

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON
NEW JERSEY**

Application #: 2015-56-V
Decided: November 10, 2015
Memorialized: December 8, 2015

FINDINGS AND CONCLUSIONS

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and the testimony and evidence presented at the hearing on November 10, 2015 the following findings of fact and conclusions are made:

1. The Applicant is Eric Sacks (Sacks Orthodontics).
2. The Property is commonly known as 41 North Livingston Avenue, and is taxed as Block 1409, Lot 6. The property is in the R-4 Zone.
3. The Applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrears.
4. The Applicant proposes to occupy an existing orthodontic office, and to utilize the entire building where the office is located to use as an orthodontic office. The use as an orthodontic facility originated as a conditional use for a home based business. The Application is for elimination of the residential component of the building thereby making the building a prohibited use.
5. In addition to the use variance, bulk variances are requested for violations of the following Livingston Zoning Ordinances:
 - (a) Section 170-94 Parking – 24 parking spaces required, 15 parking spaces proposed; a variance for 9 spaces requested;
 - (b) Section 170-94 B(10) Tandem Parking - Prohibited, 2 tandem spaces requested;
 - (c) Section 170- 94 B(10) Aisle widths – none for tandem stalls requested;
 - (d) Section 170-94B(11) driveway width – 12 ‘ or multiples of 10’ required, 19.6’ proposed;
 - (e) Section 170-90 A(1) – Signage Area – 2 square feet required, 12.5 square feet proposed, a 10.5 square foot variance is requested;
 - (f) Section 170-99 C(3) Side Yard Setback - 10’ required, 8.87 ‘ proposed, a 1.13’ variance is requested;
 - (g) Section 170-3 Parking Space for Residential Zones – 9’ required, 8.5’ proposed, .5 variance per parking space requested; and
 - (h) Section 170-91 (3)(b) Height of Fence for Side Yard – 60 inches required, 102 inches proposed, a variance of 42 inches is requested.
6. The following persons testified at the hearