and Plaintiff proposed a slight increase to 63.33% as a result of the outdoor seating patio; and

WHEREAS, there are 14 apartment units on the premises that require 27 parking spaces which are provided in the rear of the property; and

WHEREAS, the Board held public hearings on April 24, 2018, May 22, 2018, June 26, 2018, July 24, 2018, August 16, 2018 and September 25, 2018, during which Plaintiff presented testimony by witnesses and introduced the following Exhibits in support of its Application:

Marked Exhibits:

- A-1 Architectural plan dated March 15, 2018
- A-2 Site plan dated March 28, 2018
- A-3(a) Photograph of refuse area
- A-3(b) Photograph of cooking oil drum #2
- A-3(c) Photograph of cooking oil drum #3
- A-4 Parking study, undated
- A-5 Aerial photograph of site dated April 7, 2018
- A-6 Revised parking study dated June 22, 2018
- A-7 Report dated June 8, 2018 from Evan Jacobs of Neglia Engineering Associates
- A-8 Layout plan for outdoor dining area dated March 12, 2018
- A-9 Revised site plan dated July 9, 2018
- A-10 Revised architectural plan dated July 5, 2018

- B-1 Report dated April 18, 2018 from Richard Preiss of Phillips Preiss Grygiel Leheny Hughes LLC
- B-2 Report dated July 23, 2018 from Evan Jacobs of Neglia Engineering Associates
- B-3 B-mail from Zoning Officer Nick Saluzzi
- B-4 Photograph packet dated April 16, 2018 from Richard Preiss of Phillips Preiss Grygiel Leheny Hughes LLC
- B-5 List of conditions for discussion

Additional items not required to be marked into evidence:

1. Prior Resolutions adopted by the Board with respect to the Property
2. Resolution of denial adopted October 23, 2018
3. Resolution of approval of modified application adopted October 23, 2018
4. Applicable sections of Woodcliff Lake Zoning Ordinance
5. Legal memoranda submitted to the Board by Plaintiff's counsel; and

WHEREAS, in order to favorably consider the application, the Board contemplated certain conditions to be imposed in the event the Application were approved, some of which were accepted by Plaintiff and others which were not; and

WHEREAS, at the conclusion of the hearing held on September 25, 2018, a motion was made to approve the Application as proposed, which failed to receive the requisite five (5) affirmative votes, per N.J.S.A. 40:55D-70(d); and

WHEREAS, shortly thereafter, a second motion was made to approve a "modified application", and which eliminated the outdoor patio and reduced the number of interior seats for a total of 36 interior seats; and

WHEREAS, the Board voted to approve the "modified application" and thereafter the Board adopted two separate resolutions: one for denial of the application and one for approval of the "modified application"; and

WHEREAS, on December 5, 2018, the Plaintiff timely filed a Complaint in Lieu of Prerogative Writs (the "Litigation") against the Board, seeking to overturn the Board's September 25, 2018 decision denying its variance application, including for both a use variance and parking variance, alleging in pertinent part that the board's actions were arbitrary and capricious, not based upon the record and further challenging several conditions that had been set forth during the course of the hearings as being contrary to law and/or the facts elicited during the hearing; and

WHEREAS, subsequent to the filing of the Complaint, the Mayor and Council of the Borough of Woodcliff Lake formally adopted ordinance 19 - 08, which made certain amendments to Chapter 380 of the Woodcliff Lake Borough Code entitled "Zoning", specifically Article VI, section 41 which provided, in pertinent part, an amendment to the zoning code so as to permit restaurants and coffee shops, excluding drive-through restaurants within the B - 1 business zone (section G), And an amendment to address outdoor dining as described in section I of the amending ordinance, which permits outdoor dining as a permitted accessory but not Conditional Use based upon the following conditions:

I. Outdoor dining as an accessory use in conjunction with permitted restaurants and coffee shops, but only in conformance with the following supplementary standards:

(1) Outdoor dining uses or outdoor dining areas shall be permitted as accessory uses only in conjunction with a permitted restaurant or coffee shop and shall be required to obtain site plan approval, including outdoor dining areas that are added to existing restaurants.

(2) Outdoor dining area shall be permitted entirely within the front yard of the property containing the restaurants and/or wholly or partially within the side walk or the public right-of-way in front of the restaurant.

(3) Outdoor dining areas shall be set back at least fifteen (15) feet from all residentially zoned property lines and ten (10) feet from all driveways.

(4) Such setback area shall be suitably landscaped and screened as appropriate to block noise, glare, lighting and other potential impacts from adjoining properties and

from vehicular movements within the property.

WHEREAS, the amendments to the zoning permitting restaurants and outdoor dining did not resolve the requested parking variances required and the Mayor and Council in this amendment did not change the parking requirements for restaurants.

WHEREAS, in furtherance of the Court's request for the parties to attempt good faith settlement for the Litigation, the parties, having now determined to amicably resolve this Litigation, desire to execute this Consent Order of Settlement and Remand (the "Consent Order") to memorialize the terms and conditions of the settlement, as well as the respective prospective obligations of the parties thereto.

NOW THEREFORE, it is hereby ORDERED on this 25TH day of SEPTEMBER 2020,

1. The Board's September 25, 2018 Resolution approving Plaintiff's Application for variance relief be and is hereby modified but contingent upon a public hearing as set forth in paragraph 5 and provided a final nonappealable adjudication is reached.
2. The Application shall be considered a "Revised Application" for purposes of this Settlement and Remand Order. The record below, together with the conditions listed herein at numbers a through q shall be incorporated into the Revised Application:
 - a. The rear parking lot will not be used for staff parking.
 - b. During operation and occupancy of any part of the 2027 sq. ft. space by Ray's Pizzeria or a successor restaurant, a second restaurant use will not be permitted at the Property.
 - c. Hours of refuse pickup will be the same hours of pickup as for Borough residences.
 - d. Wall sconces will be turned off no later than 11:30 p.m. or one half-hour after any store is required to close by ordinance whichever is earlier.
 - e. UV film will be installed on the bollard lights.
 - f. A house-side shield will be installed on the parking lot lights, specification of same as approved by the Borough Engineer.
 - g. No truck parking will be permitted on the premises. All employees of the restaurant and to the extent practical, employees of the other commercial tenants of the property shall use the offsite parking as provided below.

- h. There will be no parking on Columbus Avenue and/or Lincoln Avenue by employees of tenants, staff or trucks servicing the non-residential tenants at the property.
- i. The outdoor patio shall be 7 feet by 35 feet and located in the side yard as shown on Exhibit A-8. The outdoor patio will not be used past 10 P.M.
- j. The basement of the restaurant will be used only for storage and food preparation.
- k. Seating for the restaurant may be increased from a total maximum of 36 indoor seats to a maximum of 48 indoor seats and a maximum of 16 outdoor seats as shown on the submitted plans provided that "plaintiff" and/or "applicant" complies with the conditions as set forth in subparagraph (m) below.
- l. At all times when a restaurant use exists, Plaintiff shall provide a minimum of 5 off-site parking spaces to be used for employee parking for all businesses.
 - (i) For so long as a restaurant use continues to exist at the subject premises and the restaurant contains more than 36 seats total, plaintiff shall provide written documentation of the availability of offsite parking of one space for each two seats over 36 up to the maximum provided for in subparagraph (k) above which is 64 total, 48 inside and 16 outside (hereinafter Off-Site Parking). Plaintiff shall supply satisfactory proof by way of a written lease, license or other legally binding document establishing that it has supplied the Off-Site Parking as required by this agreement (including the minimum 5 off-site parking spaces noted in paragraph 1 above) and file same periodically as necessary to establish that offsite parking is available and is provided under a validly existing lease, license or other legally binding document. Said proof shall be filed with the Borough's Construction Code Official and/or the Zoning Enforcement Officer. If plaintiff is using the maximum 48 indoor seats and the maximum 16 outdoor seats, it shall provide a minimum of 14 offsite parking spaces for the restaurant in addition to the minimum 5 off-site parking spaces noted in paragraph 2(l) above. In the event that plaintiff fails to provide satisfactory of the Off-Site Parking in accordance with this agreement, then in such event plaintiff's restaurant use of the property shall be limited to 36 seats total provided the minimum 5 off-site parking spaces are provided. All off-site parking shall be within one mile of the "property. Any violation of this Order/Settlement shall be subject to the violations and penalties as provided in Chapter 380-105 of the Code of the Borough of Woodcliff Lake or any successor or replacement Ordinance. In addition to the foregoing, plaintiff shall be subject to enforcement of this agreement including equitable and injunctive relief enjoining the use of the property in accordance with this agreement.

(ii) In the event at any time in the future, and absent further approval from the Board, available parking on the Property itself is deemed inadequate to accommodate the restaurant patrons and/or other tenants and their visitors without valet service, Plaintiff shall also undertake the responsibility to hire a valet service to provide transport of customer and tenant employee vehicles to the Off-Site Parking at times and duration sufficient to eliminate any overflow parking on Columbus Avenue or Lincoln Avenue. This obligation shall be triggered upon review and determination by the Woodoliff Lake Construction Code Official's or Zoning Enforcement Officer's independent observation and/or upon his review of complaints filed with the Woodoliff Lake Police Department and/or Borough Engineer. The Construction Code Official or Zoning Enforcement Officer shall provide Plaintiff a reasonable opportunity to cure the issues within 10 days (i.e. if the purported issue was one created by an emergent event). If parking is not cured in 10 days or if there are repeated cures required, the Construction Code Official and/or Zoning Enforcement Officer shall forthwith issue an Order compelling Plaintiff to provide within 30 days a valet parking service to alleviate the overflow parking conditions or plaintiff shall reduce the seating to 36 seats total, outdoor seats shall still be limited to 16 seats and if there are 16 outdoor seats, indoor seating shall be limited to 20 seats. Plaintiff agrees to provide any information reasonably requested by the Construction Code Official and/or Zoning Enforcement Officer to ascertain the nature of the parking overflow and plaintiff shall have the further right to make application to the Board for relief from such Order, which shall be considered an appeal pursuant to N.J.S.A. 40:55D-70(a), as governing law. Once the valet service has been implemented and there is sufficient evidence that it is no longer required, the Zoning Officer may relax the requirement and eliminate the service on a temporary basis provided however, if the Zoning Officer suspends the obligation to provide valet service, it is subject to being re-triggered at any time as set forth above.

(iii) In addition to the Owner's general responsibility to avoid overflow parking at its site, the Owner shall also have a responsibility to anticipate certain occasional events that may be scheduled at the premises and which would give a reasonable person an opportunity to anticipate that overflow parking will be expected. The Owner shall use its best efforts, both by itself and through its restaurant tenant, to anticipate such occurrences and shall take reasonable steps necessary to anticipate the need to avoid overflow parking by the implementation of the valet services elsewhere provided within this settlement, notwithstanding that the local construction code official or zoning official had not previously requested valet parking service as a result of an overflow parking condition.

(iv) In the event 14 off-site parking spaces are not provided for the restaurant use, the restaurant shall not be open to the public between the hours of 8:00 am and 11:00 A.M. without application to and approval from the Borough through its land use board.

- n. During the pendency of any appeal and its final decision, Plaintiff agrees to provide the referenced valet parking service.
- o. Of the 38 front yard parking spaces, and to permit the Zoning Officer to assess future land use permit applications for the balance of the commercial non-restaurant use tenancies, it is agreed that 12 of those spaces shall be attributable to the restaurant and 26 shall be deemed provided for the purpose of determining parking available for the remaining space of 5,065 square feet.
- p. In the event that Plaintiff shall obtain Off-Site parking as defined, above, it shall require not less than five employees from amongst the non-restaurant tenants and the employees of the restaurant to utilize the off-site parking location.
- q. The non-restaurant use of the premises shall not be used for group style uses when more than (10) individuals attend at any one time after 6:30 p.m. for the purpose of participating in such things as yoga classes, a gym, Pilates, Soul Cycle, Orange Theory, Pure Bar health clubs, or similar uses as long as a restaurant occupies the premises.

The site plan and its conditions detailed herein for clarity and agreement of the parties shall be considered approved.

- 3. Within thirty (30) days of the entry of this Order by the Court, Plaintiff shall submit to the Board a Revised Application, to effectuate the agreement of the parties. Such Revised Application shall comply with the terms and agreements set forth herein.
- 4. This matter shall be remanded to the Board for the purpose of conducting a public hearing on the Revised Application pursuant to *Whispering Woods v Middletown Township*, 220 NJ Super 161 (App Div 1987) ("*Whispering Woods*") and for the purpose of implementing the settlement terms agreed to herein. Board hereby agrees that there shall be no filing fee or escrow fee however, all attorney fees of the Board at municipal rates charged to the Borough shall be paid by the applicant including preparation of a Resolution. No fees shall be payable in the event the Board denies the *Whispering Woods* application. Said hearing shall be on full notice as required by the MLUL for a full hearing before the Board, with notices of such hearing

published in an approved newspaper and served upon all property owners existing within 200' of the subject premises not later than ten (10) days prior to said hearing, and containing a copy of this Stipulation and advising the public that the terms of this Stipulation are to be presented to the Board for final approval. All interested persons shall have the right to be heard and to present witnesses, to ask questions and to make comments in connection with the Board's decision of whether to approve the Revised Application and the provisions of the parties' agreement.

5. The Defendant shall provide Plaintiff with a fast track application process for the Revised Application. ~~No formal application will be.~~ Defendant agrees to schedule and hold a hearing not later than the Board's November 24, 2020 meeting absent unforeseen circumstances.
6. Defendant agrees that it shall pass upon the merits of the application during the course of one hearing date, absent unforeseen circumstances which would warrant the adjournment of such hearing to a second and final date, with such circumstances to include only evidence or facts not known by any party or which by due diligence could not be ascertained and introduced at the first schedule hearing date.
7. If the Board approves of the terms of this settlement, it shall adopt by voice vote its approval be further memorialized by resolution as detailed in the MLUL. The Resolution shall be recorded by plaintiff's counsel at plaintiff's cost and expense and shall be binding upon plaintiff's successors and assigns. No Certificate of Occupancy shall be issued until the Resolution is recorded and all professional fees have been paid by the plaintiff.
8. Within thirty (30) days of expiration of any appeal period relative to the Revised Application, Plaintiff will dismiss this Litigation with prejudice and without costs or attorneys fees to Plaintiff.
9. In the event that the Board does not approve the terms of this settlement as part of the Whispering Woods hearing, Plaintiff then shall be entitled to make application to the Superior Court to reinstate the within Prerogative Writ Complaint.
10. If the matter is reinstated, all issues raised in the Litigation shall be deemed preserved by way of this Consent Order and this Litigation may be re-opened to the Court without need for motion, or further consent.
11. If, following approval at the aforementioned Whispering Woods hearing, litigation is commenced by any person or entity seeking to invalidate the Plaintiff's approvals, this entire Consent Order shall be deemed null and void *ab initio* and the matter returned to the trial Court for conclusion through litigation. This shall be at the Plaintiff's option and Plaintiffs may elect to defend the decision of the Board made at the Whispering Woods hearing and seek a dismissal or other disposition of any litigation commenced by any person or entity and, in that event, the Board shall support and defend its actions in any subsequent litigation brought by any person

seeking to invalidate any Board decision made as part of this settlement or the Whispering Woods hearing.

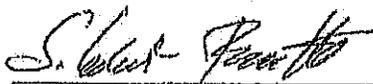
12. If the Board fails to approve the Revised Application at the aforementioned Whispering Woods hearing, this entire Consent Order shall be deemed *void ab initio* and the matter returned to the trial Court for conclusion through litigation.
13. If the Board imposes additional or modified conditions of approval Plaintiff may either accept same or, in its sole discretion, declare the settlement *void ab initio* and return the matter to the court's calendar, as detailed herein and as provided by the Court.
14. The only new evidence that will be subject of the Revised Application is that which addresses the "valet parking" and variances related to the outdoor dining patio. The parties agree that the record shall explicitly be limited to that one issue and its relationship to the overall plan and requisite variance relief and the approval of this Order/Settlement.
15. The Board's consent to this settlement does not indicate that the Board approves the Revised Application, but only gives its consent to the elements set forth in the proposed settlement. The Board cannot take formal action until it has a full public hearing in accordance with Whispering Woods.
16. Plaintiff's counsel shall serve a copy of this Consent Order upon counsel for Defendant within 7 days of receipt of the Order.
17. This Order/Settlement shall be binding on the parties, their successors and assigns.

(see next page for signatures)

CONSENTED TO AND AGREED UPON



John L. Molinelli, Esq.
Rice, Meese, Shulman & D'Aminto, PC
Attorney for Plaintiff



S. Robert Princiolo, Esq.
Marcus & Levy
Attorney for Defendant



Honorable Gregory A. Padovano, J.S.C.
GREGG

Exhibit 3

APPROVAL

**Borough of Woodcliff Lake
Zoning Board of Adjustment
Resolution**

**APPROVAL OF VARIANCE RELIEF AND DENIAL OF AMENDMENT
OF SITE PLAN TO PERMIT OUTDOOR PATIO**

In the Matter of the Application of
WCL Broadway Realty Associates L.L.C
62 Broadway, Block 2708, Lot 1
Decided September 25, 2018

WHEREAS, WCL Broadway Realty Associates L.L.C. (the "Owner") is the owner of the property located at 62 Broadway and designated as Lot 1 in Block 2708 on the Tax Map of the Borough of Woodcliff Lake (the "Property"); and

WHEREAS, WCL Broadway Realty Associates, L.L.C., the Owner has made application to the Zoning Board of the Borough of Woodcliff Lake (the "Board") for modification of Site Plan Approval pursuant to N.J.S.A. 40:55D-37 and Chapter 292 of the Site Plan Review Ordinance, together with application for variance relief pursuant to N.J.S.A. 40:55D-70(c) including an additional variance for parking and N.J.S.A. 40:55-70(d) for a use variance to permit a restaurant; and

WHEREAS, public hearings were held by the Zoning Board on April 24, 2018, May 22, 2018, June 26, 2018, July 24, 2018, August 16, 2018 and September 25, 2018 before Board members Victor Bongard, John Spirig, Robin Effron Malley, Gary Newman, Sangeev Dhawan, Emilia Fendian, Robert Hayes and James Vercelli. Chairwoman Christina Hembree recused herself from hearing the application. The Applicant was represented by counsel, John L.

Molinelli, Esq. of the firm of Price, Meese, Shulman & D'Arminio, P.C. At the hearings the Applicant submitted proof of notice and publication as required by law. In addition the Applicant submitted as exhibits:

A-1 - Architectural drawing first floor plan prepared by Virgona & Virgona dated March 15, 2018,

A-2 - Site Plan prepared by R.L. Engineering dated March 28, 2018,

A-3a - Photograph,

A-3b - Photograph,

A-3c - Photograph,

A-4 - Parking study exhibit prepared by Luis Luglio,

A-5 - Aerial photograph of site dated April 7, 2018

A-6 - Modified parking study exhibit prepared by Luis Luglio,

A-7 - Letter from Evan Jacobs dated June 8, 2018,

A-8 - Layout plan for outdoor dining prepared by R.L. Engineering dated March 12, 2018,

A-9 - Revised drawing by R.L. Engineering dated July 9, 2018,

A-10 - Revised architectural drawing first floor plan last revised July 5, 2018 prepared by Virgona & Virgona

The Applicant also presented the testimony of: (i) Gil Rivera, President of Development for Kansom, parent company of WCL Broadway; (ii) Richard L. Eichenlaub, Jr., a licensed civil engineer and principal of the firm of R.L. Engineering Inc. and accepted by the Board as an expert in the field of civil engineering; (iii) Luis Luglio, traffic consultant; (iv) Joseph Burris, a

licensed professional planner accepted by the Board as an expert in the field of community planning; and

WHEREAS, the Board has reviewed the plans and exhibits enumerated above and other evidence submitted, having heard and considered the testimony presented by the Applicant and all members of the public that offered comments, and having heard the arguments of counsel and considered the reports of the Board professionals and Borough departments, including but not limited to the reports of (a) Neglia Engineering Associates, the Board's civil engineer, dated June 8, 2018 (Exhibit A-7), revised July 23, 2019 (Exhibit B-2); (b) Richard Preiss, the Board's professional planner, dated April 18, 2018 (Exhibit B-1); (c) an email from Construction Code Official Nick Saluzzi (Exhibit B-3); (d) photo packet prepared by Richard Preiss taken April 16, 2018 (Exhibit B-4); (e) proposed conditions (Exhibit B-5).

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of the Borough of Woodcliff Lake makes the following findings of fact and conclusions with respect to the within Application:

1. The Property is comprised of 1.27 acres of land located on the eastern side of Broadway, with additional frontages on both Columbus Avenue and Lincoln Avenue. The Property was previously developed with a restaurant known as Matsu, which has since been removed. The Property is situated in the B-1 (Business) Zone and the Applicant received prior approval for mixed use of retail use and apartments. Although retail is permitted, restaurants are currently not permitted in the B-1 Zone.

2. On July 21, 2015, the Applicant previously received Final Site Plan Approval, variance relief including a parking variance and use variance for apartments and exceptions from

the requirements of the Borough Site Plan Ordinance to construct a new three-story building with approximately 8,288 square feet of floor area for each floor and containing retail use on the first floor and apartment use on the second floor and third floors comprised of four (4) one bedroom units and ten (10) two bedroom units as set forth in a Resolution adopted on October 27, 2015 (copy attached hereto and made a part hereof).

3. During the course of the hearing, the Applicant revised its request and plans seeking variances as follows:

A. Use: for a restaurant use with an outdoor patio 7 feet by 35 feet.

B. Impervious coverage: The limitation of impervious coverage in the zone is 50 percent. A prior variance was granted for impervious of 62.89 percent. Applicant requested increasing impervious coverage to 63.33 percent representing a .44 percent increase in the impervious coverage.

C. Parking variance: There are currently 65 parking spaces available. A proposed zoning ordinance for the Broadway Corridor would require 38 parking spaces for a restaurant that is based upon 48 seats in the interior of the premises and 16 outdoor seats, a total of 64 seats. The proposed ordinance requires 1 space for every 2 seats, 32 parking spaces plus one space for each employee. There are 6 employees and some times 8 employees during peak hours although some employees may get dropped off. Based upon the proposed ordinance the restaurant use alone would require 38 spaces. There are 14 apartments and the parking requirement for the apartments is 27 based upon prior approval and (RSIS-Residential Site Improvement Standards). This restaurant, at the current level proposed, is to be 2,077 square feet. That leaves a remaining 5,065 square feet of net retail space. Pursuant to ordinance, the

requirement is 1 space for every 175 square feet and requires 29 parking spaces. Under the strict application of the Zoning Ordinance and proposed Ordinance, 94 parking spaces would be required. There are 65 spaces that are existing and proposed. Based upon the foregoing, there is a request for a variance of 29 parking spaces.

5. At the hearing the Applicant presented exhibits: A-1 through A-10 which the Board considered.

6. Ray Duraku, the owner and proprietor of Ray's Pizza in Hillsdale, testified at the hearing his desire to relocate Ray's Pizza from its existing location in Hillsdale to Woodcliff Lake. He also operates at 3 other locations. The nature of the business is everything from pasta to pizza, salads, subs, heros and everything that goes with the business.

7. Mr. Duraku testified that he intends to occupy a space on the right side of the building if one were standing on Broadway and looking at the front of the building.

8. The proposal is for 48 seats plus outdoor dining of 16 seats (total 64) as noted on A-1.

9. Although the original proposal included a dining room for fine dining for an additional 48 seats, the applicant withdrew this request.

10. Grease is a by-product of the cooking and there are 2 grease traps, the grease is removed to drums and they are placed in a special container. There is a service company that comes in and removes the grease and cleans the drums.

11. The intended hours of operation are Monday through Thursday 10 A.M. to 10 P.M., Friday 10 A.M. to 10 P.M. and Saturday 10 A.M. to 10 P.M. and Sunday 11 A.M. to 9 P.M. The peak hours of operation are lunch until approximately 1:30 P.M. and then dinner from

6:30 P.M. to 9:00 P.M.

12. The delivery part of the business is approximately 40% and normally Monday through Thursday, he will have two drivers. On Friday and Saturday nights he will have between 3 and 4 drivers. The delivery personnel are usually never all there at the same time because they are out delivering.

13. Deliveries with his own trucks are approximately three times a week and in addition, food is delivered once a week by a food vendor approximately 9:30 in the morning. In addition, beverages are delivered after the lunch hour between 1:30 P.M. and 3:30 P.M. The number of employees are anticipated to be 6 and sometimes 8 at peak times.

14. Mr. Duraku testified that deliveries by his car drivers are approximately 25 trips per night.

15. At the meeting of May 22, 2018, the applicant stipulated that during seasonal weather, 16 seats would be used outside and the interior seating would be limited to 40. In addition, the applicant stipulated that garbage pickup would be the same pickup schedule as used by the Borough for garbage pickup.

16. Applicant's engineer Richard L. Eichenlaub, Jr. testified that the proposal for the outdoor patio is a 7 foot by 35 foot paver outdoor dining area of 245 square feet. This patio will cause the relocation of two bollards and there would be no other changes with respect to the physical features. The addition of 245 square feet increases the impervious coverage to 63.33%.

17. Mr. Eichenlaub further testified that there are residential homes on Columbus Avenue across the street from where the proposed patio is going to be located, nothing else on the site changed; however, the lighting will be moved 7 feet to the south (closer to Columbus)

and be approximately 9 feet from the street and would be 3 and a half feet in height. The lighting will be downcast cylinder and shaped to illuminate the walkway around the south side.

18. Mr. Eichenlaub referred to Exhibit A-3a, A-3b and A-3c showing the dumpster enclosure and the canister for the cooking oil and how it would be arranged. The barrel was depicted on photograph (b) and (c). This will hold the grease.

19. In the original application 27 parking spaces were allocated for the residents of the apartments. Mr. Eichenlaub confirmed that the 27 parking spaces were based upon the New Jersey Residential Site Improvement Standards (RSIS). With regard to the chase from the first floor to the roof, it is approximately 38 square feet. There will be a vacuum fan at the top to suck the air up to the chase. There are two smaller ducts approximately 12 inches in diameter that will also go through the chase and the exhaust goes to the roof.

20. The patio will also require a retaining wall that would be segmental block about 8 to 12 inches high.

21. The restaurant will use a barrel kept between the dumpster to hold grease from the restaurant operation.

22. Luis Luglio also testified on behalf of the applicant as an expert in the area of traffic engineering. Mr. Luglio has 30 years experience including performing parking studies. He performed a site visit of the subject site and also looked at the existing Ray's operation in Hillsdale and conducted a survey to look at the number of vehicles that are coming into the site, how long they stayed and the parking accumulation, number of spaces that were accumulated, and the maximum number of parking spaces that were used. He performed a parking study marked as Exhibit A-4 on Friday, May 18, 2018 and Saturday, May 19, 2018. This study was

performed from 6 P.M. to 9 P.M.

23. Mr. Luglio testified that the current Hillsdale location area shows 22 parking spaces and an additional 40 parking spaces on the lower level underneath the building. Friday night (May 18th) did not have much rain but there was rain on Saturday night (May 19th). The study included pizza delivery cars and there was not much activity with regard to the lower level parking. He observed 3 to 4 delivery vehicles.

24. Mr. Luglio opined that the traditional retail spaces wind down at 5 P.M., 6 P.M. and by 7 P.M. so there is a sense of shared parking that could happen on the site. With regard to the apartments, the 27 spaces are based on RSIS requirements, the 2 bedrooms require 2 spaces and the 1 bedroom require 1.8 spaces. The 27 space requirement includes visitor parking. Therefore, there are 7 visitor spaces included in the 27.

25. Mr. Luglio returned to the Hillsdale location and conducted a second study on Saturday, June 16, 2018. He arrived at approximately 6 P.M. and stayed till approximately 9 P.M. and the weather was good. An amended parking study exhibit was marked as Exhibit A-6 for identification. The maximum number of parking spaces used was 23 and that occurred at 7:10 P.M. From 6:50 P.M. to 7:20 P.M., there were over 20 parked vehicles and the number of parked vehicles went down just before 9 P.M. when there were 6 parked vehicles. Mr. Luglio opined that traditional retail user demand begins to drop after 6 P.M. and there would be shared level of parking for the 38 spaces in the front of the subject site.

26. The study that was conducted was very specific to a pizzeria/restaurant.

27. During the traffic study, there were 2 to 3 delivery vehicles that went back and forth and occupied spaces, however, there was never more than 1 space occupied at a time by a

delivery type vehicle.

28. Joseph Burgis, a licensed professional planner certified by the American Institute of Certified Planners and a member of the American Planning Association testified on behalf of the applicant. He testified the site is on the east side of Broadway between Lincoln Avenue and Columbus Avenue and occupies approximately one and a quarter acre. To the east of the property is residential development. Along Broadway there is a commercial development including another pizzeria right near by at the corner of Columbus and Broadway.

29. Mr. Burgis examined the Master Plan. He acknowledged that the zoning ordinance does not permit restaurants in the B-1 zone where the property is located and the applicant has the burden to prove special reasons to address the positive criteria required by statute. Special reasons can be a variety of things because the statute is not definitive; however, where some of the purposes of the municipal land use law are affirmed, that would represent a special reason. There is also the negative criteria, a two prong test that the applicant has to address. The first prong is that you have to show there is no substantial detriment to the Master Plan intent and the second prong is that you have to show there is no substantial detriment to the public good. Additionally, for a use variance you have to address particular suitability and furthering the overall intent of the community's Master Plan.

30. With regard to the bulk variances, Mr. Burgis testified that an applicant has to show various physical features that affect their ability to comply or alternatively by virtue of the grant of variance that a public benefit will accrue from the relief being sought and the negative criteria would apply to residences as well.

31. Mr. Burgis testified about the Master Plan adopted in the early 2000's which

stated that the municipality should re-examine its zoning ordinance and when it does it should reconsider the prohibition on restaurants. A re-examination was done in 2008 and this document again re-iterated its concern about the prohibition on restaurants and went on to say that along the Broadway corridor, the kind of uses that are found in a traditional downtown should be considered as permitted uses. He opined that traditional downtowns include restaurants.

32. Mr. Burgis also referenced a Broadway corridor study and talked about recognizing change in market conditions and there is a need to re-examine permitted uses in commercial corridors in an effort to address the problem of dying commercial areas because e-commerce trade was starting to have significant adverse effects on all business districts.

33. Mr. Burgis further opined that if you want retail trade you need to address in your ordinance that the market is going toward entertainment uses, restaurant uses, and uses that traditionally would not be in a retail area such as dentists and medical facilities.

34. With regard to special reasons, Mr. Burgis referenced the Master Plan, e-commerce and the municipal land use law purposes of appropriate use of land and compatibility of adjoining municipalities.

35. In terms of negative criteria, Mr. Burgis opined that given the Master Plan recommendation, the application doesn't represent a substantial impairment to the intent of the recommended plan because the intent of the plan was to give consideration to this kind of use. In terms of the other prong of the negative criteria, there will be no substantial impairment to the surrounding development area as there is a buffer area providing a physical separation of this activity from the adjoining or surrounding residential development. With regard to parking, he opined that the parking lot is adequate based upon the testimony of Luis Luglio.

36. With regard to the patio Mr. Burgis opined that the increase in impervious coverage is about a quarter of a percent and the 245 square foot results in an attractive feature that a lot of people are seeking today in restaurant use, that is an outdoor patio and the seats are limited to 16. In his opinion it is not uncommon for anyone with a backyard especially in the summertime to have 16 people in their backyard. In his opinion, in terms of an asset to the community, it was his opinion that it was a benefit.

37. Mr. Burgis also mentioned the proximity to the train station and you are seeing that in the State of New Jersey this kind of mixed use development with retail and apartments above that are being located around train stations throughout the state.

38. Mr. Burgis conceded that when the people rented the apartments, there was no restaurant; however, it is a typical use and some people would view this as a significant asset.

39. Mr. Burgis agreed that one of the goals of the Master Plan is to preserve the residential areas and the surrounding areas are residential.

40. At the meeting of July 24, 2018 the applicant amended the application to remove the fine dining area/party room of 48 seats and proceed on the basis of 48 seats in the pizzeria and 16 on the outside patio. The applicant's plans state that the total net square feet (net does not include the entry, lobby, stairwells and elevator) of the retail space that would remain other than the pizzeria would be 5,065 square feet.

41. Revised drawings from R.L. Engineering were submitted dated July 9, 2018 and marked A-9 and the parking requirements were listed under paragraph 14. A revised architectural drawing floor plan was marked as A-10.

42. After the amendment the number of retail spaces available would be 4 and one

retail space would now be 815 square feet. The 5,065 square foot retail left after the restaurant requires 29 parking spaces.

43. Richard Preiss, a licensed planner and the planning consultant to the Planning and Zoning Boards of the Borough associated with the firm of Phillips, Preiss, Grygiel, Leheny and Hughes, attended all the hearings and prepared a review letter and offered testimony.

44. Mr. Preiss testified that the testimony on the record relied upon the ITE which is the Institute of Transportation Engineers parking study which indicates different uses with the number of parking spaces that should be provided. He stated that the ITE says in the absence of any better source of information ITE is the source that should be used; however, it also says if you have a comparable local situation that it may be better information and maybe more reliable than ITE because there are parking studies that are done all over the country.

45. Mr. Preiss suggested at the first meeting that the applicant rather than relying on ITE take a look at the parking where the pizzeria was one of the existing tenants.

46. Mr. Preiss stated what shared parking situation means is you have a number of uses or a number of tenants that share parking in common and this happens at shopping centers where you may have certain uses that are busy in the morning, some that are particularly busy in the evening and then you have some uses like restaurant, entertainment, health clubs, where their peak hours of use is different than other stores within the shopping center.

47. Mr. Preiss opined that a restaurant is one of those kind of uses where the restaurants peak even though they have a bit of bump at lunch time and their peaks are in the evening and on weekends. He further stated that typically when the restaurant is open the other stores are closed. Essentially, as the restaurant gets busier and the other stores close, the spaces

that would ordinarily be utilized by those retailers are available for those customers.

48. Mr. Preiss opined that a restaurant use is appropriate. Since the recession brick and mortar buildings are having a bad time. Broadway is lacking in terms of aesthetics. Past studies identify that restaurants should be a permitted use.

49. Mr. Preiss presented a packet of photos marked B-4 to show the lighting of the patio.

50. Mr. Preiss opined that a pizza restaurant is not a substantial outlier that is significantly different from a typical restaurant but agreed with Mr. Intindola that a pancake house or something that has peak hours early in the day may be competing for spaces and suggested that the Board consider a condition limiting use such as a pancake house.

51. Mr. Preiss suggested conditions that certain uses that stay open in the evening would have to come back to the Board.

52. Mr. Preiss opined that the peak parking demand is 23 spaces and in the front there are 38, however, if another restaurant were to come, there would be a problem.

53. Mr. Preiss testified that if the Board was concerned about having a store open in the evenings to consider a condition that if they had another tenant and the tenant had hours which would coincide with the restaurant and they are open at night and take up a lot of spaces, they should be required to come back to the Board before they would be permitted to operate.

54. Mr. Preiss confirmed that the parking study indicated that 13 cars would be parked around 6 P.M. and then went up to a peak of 23 at 7:10 P.M. and dropped to 20, 16 and then went down to 14 at 8:20 P.M. and down to 12 by 8:30 P.M. and then to 9 by 8:40 P.M. and 6 by 8:50 P.M. He concluded that's what one would expect for this type of restaurant in this

location.

55. Mr. Preiss stated further that there could be a problem if one of the other retail spaces had a use which stayed open which would compete for those parking spaces including health clubs whose peak hours are sometimes in the evening like Soul Cycle or Orange Theory or Yoga where you may get a class of 10 to 15 people with 10 cars. Assuming the pizzeria was a more successful store then maybe the peak number goes up to 28 but you have 38 spaces available and if you had another competing business that needed 10 or 15 spaces, you could run into a parking problem. To the extent that the other retailers are closing early at 6 P.M. then going forward most of the parking lot would be available starting at the early dinner hour and peak around 7:10 P.M.

56. Mr. Preiss suggested as a condition to granting approval that no other retail tenant be open for business after a certain hour or there be a requirement that the applicant would have to come back to the board and perform a parking analysis to ensure that there wouldn't be a problem.

57. Brian Intindola, a principle of Neglia Engineering provided testimony with regard to traffic engineering issues and is a licensed civil engineer. Mr. Intindola testified that he is more comfortable that the site could accommodate the restaurant without the fine dining area/party room; however, it has to be a complimentary use so that the shared parking concept is valid and you do not have two competing uses that compete at the same time.

58. Mr. Intindola testified that the remaining space is 5,065 square feet divided by 175 the parking standard which yields 29 spaces required which in his opinion is aggressive. Other parking rates use 1 space per 200 square feet.

59. Mr. Intindola opined that the parking study was valid for most uses except for the pancake house, or restaurants that provide a specialty breakfast.

60. Mr. Intindola also opined that a pizzeria has a high turnover rate for the sit down and if you went to another type of restaurant that was higher end, it would have a lesser turnover rate and the parking demand would be similar; however, if the restaurant was a different type of restaurant that had a morning or lunch emphasis, it would be a concern. Mr. Intindola also stated that the apartment parking area is in conformance with the residential site improvement standard which is the state standard and this includes visitor parking.

61. Evan Jacobs, the Borough's engineer, a licensed civil engineer, also testified that the proposed patio extension from a storm water perspective was a relatively small patio that would not require storm water improvement. From an engineering perspective, he took no exception to storing a grease barrel in the dumpster enclosure. With regard to the exhaust system, the applicant was looking to retrofit an exhaust system in a utility chase and that would come under the local construction code official. With regard to lighting, it is low level pedestrian lighting bollards which are being moved closer to the street and at pedestrian level height which is not a concern for a spillover to adjacent properties from the bollard lights. Mr. Jacobs' letters were marked B-1 and B-2 for identification.

62. The construction code official provided an email marked B-3 stating that an 8 foot by 4 foot shaft was installed adjacent to the stairwell leading up to the roof that was basically constructed for a future kitchen exhaust system for whatever venting may be required and the plans are available for review.

63. After much discussion, the Board considered the following conditions:

CONDITIONS

1. The rear parking lot will not be used for staff parking.
2. There will be no other restaurant of any type at the premises other than the 2,027 square foot area identified on the first floor plan of Virgona & Virgona last revised July 5, 2018 marked as Exhibit A-10.
3. Hours of refuse pickup shall be the same hours of pickup as for Borough residences.
4. Wall sconces will be turned off no later than 11:30 p.m. or one half-hour after any store is required to close by ordinance whichever is earlier.
5. UV film shall be installed on the bollard lights.
6. A shield will be installed on the parking lot lights to lessen spillover as approved by the Borough Engineer.
7. Upon a change in the use or occupancy of the 2,027 square foot space for a restaurant with different peak hour use, or a change in the peak hour use, a new application for approval shall be filed with the Zoning Board to determine if the parking is adequate and whether or not the use should be approved including a determination as to whether the shared parking calculations and assumptions made by the Zoning Board can accommodate the different peak hour use.
8. No truck parking will be permitted on the premises.
9. No staff, delivery vehicles, or truck parking related to the site shall be permitted on Columbus Avenue and Lincoln Avenue.

10. There shall be no outdoor patio.
11. The basement of the restaurant shall be used only for storage and food preparation.
12. No more than 3,000 square feet of the remaining retail space shall be open beyond 6:30 P.M. as long as a restaurant occupies the premises.
13. Seating shall be limited to 36.
14. The restaurant shall not serve breakfast.
15. The remaining retail space shall not be used for yoga classes, a gym, pilates, soul cycle, orange theory, pure bar (if permitted by ordinance), health clubs or similar uses that have group activities past 6:30 P.M., as long as a restaurant occupies the premises.

CONCLUSIONS AND DETERMINATIONS

1. All findings of fact set forth above are made a part hereof as if set forth herein at length but not opinions.
2. The proceedings in this matter were voice recorded. The foregoing facts in this Resolution are not intended to be all inclusive but merely a summary and highlight of the complete record made before the Board.
3. N.J.S.A. 40:55D-70 provides that a variance may be granted where the Board finds that the purposes of the Municipal Land Use Law ("MLUL") would be advanced by a deviation from the zoning requirements and that the benefits of the deviation would substantially outweigh any detriment. The Board finds that with all the conditions enumerated above the benefits of the

proposed use, include but are not limited to (i) traditional downtowns include restaurants provided adequate parking is available; (ii) the use is an appropriate use in the B-1 zone which is lacking in terms of aesthetics and past studies identified that restaurants should be a permitted use; and (iii) a limited seat restaurant benefits outweigh detriments but only if all of the conditions previously listed in paragraph 63 are imposed to protect the neighboring residential areas.

4. In addition, the Board finds that the purposes of the MLUL are advanced by this Application by (i) providing use of space in an appropriate location for restaurant use; and (ii) promoting a more desirable visual environment through encouraging development with conditions to protect the character of residential neighborhoods.

5. The Board finds that the variances stated below can be granted without detriment to the public good or any neighboring properties provided the seating is limited to 36 seats and further provided there is no outdoor patio which this Board denied by resolution this same date. The Board further finds that these approvals with all of the conditions above in paragraph 63 will not substantially impair the intent and purpose of the Woodcliff Lake Zone Plan and Zoning Ordinance and are in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2. The Board also finds that the 2002 Master Plan provides that restaurants in conjunction with retail use may provide an incentive for re-development provided sufficient parking is available.

6. As such, the granting of the variances for parking is appropriate but only if the seating is limited to 36 seats and all conditions are upheld.

7. The Board considered the ITE standards and the parking studies.

8. The approval of the variances are within the Zoning Board's statutory authority

granted pursuant to N.J.S.A. 40:55D-70(c) and (d).

NOW, THEREFORE, BE IT RESOLVED that the within Application for the limited variances be and the same are hereby approved by this Board only as set forth below subject to the following conditions:

(a) The Applicant shall comply with all of the ordinances of the Borough of Woodcliff Lake and all applicable county, State, and federal statutes, ordinances, rules and regulations. Without limiting the foregoing, the Applicant shall comply with any and all applicable requirements of the United States of Americans with Disabilities Act.

(b) The approval of the within Application does not constitute a determination by this Board as to whether the proposed development complies with the United States Americans with Disabilities Act or the applicable regulations thereunder.

(c) The Applicant shall comply with all of the stipulations made during the hearing on this Application as set forth herein and on the record before the Board.

(d) Certification shall be required that all taxes and assessments have been paid up to the present time.

(e) The Applicant shall post all fees and deposits as required by applicable ordinances of the Borough of Woodcliff Lake, which shall also include the posting of a deposit to reimburse the Municipality for monies paid and to be paid to its professionals for the review of the within Application. All sums owed to the Borough professionals shall be paid prior to the issuance of a building permit and prior to the issuance of any Certificate of Occupancy.

(f) The Applicant shall obtain the approval (or waiver thereof) of any and all other governmental agencies having jurisdiction over the proposed development, including but

not limited to the final approval of the Bergen County Department of Planning and Economic Development.

(g) The approval is strictly conditional on abiding by all 15 conditions as set forth in paragraph 63 of this Resolution.

(h) The parking variance is limited and is based upon the following: the restaurant shall be limited to 36 seats and 6 employees requiring 24 parking spaces, 29 parking spaces are required for the net remaining space of 5,065 square feet ($5,065 \div 175$). The apartments require 27 parking space. Total parking required is 80 spaces. Total provided 65. The variance is for 15 parking spaces. For the purposes of this application, the Board adopts for restaurant use the parking standard of one space for each two seats plus one space for each employee as set forth in the proposed ordinance for the Broadway Corridor. For other retail use the Board has used the Borough Ordinance of one space for every 175 square feet of space.

(i) This Resolution and attachments shall be recorded at the applicant's cost and expense in the Bergen County Clerk's Office Deed Book prior to the issuance of any permit or Certificate of Occupancy.

(j) The Applicant's failure to comply with any of the conditions set forth within this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of this Approval and/or Certificate of Occupancy of the Property, subject to reasonable notice and the opportunity to cure.

IT IS HEREBY CERTIFIED that this is a true correct copy of a Resolution adopted by the Zoning Board of the Borough of Woodcliff Lake upon a roll call vote at its regular meeting held on October 23, 2018.

A copy of this Resolution shall be given to the Tax Assessor, Borough Clerk,

Construction Code Officer, Borough Engineer and the Applicant (through counsel).

ATTEST:

SO APPROVED:

Paul J. Ammirati
ZONING BOARD SECRETARY

Vicki Boyer
VICE CHAIRMAN, ZONING BOARD

Date of Adoption:

10/23/18

DENIAL

**Borough of Woodcliff Lake
Zoning Board of Adjustment
Resolution**

**DENIAL OF VARIANCE RELIEF AND DENIAL OF AMENDMENT
OF SITE PLAN TO PERMIT OUTDOOR PATIO**

In the Matter of the Application of
WCL Broadway Realty Associates L.L.C
62 Broadway, Block 2708, Lot 1
Decided September 25, 2018

WHEREAS, WCL Broadway Realty Associates L.L.C. (the "Owner") is the owner of the property located at 62 Broadway and designated as Lot 1 in Block 2708 on the Tax Map of the Borough of Woodcliff Lake (the "Property"); and

WHEREAS, WCL Broadway Realty Associates, L.L.C., the Owner has made application to the Zoning Board of the Borough of Woodcliff Lake (the "Board") for modification of Site Plan Approval pursuant to N.J.S.A. 40:55D-37 and Chapter 292 of the Site Plan Review Ordinance, together with application for variance relief pursuant to N.J.S.A. 40:55D-70(c) including an additional variance for parking and N.J.S.A. 40:55-70(d) for a use variance to permit a restaurant; and

WHEREAS, public hearings were held by the Zoning Board on April 24, 2018, May 22, 2018, June 26, 2018, July 24, 2018, August 16, 2018 and September 25, 2018 before Board members Victor Bongard, John Spirig, Robin Effron Malley, Gary Newman, Sangeev Dhawan, Emilia Fendian, Robert Hayes and James Vercelli. Chairwoman Christina Hembree recused herself from hearing the application. The Applicant was represented by counsel, John L.

Molinelli, Esq. of the firm of Price, Meese, Shulman & D'Arminio, P.C. At the hearings the Applicant submitted proof of notice and publication as required by law. In addition the Applicant submitted as exhibits:

A-1 - Architectural drawing first floor plan prepared by Virgona & Virgona dated March 15, 2018,

A-2 - Site Plan prepared by R.L. Engineering dated March 28, 2018,

A-3a - Photograph,

A-3b - Photograph,

A-3c - Photograph,

A-4 - Parking study exhibit prepared by Luis Luglio,

A-5 - Aerial photograph of site dated April 7, 2018

A-6 - Modified parking study exhibit prepared by Luis Luglio,

A-7 - Letter from Evan Jacobs dated June 8, 2018,

A-8 - Layout plan for outdoor dining prepared by R.L. Engineering dated March 12, 2018,

A-9 - Revised drawing by R.L. Engineering dated July 9, 2018,

A-10 - Revised architectural drawing first floor plan last revised July 5, 2018 prepared by Virgona & Virgona

The Applicant also presented the testimony of: (i) Gil Rivera, President of Development for Kansom, parent company of WCL Broadway; (ii) Richard L. Eichenlaub, Jr., a licensed civil engineer and principal of the firm of R.L. Engineering Inc. and accepted by the Board as an expert in the field of civil engineering; (iii) Luis Luglio, traffic consultant; (iv) Joseph Burris, a

licensed professional planner accepted by the Board as an expert in the field of community planning; and

WHEREAS, the Board has reviewed the plans and exhibits enumerated above and other evidence submitted, having heard and considered the testimony presented by the Applicant and all members of the public that offered comments, and having heard the arguments of counsel and considered the reports of the Board professionals and Borough departments, including but not limited to the reports of (a) Neglia Engineering Associates, the Board's civil engineer, dated June 8, 2018 (Exhibit A-7), revised July 23, 2019 (Exhibit B-2); (b) Richard Preiss, the Board's professional planner, dated April 18, 2018 (Exhibit B-1); (c) an email from Construction Code Official Nick Saluzzi (Exhibit B-3); (d) photo packet prepared by Richard Preiss taken April 16, 2018 (Exhibit B-4); (e) proposed conditions (Exhibit B-5).

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of the Borough of Woodcliff Lake makes the following findings of fact and conclusions with respect to the within Application:

1. The Property is comprised of 1.27 acres of land located on the eastern side of Broadway, with additional frontages on both Columbus Avenue and Lincoln Avenue. The Property was previously developed with a restaurant known as Matsu, which has since been removed. The Property is situated in the B-1 (Business) Zone and the Applicant received prior approval for mixed use of retail use and apartments. Although retail is permitted, restaurants are currently not permitted in the B-1 Zone.
2. On July 21, 2015, the Applicant previously received Final Site Plan Approval, variance relief including a parking variance and use variance for apartments and exceptions from

the requirements of the Borough Site Plan Ordinance to construct a new three-story building with approximately 8,288 square feet of floor area for each floor and containing retail use on the first floor and apartment use on the second floor and third floors comprised of four (4) one bedroom units and ten (10) two bedroom units as set forth in a Resolution adopted on October 27, 2015 (copy attached hereto and made a part hereof).

3. During the course of the hearing, the Applicant revised its request and plans seeking variances as follows:

A. Use: for a restaurant use with an outdoor patio 7 feet by 35 feet.

B. Impervious coverage: The limitation of impervious coverage in the zone is 50 percent. A prior variance was granted for impervious of 62.89 percent. Applicant requested increasing impervious coverage to 63.33 percent representing a .44 percent increase in the impervious coverage.

C. Parking variance: There are currently 65 parking spaces available. A proposed zoning ordinance for the Broadway Corridor would require 38 parking spaces for a restaurant that is based upon 48 seats in the interior of the premises and 16 outdoor seats, a total of 64 seats. The proposed ordinance requires 1 space for every 2 seats, 32 parking spaces plus one space for each employee. There are 6 employees and some times 8 employees during peak hours although some employees may get dropped off. Based upon the proposed ordinance the restaurant use alone would require 38 spaces. There are 14 apartments and the parking requirement for the apartments is 27 based upon prior approval and (RSIS-Residential Site Improvement Standards). This restaurant, at the current level proposed, is to be 2,077 square feet. That leaves a remaining 5,065 square feet of net retail space. Pursuant to ordinance, the

requirement is 1 space for every 175 square feet and requires 29 parking spaces. Under the strict application of the Zoning Ordinance and proposed Ordinance, 94 parking spaces would be required. There are 65 spaces that are existing and proposed. Based upon the foregoing, there is a request for a variance of 29 parking spaces.

5. At the hearing the Applicant presented exhibits: A-1 through A-10 which the Board considered.

6. Ray Duraku, the owner and proprietor of Ray's Pizza in Hillsdale, testified at the hearing his desire to relocate Ray's Pizza from its existing location in Hillsdale to Woodcliff Lake. He also operates at 3 other locations. The nature of the business is everything from pasta to pizza, salads, subs, heros and everything that goes with the business.

7. Mr. Duraku testified that he intends to occupy a space on the right side of the building if one were standing on Broadway and looking at the front of the building.

8. The proposal is for 48 seats plus outdoor dining of 16 seats (total 64) as noted on A-1.

9. Although the original proposal included a dining room for fine dining for an additional 48 seats, the applicant withdrew this request.

10. Grease is a by-product of the cooking and there are 2 grease traps, the grease is removed to drums and they are placed in a special container. There is a service company that comes in and removes the grease and cleans the drums.

11. The intended hours of operation are Monday through Thursday 10 A.M. to 10 P.M., Friday 10 A.M. to 10 P.M. and Saturday 10 A.M. to 10 P.M. and Sunday 11 A.M. to 9 P.M. The peak hours of operation are lunch until approximately 1:30 P.M. and then dinner from

6:30 P.M. to 9:00 P.M.

12. The delivery part of the business is approximately 40% and normally Monday through Thursday, he will have two drivers. On Friday and Saturday nights he will have between 3 and 4 drivers. The delivery personnel are usually never all there at the same time because they are out delivering.

13. Deliveries with his own trucks are approximately three times a week and in addition, food is delivered once a week by a food vendor approximately 9:30 in the morning. In addition, beverages are delivered after the lunch hour between 1:30 P.M. and 3:30 P.M. The number of employees are anticipated to be 6 and sometimes 8 at peak times.

14. Mr. Duraku testified that deliveries by his car drivers are approximately 25 trips per night.

15. At the meeting of May 22, 2018, the applicant stipulated that during seasonal weather, 16 seats would be used outside and the interior seating would be limited to 40. In addition, the applicant stipulated that garbage pickup would be the same pickup schedule as used by the Borough for garbage pickup.

16. Applicant's engineer Richard L. Eichenlaub, Jr. testified that the proposal for the outdoor patio is a 7 foot by 35 foot paver outdoor dining area of 245 square feet. This patio will cause the relocation of two bollards and there would be no other changes with respect to the physical features. The addition of 245 square feet increases the impervious coverage to 63.33%.

17. Mr. Eichenlaub further testified that there are residential homes on Columbus Avenue across the street from where the proposed patio is going to be located, nothing else on the site changed; however, the lighting will be moved 7 feet to the south (closer to Columbus)

and be approximately 9 feet from the street and would be 3 and a half feet in height. The lighting will be downcast cylinder and shaped to illuminate the walkway around the south side.

18. Mr. Eichenlaub referred to Exhibit A-3a, A-3b and A-3c showing the dumpster enclosure and the canister for the cooking oil and how it would be arranged. The barrel was depicted on photograph (b) and (c). This will hold the grease.

19. In the original application 27 parking spaces were allocated for the residents of the apartments. Mr. Eichenlaub confirmed that the 27 parking spaces were based upon the New Jersey Residential Site Improvement Standards (RSIS). With regard to the chase from the first floor to the roof, it is approximately 38 square feet. There will be a vacuum fan at the top to suck the air up to the chase. There are two smaller ducts approximately 12 inches in diameter that will also go through the chase and the exhaust goes to the roof.

20. The patio will also require a retaining wall that would be segmental block about 8 to 12 inches high.

21. The restaurant will use a barrel kept between the dumpster to hold grease from the restaurant operation.

22. Luis Luglio also testified on behalf of the applicant as an expert in the area of traffic engineering. Mr. Luglio has 30 years experience including performing parking studies. He performed a site visit of the subject site and also looked at the existing Ray's operation in Hillsdale and conducted a survey to look at the number of vehicles that are coming into the site, how long they stayed and the parking accumulation, number of spaces that were accumulated, and the maximum number of parking spaces that were used. He performed a parking study marked as Exhibit A-4 on Friday, May 18, 2018 and Saturday, May 19, 2018. This study was

performed from 6 P.M. to 9 P.M.

23. Mr. Luglio testified that the current Hillsdale location area shows 22 parking spaces and an additional 40 parking spaces on the lower level underneath the building. Friday night (May 18th) did not have much rain but there was rain on Saturday night (May 19th). The study included pizza delivery cars and there was not much activity with regard to the lower level parking. He observed 3 to 4 delivery vehicles.

24. Mr. Luglio opined that the traditional retail spaces wind down at 5 P.M., 6 P.M. and by 7 P.M. so there is a sense of shared parking that could happen on the site. With regard to the apartments, the 27 spaces are based on RSIS requirements, the 2 bedrooms require 2 spaces and the 1 bedroom require 1.8 spaces. The 27 space requirement includes visitor parking. Therefore, there are 7 visitor spaces included in the 27.

25. Mr. Luglio returned to the Hillsdale location and conducted a second study on Saturday, June 16, 2018. He arrived at approximately 6 P.M. and stayed till approximately 9 P.M. and the weather was good. An amended parking study exhibit was marked as Exhibit A-6 for identification. The maximum number of parking spaces used was 23 and that occurred at 7:10 P.M. From 6:50 P.M. to 7:20 P.M., there were over 20 parked vehicles and the number of parked vehicles went down just before 9 P.M. when there were 6 parked vehicles. Mr. Luglio opined that traditional retail user demand begins to drop after 6 P.M. and there would be shared level of parking for the 38 spaces in the front of the subject site.

26. The study that was conducted was very specific to a pizzeria/restaurant.

27. During the traffic study, there were 2 to 3 delivery vehicles that went back and forth and occupied spaces, however, there was never more than 1 space occupied at a time by a

delivery type vehicle.

28. Joseph Burgis, a licensed professional planner certified by the American Institute of Certified Planners and a member of the American Planning Association testified on behalf of the applicant. He testified the site is on the east side of Broadway between Lincoln Avenue and Columbus Avenue and occupies approximately one and a quarter acre. To the east of the property is residential development. Along Broadway there is a commercial development including another pizzeria right near by at the corner of Columbus and Broadway.

29. Mr. Burgis examined the Master Plan. He acknowledged that the zoning ordinance does not permit restaurants in the B-1 zone where the property is located and the applicant has the burden to prove special reasons to address the positive criteria required by statute. Special reasons can be a variety of things because the statute is not definitive; however, where some of the purposes of the municipal land use law are affirmed, that would represent a special reason. There is also the negative criteria, a two prong test that the applicant has to address. The first prong is that you have to show there is no substantial detriment to the Master Plan intent and the second prong is that you have to show there is no substantial detriment to the public good. Additionally, for a use variance you have to address particular suitability and furthering the overall intent of the community's Master Plan.

30. With regard to the bulk variances, Mr. Burgis testified that an applicant has to show various physical features that affect their ability to comply or alternatively by virtue of the grant of variance that a public benefit will accrue from the relief being sought and the negative criteria would apply to residences as well.

31. Mr. Burgis testified about the Master Plan adopted in the early 2000's which

stated that the municipality should re-examine its zoning ordinance and when it does it should reconsider the prohibition on restaurants. A re-examination was done in 2008 and this document again re-iterated its concern about the prohibition on restaurants and went on to say that along the Broadway corridor, the kind of uses that are found in a traditional downtown should be considered as permitted uses. He opined that traditional downtowns include restaurants.

32. Mr. Burgis also referenced a Broadway corridor study and talked about recognizing change in market conditions and there is a need to re-examine permitted uses in commercial corridors in an effort to address the problem of dying commercial areas because e-commerce trade was starting to have significant adverse effects on all business districts.

33. Mr. Burgis further opined that if you want retail trade you need to address in your ordinance that the market is going toward entertainment uses, restaurant uses, and uses that traditionally would not be in a retail area such as dentists and medical facilities.

34. With regard to special reasons, Mr. Burgis referenced the Master Plan, e-commerce and the municipal land use law purposes of appropriate use of land and compatibility of adjoining municipalities.

35. In terms of negative criteria, Mr. Burgis opined that given the Master Plan recommendation, the application doesn't represent a substantial impairment to the intent of the recommended plan because the intent of the plan was to give consideration to this kind of use. In terms of the other prong of the negative criteria, there will be no substantial impairment to the surrounding development area as there is a buffer area providing a physical separation of this activity from the adjoining or surrounding residential development. With regard to parking, he opined that the parking lot is adequate based upon the testimony of Luis Luglio.

36. With regard to the patio Mr. Burgis opined that the increase in impervious coverage is about a quarter of a percent and the 245 square foot results in an attractive feature that a lot of people are seeking today in restaurant use, that is an outdoor patio and the seats are limited to 16. In his opinion it is not uncommon for anyone with a backyard especially in the summertime to have 16 people in their backyard. In his opinion, in terms of an asset to the community, it was his opinion that it was a benefit.

37. Mr. Burgis also mentioned the proximity to the train station and you are seeing that in the State of New Jersey this kind of mixed use development with retail and apartments above that are being located around train stations throughout the state.

38. Mr. Burgis conceded that when the people rented the apartments, there was no restaurant; however, it is a typical use and some people would view this as a significant asset.

39. Mr. Burgis agreed that one of the goals of the Master Plan is to preserve the residential areas and the surrounding areas are residential.

40. At the meeting of July 24, 2018 the applicant amended the application to remove the fine dining area/party room of 48 seats and proceed on the basis of 48 seats in the pizzeria and 16 on the outside patio. The applicant's plans state that the total net square feet (net does not include the entry, lobby, stairwells and elevator) of the retail space that would remain other than the pizzeria would be 5,065 square feet.

41. Revised drawings from R.L. Engineering were submitted dated July 9, 2018 and marked A-9 and the parking requirements were listed under paragraph 14. A revised architectural drawing floor plan was marked as A-10.

42. After the amendment the number of retail spaces available would be 4 and one

retail space would now be 815 square feet. The 5,065 square foot retail left after the restaurant requires 29 parking spaces.

43. Richard Preiss, a licensed planner and the planning consultant to the Planning and Zoning Boards of the Borough associated with the firm of Phillips, Preiss, Grygiel, Leheny and Hughes, attended all the hearings and prepared a review letter and offered testimony.

44. Mr. Preiss testified that the testimony on the record relied upon the ITE which is the Institute of Transportation Engineers parking study which indicates different uses with the number of parking spaces that should be provided. He stated that the ITE says in the absence of any better source of information ITE is the source that should be used; however, it also says if you have a comparable local situation that it may be better information and maybe more reliable than ITE because there are parking studies that are done all over the country.

45. Mr. Preiss suggested at the first meeting that the applicant rather than relying on ITE take a look at the parking where the pizzeria was one of the existing tenants.

46. Mr. Preiss stated what shared parking situation means is you have a number of uses or a number of tenants that share parking in common and this happens at shopping centers where you may have certain uses that are busy in the morning, some that are particularly busy in the evening and then you have some uses like restaurant, entertainment, health clubs, where their peak hours of use is different than other stores within the shopping center.

47. Mr. Preiss opined that a restaurant is one of those kind of uses where the restaurants peak even though they have a bit of bump at lunch time and their peaks are in the evening and on weekends. He further stated that typically when the restaurant is open the other stores are closed. Essentially, as the restaurant gets busier and the other stores close, the spaces

that would ordinarily be utilized by those retailers are available for those customers.

48. Mr. Preiss opined that a restaurant use is appropriate. Since the recession brick and mortar buildings are having a bad time. Broadway is lacking in terms of aesthetics. Past studies identify that restaurants should be a permitted use.

49. Mr. Preiss presented a packet of photos marked B-4 to show the lighting of the patio.

50. Mr. Preiss opined that a pizza restaurant is not a substantial outlier that is significantly different from a typical restaurant but agreed with Mr. Intindola that a pancake house or something that has peak hours early in the day may be competing for spaces and suggested that the Board consider a condition limiting use such as a pancake house.

51. Mr. Preiss suggested conditions that certain uses that stay open in the evening would have to come back to the Board.

52. Mr. Preiss opined that the peak parking demand is 23 spaces and in the front there are 38, however, if another restaurant were to come, there would be a problem.

53. Mr. Preiss testified that if the Board was concerned about having a store open in the evenings to consider a condition that if they had another tenant and the tenant had hours which would coincide with the restaurant and they are open at night and take up a lot of spaces, they should come be required to come back to the Board before they would be permitted to operate.

54. Mr. Preiss confirmed that the parking study indicated that 13 cars would be parked around 6 P.M. and then went up to a peak of 23 at 7:10 P.M. and dropped to 20, 16 and then went down to 14 at 8:20 P.M. and down to 12 by 8:30 P.M. and then to 9 by 8:40 P.M. and

6 by 8:50 P.M. He concluded that's what one would expect for this type of restaurant in this location.

55. Mr. Preiss stated further that there could be a problem if one of the other retail spaces had a use which stayed open which would compete for those parking spaces including health clubs whose peak hours are sometimes in the evening like Soul Cycle or Orange Theory or Yoga where you may get a class of 10 to 15 people with 10 cars. Assuming the pizzeria was a more successful store then maybe the peak number goes up to 28 but you have 38 spaces available and if you had another competing business that needed 10 or 15 spaces, you could run into a parking problem. To the extent that the other retailers are closing early at 6 P.M. then going forward most of the parking lot would be available starting at the early dinner hour and peak around 7:10 P.M.

56. Mr. Preiss suggested as a condition to granting approval that no other retail tenant be open for business after a certain hour or there be a requirement that the applicant would have to come back to the board and perform a parking analysis to ensure that there wouldn't be a problem.

57. Brian Intindola, a principle of Neglia Engineering provided testimony with regard to traffic engineering issues and is a licensed civil engineer. Mr. Intindola testified that he is more comfortable that the site could accommodate the restaurant without the fine dining area/party room; however, it has to be a complimentary use so that the shared parking concept is valid and you do not have two competing uses that compete at the same time.

58. Mr. Intindola testified that the remaining space is 5,065 square feet divided by 175 the parking standard which yields 29 spaces required which in his opinion is aggressive. Other

parking rates use 1 space per 200 square feet.

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2. There will be no other restaurant of any type at the premises other than the 2,027 square foot area identified on the first floor plan of Virgona & Virgona last revised July 5, 2018 marked as Exhibit A-10.
3. Hours of refuse pickup shall be the same hours of pickup as for Borough residences.
4. Wall sconces will be turned off no later than 11:30 p.m. or one half-hour after any store is required to close by ordinance whichever is earlier.
5. UV film shall be installed on the bollard lights.
6. A shield will be installed on the parking lot lights to lessen spillover as approved by the Borough Engineer.
7. Upon a change in the use or occupancy of the 2,027 square feet space for a restaurant with different peak hour use, a new application for approval shall be filed with the Zoning Board to determine if the parking is adequate and whether or not the use should be approved including a determination as to whether the shared parking calculations and assumptions made by the Zoning Board can accommodate the different peak hour use.
8. No truck parking will be permitted on the premises.
9. No staff, delivery vehicles, or truck parking related to the site shall be

permitted on Columbus Avenue and Lincoln Avenue.

10. The outdoor patio shall not be used past 10 P.M.
11. The basement of the restaurant shall be used only for storage and food preparation.
12. No more than 3,000 square feet of the remaining retail space shall be open beyond 6:30 P.M. as long as a restaurant occupies the premises.
13. Seating shall be limited to 48.
14. The restaurant shall not serve breakfast.
15. The remaining retail space shall not be used for yoga classes, a gym, pilates, soul cycle, orangetheory, pure barre (if permitted by ordinance), health clubs or similar uses that have group activities past 6:30 P.M., as long as a restaurant occupies the premises.

CONCLUSIONS AND DETERMINATIONS

1. All findings of fact set forth above are made a part hereof as if set forth herein at length but not opinions.
2. The proceedings in this matter were voice recorded. The foregoing facts in this Resolution are not intended to be all inclusive but merely a summary and highlight of the complete record made before the Board.
3. N.J.S.A. 40:55D-70 (c) (2) provides that a variance may be granted where the Board finds that the purposes of the Municipal Land Use Law ("MLUL") would be advanced by a deviation from the zoning requirements and that the benefits of the deviation would

substantially outweigh any detriment. The Board finds that the benefits of the proposed improvements, do not outweigh the detriment including without limitation the following (i) inadequate parking and buffering of residential areas; (ii) the close proximity of the patio to a residence directly across the street on Columbus Avenue and the apartments above; (iii) the likelihood of overflow parking on the primarily residential streets of Columbus Avenue and Lincoln Avenue. Furthermore, tenant parking at the site may be used by restaurant patrons during peak hours causing disruption to tenant parking.

4. In addition, the Board finds that the purposes of the MLUL are not advanced by this Application by *inter alia* providing insufficient parking for the number of seats of the restaurant.

5. The Board finds that the Amended Site Plan Approval and variances cannot be granted without detriment to the public good and to the neighboring properties. The Board further finds that these approvals will substantially impair the intent and purpose of the Woodcliff Lake Zone Plan and Zoning Ordinance and are not in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2 due to the size of the restaurant and number of proposed seats. The Board also finds that one of the Master Plan goals is to protect the character of the residential zones and the proposal does not comply with that goal.

6. As such, the granting of the variances for parking and impervious coverage is inappropriate. The patio would be only 9 feet from the street and directly across from a single family residence.

7. The Board further finds that the applicant has failed to meet its burden of proof with regard to negative criteria and has failed to prove special reasons for an outdoor patio and

prove that there will be no adverse impact on the neighboring properties. The parking study was limited to evenings and no studies were performed during daytime hours or proposed daytime peak hours of operation.

NOW, THEREFORE, BE IT RESOLVED that the within Application for Amended Site Approval, together with the variances, be and the same are hereby denied by this Board.

IT IS HEREBY CERTIFIED that this is a true correct copy of a Resolution adopted by the Zoning Board of the Borough of Woodcliff Lake upon a roll call vote at its regular meeting held on October 23, 2018.

A copy of this Resolution shall be given to the Tax Assessor, Borough Clerk, Construction Code Officer, Borough Engineer and the Applicant (through counsel).

ATTEST:

SO APPROVED;


ZONING BOARD SECRETARY


VICE CHAIRMAN ZONING BOARD

Date of Adoption: October 23, 2018

Exhibit 4

OFFICIAL SEARCH FOR MUNICIPAL LIENS

New Jersey Statutes Annotated, Article 3, Title 54, Chapter 5

SEARCH #	72
----------	----

APPLICATION #	72
---------------	----

To:

PRICE, MEESE, SHULMAN & D'ARMINIO
MACK-CALI CORPORATE CENTER
50 TICE BOULEVARD
WOODCLIFF LAKE, NJ 07677

This is to CERTIFY that the undersigned is the Official Tax Search Officer of the BOROUGH OF WOODCLIFF LAKE

in the County of COUNTY OF BERGEN

In pursuance of the authority so vested in me as such Official, I do further certify that I have searched the records of said municipality for unpaid taxes, assessments, all other municipal liens and certificates of tax sale pursuant to N.J.S.A 54:5 on lands situated within said municipality and more particularly described as follows:

Block No.	2708	Lot No.	1	Qualifier	Location	62 BROADWAY
-----------	------	---------	---	-----------	----------	-------------

Assessed to	WCL B'WAY ASSOC.LLCC/O KAMSON CORP.
-------------	-------------------------------------

TAXES				UTILITY & OTHER MUNICIPAL CHARGES				
YR/ 20	TAX	INTEREST	TOTAL DUE	DUE DATE	TYPE	CHARGES	INTEREST	TOTAL
1st Qtr	24510.76			NONE				
2nd Qtr	24510.76							
3rd Qtr	26299.28							
4th Qtr	26590.31	PRIN DUE	26590.31					
YR/ 21	50955.56	PRIN DUE	50955.56					
19 *	98043.04							

ADDITIONAL INTEREST MUST BE COMPUTED TO DATE OF PAYMENT.

QUALIFICATIONS, DEDUCTIONS AND EXEMPTIONS

Veteran:	NONE	Veteran Spouse:	NONE	Others:
Senior Citizen:	NONE	Disability:	NONE	
Farmland Rollback:		Surviving Spouse:	NONE	

ASSESSMENTS

Ord. No	Block	Lot	Original Assessment	Date Confirmed	Total # Annual Installments	Annual Installments Due Date	Paid on Account	Balance Owing	Amt. of Next Installment Due	Interest at % from
NONE										

CERTIFICATES OF SALE FOR TAXES, ASSESSMENTS AND (OR) OTHER MUNICIPAL LIENS

CERT. NO.	DATE OF SALE	AMOUNT	TO WHOM SOLD
NONE			

SUBSEQUENT MUNICIPAL LIENS PAID BY CERTIFICATE HOLDER FOR WHICH AFFIDAVIT HAS BEEN FILED PURSUANT TO N.J.S.A. 54:5-60

DATE OF AFFIDAVIT	TOTAL AMOUNT OF AFFIDAVIT
NONE	

A BUILDING PERMIT WAS ISSUED ON:

THE POSSIBILITY OF ADDED, OMITTED OR ROLL BACK ASSESSMENTS ARE AS FOLLOWS

FOR ADDITIONAL REMARKS -SEE REVERSE SIDE

Fee for making this Search 0.00

DATED 09/22 2020

TYPE	YES	IF YES, YEAR(S)	NO	NOT KNOWN AT THIS TIME	AMOUNT (IF KNOWN)
ADDED ASSESSMENTS				X	
OMITTED ASSESSMENTS				X	
ROLLBACK ASSESSMENTS				X	

Fran Scordo

FRAN SCORDO

OFFICIAL TAX SEARCH OFFICER

CERTIFICATE OF CONTINUATION SEARCH

This is to certify that the foregoing Search has been continued to with the same result as stated except as follows;

FEE	\$	DATE		OFFICIAL TAX SEARCH OFFICER
-----	----	------	--	-----------------------------

Exhibit 5

North Jersey Media Group

Classified Ad Receipt (For Info Only - NOT A BILL)

Customer: PRICE MEESE SHULMAN
Address: 50 TICE BLVD STE 380
WOODCLIFF LAKE NJ 07677
USA

Ad No.: 0004409297
Pymt Method: Invoice
Net Amt: \$115.75

Run Times: 1

No. of Affidavits: 1

Run Dates: 10/09/20

Text of Ad:

PLEASE TAKE NOTICE that a Revised Application for Preliminary and Final Site Plan Approval with variance relief has been filed on behalf of WCL Broadway Realty Associates, LLC ("Applicant") with the Zoning Board of Adjustment of the Borough of Woodcliff Lake ("Board"). The property is designated as Block 2708, Lot 1, and known as 62 Broadway ("Property") within the B-1 Business District. Said special hearing is being held pursuant to Whispering Woods at Bamm Hollow, Inc. v. Tp. of Middletown Planning Board, 220 N.J. Super. 161 (Law Div. 1987) ("Whispering Woods Hearing"), relating to the settlement of an action filed by the Applicant in the Superior Court of New Jersey, Law Division entitled WCL Broadway Realty Associates, LLC vs. Zoning Board of Adjustment of the Borough of Woodcliff Lake, Docket No. BER-L-8727-18 (the "Action"), which was remanded to the Board by a Consent Order of Settlement and Remand dated September 25, 2020 (the "Settlement").

The Applicant seeks to relocate "Ray's Pizza" ("Restaurant") from its current site in Hillsdale, New Jersey to the existing three-story mixed retail/residential use on the Property. The Restaurant will occupy 2,077 sq. ft. on the first floor, with no fine dining area. The Restaurant also proposes a 35' x 7' (245 sf.) outdoor dining area to the south of the building. No enlargement of the building structure is being proposed or requested.

Specifically, on September 25, 2018, the Board memorialized a Resolution permitting the Applicant to operate Ray's Pizza upon the Property, but an appeal of such decision was taken by the Applicant and which resulted in the Action. At the Whispering Woods Hearing, the Board will consider approving the Settlement upon the terms and with the modified conditions set forth in the Settlement. The Settlement, along with all other documents associated with this Revised Application are on file at Borough Hall, located at 188 Pascack Road, Woodcliff Lake, New Jersey, and also available for inspection on the Borough's website.

Separate and apart from the Whispering Woods hearing, the Applicant seeks the following relief: (1) interpretation under N.J.S.A. 40:55D-70(b) of Ordinance 380-41 I.(2) which requires outdoor dining be located in the yard in which the building faces, and its applicability to this building which maintains front yards on both Broadway and Columbus Avenue, or, in the alternative, (2) variance relief from that same section to permit outside dining at the side (south) of the building. There have been no changes to the planned outdoor dining to the south side of the building from the initial application.

In addition to the foregoing described approval and requests for relief, the Applicant will also seek the Board's approval for any and all variances, exceptions, waivers, and other incidental relief that may be required or deemed necessary by the Board after or during its review of this Application, together with any further relief that may be deemed necessary by the Applicant during the hearing process, including that which may be generated by way of revised plans and submission of same. Measurements, percentages and other calculations provided in this notice are in accordance with the documents filed with the Revised Application. Please note that to the extent plan and/or Revised Application revisions are made during the hearing process, these measurements, percentages and other calculations will likely change as will the associated relief required per the Borough Land Use Ordinance. The Applicant will seek approval for any such modifications/revisions.

The Board has scheduled a special public hearing date on the Revised Application for October 21, 2020 at 7:00 P.M., or as soon thereafter as the matter may be heard. This meeting will be held at the Borough Hall, 188 Pascack Road, Woodcliff Lake, New Jersey.

DUE TO THE COVID-19 VIRUS, THIS MEETING WILL BE A VIRTUAL MEETING AND THE PUBLIC WILL NOT BE ALLOWED TO ATTEND IN PERSON. YOU CAN WATCH THE MEETING LIVE. IF YOU HAVE CABLEVISION, TUNE IN TO CHANNEL 77, AND IF YOU HAVE FIOS TUNE IN TO CHANNEL 37. IF YOU WOULD LIKE TO MAKE A PUBLIC COMMENT, TESTIFY, OR POSE A QUESTION YOU MAY CALL IN AT 201-391-4977, EXT. 203. PLEASE NOTE THAT ONLY ONE CALL CAN BE TAKEN AT A TIME. YOU CAN EMAIL COMMENTS OR QUESTIONS TO OUR BOARD SECRETARY UNTIL 6:30 PM ON OCTOBER 21, 2020 AT msmith@wclnj.com, AND YOUR COMMENT AND QUESTIONS WILL BE PLACED INTO THE RECORD. THE PUBLIC WILL BE ABLE TO ACCESS THE ZONING BOARD MEETING THROUGH ZOOM. DETAILED GUIDELINES TO ACCESS ZOOM WILL BE NOTICED WITHIN 48 HOURS OF THE MEETING ON THE BOROUGH WEBSITE.

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WCL Broadway Realty Associates, LLC, Applicant by its attorneys Price, Meese, Shulman & D'Arminio, P.C.
By: John L. Molinelli, Esq.
The Record- 10/09/2020
Fee: \$80.75 (170) 4409297

Exhibit 6

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
ATTORNEYS AT LAW

WWW.PRICEMEESE.COM

TICE CORPORATE CENTER
50 TICE BOULEVARD
SUITE 380
WOODCLIFF LAKE, NEW JERSEY 07677
PHONE: 201-391-3737
FAX: 201-391-9360

4 WEST RED OAKLANE
SUITE 302
WHITE PLAINS, NEW YORK 10604

89 HEADQUARTERS PLAZA NORTH
SUITE 1442
MORRISTOWN, NJ 07960

PLEASE RESPOND TO WOODCLIFF LAKE OFFICE

October 6, 2020

VIA CERTIFIED MAIL, RRR
Legal Notice

RE: WCL Broadway Realty Associates, LLC
62 Broadway, Block 2708, Lot 1
REVISED APPLICATION FOR AMENDED
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH VARIANCE RELIEF
SPECIAL HEARING

Dear Property Owner:

PLEASE TAKE NOTICE that a Revised Application for Preliminary and Final Site Plan Approval with variance relief has been filed on behalf of WCL Broadway Realty Associates, LLC ("Applicant") with the Zoning Board of Adjustment of the Borough of Woodcliff Lake ("Board"). The property is designated as Block 2708, Lot 1, and known as 62 Broadway ("Property") within the B-1 Business District. Said special hearing is being held pursuant to Whispering Woods at Bamm Hollow, Inc. v. Tp. of Middletown Planning Board, 220 N.J. Super. 161 (Law Div. 1987) ("Whispering Woods Hearing"), relating to the settlement of an action filed by the Applicant in the Superior Court of New Jersey, Law Division entitled WCL Broadway Realty Associates, LLC vs. Zoning Board of Adjustment of the Borough of Woodcliff Lake, Docket No. BER-L-8727-18 (the "Action"), which was remanded to the Board by a Consent Order of Settlement and Remand dated September 25, 2020 (the "Settlement").

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Legal Notice
Property Owner
October 6, 2020
Page -3-

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WCL Broadway Realty Associates, LLC,
Applicant by its attorneys Price, Meese, Shulman &
D'Arminio, P.C.

By: /s/ John L. Molinelli
John L. Molinelli, Esq.

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
ATTORNEYS AT LAW

WWW.PRICEMEESE.COM

TICE CORPORATE CENTER
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Legal Notice
Property Owner
October 6, 2020
Page -2-

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Legal Notice
Property Owner
October 6, 2020
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WCL Broadway Realty Associates, LLC,
Applicant by its attorneys Price, Meese, Shulman &
D'Arminio, P.C.

By: /s/ John L. Molinelli
John L. Molinelli, Esq.



BOROUGH OF HILLSDALE

380 Hillsdale Avenue • Hillsdale, New Jersey 07642-2794
201-666-4800 • Fax: 201-358-5002 • www.hillsdalenj.org

September 14, 2020

Ms Donna Canonico
Price Meese Shulman & D'Arminio, P.C.
Tice Corporate Center
50 Tice Boulevard, Suite 380
Woodcliff Lake, NJ 07677

Dear Ms. Canonico,
62 Broadway (Block 2708 Lot 1) in Woodcliff Lake. This list is representative of the properties that are within 200' of the subject property within the Borough of Hillsdale.

You must also send notice to the following:

Corporate Secretary
Suez
69 Devoe Place
Hackensack, NJ 07601

General Manager
Optimum
12-20 River Road.
Fair Lawn, NJ 07410

Bergen County Planning Bd.
ONE Bergen County Plaza
Rm. 415
Hackensack, NJ 07601

Manager- Corp. Properties
Public Service Electric & Gas Co.
80 Park Plaza, T6B
Newark, NJ 07102

Verizon New Jersey Inc.
Land Use Matters
900 Clinton Ave.
Irvington, NJ 07111

Dominic L. DiSalvo, P.E., C.M.E.
Director Engineer/ Dir of WPC Div.
Bergen County Utilities Authority
Foot for Mehrhof Rd.
P.O. Box Nine
Little Ferry, NJ 07643

The attached list of property owners is certified to be true and accurate according to the Tax Assessment Book in the Borough of Hillsdale.

Certified by:

Patrick Wilkins
Tax Assessor

C: Hillsdale Planning Board



OWNER & ADDRESS REPORT

HILLSDALE

WCL BLOCK 2708 LOT 1

09/14/20 Page 1 of 1

BLOCK	LOT	QUAL	CLA	PROPERTY OWNER	PROPERTY LOCATION	Add'l Lots
1601	1		4A	MISHA, JOHN S. & PATRICIA M. 51 LAFAYETTE AVENUE WESTHOOD, NJ 07675	446-452 BROADWAY	
1601	2		2	CARTY, DONALD J 156 DWIGHT AVE HILLSDALE, NJ 07642	156 DWIGHT AVE	
1601	3		2	MALTSEV, BORIS & MARENA 150 DWIGHT AVE HILLSDALE, NJ 07642	150 DWIGHT AVE.	
1601	4		2	BREITENBACH, RICHARD C & KATHLEEN E 144 DWIGHT AVE HILLSDALE, NJ 07642	144 DWIGHT AVE	
1601	7.01		2	REZEN, JAMES & ANN MARIE 21 COLUMBUS AVE HILLSDALE, NJ 07642	21 COLUMBUS AVE.	
1601	7.02		2	CONTE, DONALD & ALEKSANDRA 159 VINCENT ST HILLSDALE, NJ 07642	159 VINCENT ST	
1601	8		2	SAUME, SAMI & MONY YACOB- 27 COLUMBUS AVE HILLSDALE, NJ 07642	27 COLUMBUS AVE	
1601	9		2	KEADY, THOMAS K. & PATRICIA M. 33 COLUMBUS AVE HILLSDALE, NJ 07642	33 COLUMBUS AVE	
1601	10		2	BECK, JOHN & HOWELL, JORDAN T 39 COLUMBUS AVENUE HILLSDALE, NJ 07642	39 COLUMBUS AVE	
1601	11		4A	FORCELLATI, MARCO FMLY LTD.PARTNERSH 843 TELLER LANE RIVER VALE, NJ 07675	458-460 BROADWAY	



BOROUGH OF WOODCLIFF LAKE

188 PASCACK ROAD, WOODCLIFF LAKE, NEW JERSEY 07677

Carlos Rendo, Mayor
Tomas J. Padilla, Borough Administrator

201-391-4977
Fax 201-391-8830

September 16, 2020

Price, Meese, Shulman & D'Arminio, P.C.
Attorneys At Law
Ms. Donna Canonico, Paralegal
50 Tice Corporate Center
Suite 380
Woodcliff Lake, NJ 07677

Re: 200 Foot Property List
Block - 2708 Lot- 1
Borough of Woodcliff Lake

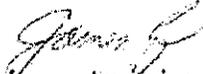
Dear Ms. Canonico,

Per your request, the attached list is the current owners of property according to the 2020 Tax Duplicate in the Borough of Woodcliff Lake that are within 200 feet of the above properties.

I have also attached a listing of utilities that require notification from you. Please note that the Municipal Lease Act requires notice of hearings and applications for certain development approval. It is recommended that Public Utilities and Cable Companies owning land or facilities and/or possessing Rights of Way and Easements within the Borough of Woodcliff Lake be notified via certified mail. Please see the attachments for contacts and addresses.

If you have any questions please contact me at the above phone number or on my cell phone, 201-906-2469.

Sincerely,


James Anzevino
Tax Assessor

OWNER & ADDRESS REPORT

WOODCLIFF LAKE

09/16/20 Page 1 of 1

THIS IS A CERTIFIED LISTING OF ALL PROPERTY WITHIN 200' OF:
BL-2708 LT-1, 62 BROADWAY, WOODCLIFF LAKE, NJ

BLOCK	LOT	QUAL	CLA	PROPERTY OWNER	PROPERTY LOCATION	Add'l Lots
2302	1		5A	NORFOLD SOUTHERN NJ & NY RR CO 188 PASCACK ROAD WOODCLIFF LAKE, NJ 07677	RAILROAD	
2303	1		1	UNITED WATER C/O ALTUS GROUP US LLC P.O. BOX #71970 PHOENIX, AZ 85050	BROADWAY	
2303	2		15C	BERGEN COUNTY COMMUNITY HOUSING 214 STATE STREET HACKENSACK, NJ 07601	49 BROADWAY	2303-3/2303-4
2406	11		1	UNITED WATER C/O ALTUS GROUP US LLC P.O. BOX #71970 PHOENIX, AZ 85050	BROADWAY	
2704	3		4A	CRISTINA REALTY LLC 270 BROADWAY WOODCLIFF LAKE, NJ 07677	84 BROADWAY	
2704	4		4A	CRISTINA REALTY LLC 270 BROADWAY WOODCLIFF LAKE, NJ 07677	82 BROADWAY	
2704	5		1	CRISTINA REALTY LLC 270 BROADWAY WOODCLIFF LAKE, NJ 07677	80 BROADWAY	
2704	6		2	FUNKE, MICHAEL & JESSICA 5 LINCOLN AVE WOODCLIFF LAKE, NJ 07677	5 LINCOLN AVE	
2704	7		2	BLACKTON, RAYMOND & ROSEMARIE 11 LINCOLN AVE WOODCLIFF LAKE, NJ 07677	11 LINCOLN AVE	
2704	8		2	BROSNAHAN, LORRAINE 676 LOTUS AVE ORADELL, NJ 07649	15 LINCOLN AVE	
2708	2		2	JAFFIN, MICHAEL & SHARON 14 LINCOLN AVENUE WOODCLIFF LAKE, NJ 07677	14 LINCOLN AVE	
2708	3		2	DUFFY, C&E 18 LINCOLN AVE WOODCLIFF LAKE, NJ 07677	18 LINCOLN AVE	
2708	4		15F	MCMORROW, WM. & ELIZ. 443 MAGNOLIA AVE WOODCLIFF LAKE, NJ 07677	443 MAGNOLIA AVE	
2708	5		2	CHONG, THOMAS P & ELENA 433 MAGNOLIA AVE WOODCLIFF LAKE, NJ 07677	433 MAGNOLIA AVE	
2708	6		2	CARLSON, RAYMOND & CHRISTINE A. 19 COLUMBUS AVE WOODCLIFF LAKE, NJ 07677	19 COLUMBUS AVE	
2708	7		2	SCHUMACHER, RAYMOND & SUZANNE 11 COLUMBUS AVE. WOODCLIFF LAKE, NJ 07677	11 COLUMBUS AVE	

LIST OF ALL UTILITY COMPANIES WITHIN WOODCLIFF LAKE TO BE NOTIFIED

<p>OPTIMUM GENERAL MANAGER 40 POTASH ROAD OAKLAND, NEW JERSEY 07436</p>	<p>BERGEN COUNTY UTILITIES AUTHORITY PO BOX 9 LITTLE FERRY, NEW JERSEY 07643</p>
<p>SUEZ 69 DE VOE PLACE HACKENSACK, NEW JERSEY 07601</p>	<p>VERIZON 1 VERIZON WAY BASKING RIDGE, NEW JERSEY 07926</p>
<p>PUBLIC SERVICE ELECTRIC & GAS CORPORATE SECRETARY 80 PARK PLACE NEWARK, NEW JERSEY 07101</p>	<p>PARK RIDGE WATER UTILITY CORPORATE SECRETARY 53 PARK AVENUE PARK RIDGE, NEW JERSEY 07656</p>
<p>BERGEN COUNTY DEPT. OF PLANNING & ECONOMIC DEVELOPMENT JOSEPH A. FEMIA, P.E. DIRECTOR & COUNTY ENGINEER ONE BERGEN PLAZA, 4TH FLOOR HACKENSACK, NEW JERSEY 07601-7000</p>	

OFFICIAL SEARCH FOR MUNICIPAL LIENS

New Jersey Statutes Annotated, Article 3, Title 54, Chapter 5

SEARCH # 72

APPLICATION # 72

This is to CERTIFY that the undersigned is the Official Tax Search Officer of the BOROUGH OF WOODCLIFF LAKE

To:
PRICE, MEESE, SHULMAN & D'ARMINIO
MACK-CALI CORPORATE CENTER
50 TICE BOULEVARD
WOODCLIFF LAKE, NJ 07677

in the County of COUNTY OF BERGEN
In pursuance of the authority so vested in me as such Official, I do further certify that I have searched the records of said municipality for unpaid taxes, assessments, all other municipal liens and certificates of tax sale pursuant to N.J.S.A 54:5 on lands situated within said municipality and more particularly described as follows:

Block No.	2708	Lot No.	1	Qualifier		Location	62 BROADWAY
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Assessed to	WCL B'WAY ASSOC.LLCC/O KAMSON CORP.
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TAXES				UTILITY & OTHER MUNICIPAL CHARGES				
YR/ 20	TAX	INTEREST	TOTAL DUE	DUE DATE	TYPE	CHARGES	INTEREST	TOTAL
1st Qtr	24510.76			NONE				
2nd Qtr	24510.76							
3rd Qtr	26299.28							
4th Qtr	26590.31	PRIN DUE	26590.31					
YR/ 21	50955.56	PRIN DUE	50955.56					
19	98043.04							

ADDITIONAL INTEREST MUST BE COMPUTED TO DATE OF PAYMENT.

QUALIFICATIONS, DEDUCTIONS AND EXEMPTIONS

Veteran:	NONE	Veteran Spouse:	NONE	Others:
Senior Citizen:	NONE	Disability:	NONE	
Farmland Rollback:		Surviving Spouse:	NONE	

ASSESSMENTS

Ord. No	Block Lot	Original Assessment	Date Confirmed	Total # Annual Installments	Annual Installments Due Date	Paid on Account	Balance Owning	Amt. of Next Installment Due	Interest at % from
NONE									

CERTIFICATES OF SALE FOR TAXES, ASSESSMENTS AND (OR) OTHER MUNICIPAL LIENS

CERT. NO.	DATE OF SALE	AMOUNT	TO WHOM SOLD
NONE			

SUBSEQUENT MUNICIPAL LIENS PAID BY CERTIFICATE HOLDER FOR WHICH AFFIDAVIT HAS BEEN FILED PURSUANT TO N.J.S.A. 54:5-60

DATE OF AFFIDAVIT	TOTAL AMOUNT OF AFFIDAVIT
NONE	

A BUILDING PERMIT WAS ISSUED ON:

THE POSSIBILITY OF ADDED, OMITTED OR ROLL BACK ASSESSMENTS ARE AS FOLLOWS

FOR ADDITIONAL REMARKS - SEE REVERSE SIDE

TYPE	YES	IF YES, YEAR(S)	NO	NOT KNOWN AT THIS TIME	AMOUNT (IF KNOWN)
ADDED ASSESSMENTS				X	
OMITTED ASSESSMENTS				X	
ROLLBACK ASSESSMENTS				X	

Fee for making this Search 0.00

DATED 09/22 2020

Fran Scordo
FRAN SCORDO
OFFICIAL TAX SEARCH OFFICER

CERTIFICATE OF CONTINUATION SEARCH

This is to certify that the foregoing Search has been continued to with the same result as stated except as follows;

FEE	\$	DATE	
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OFFICIAL TAX SEARCH OFFICER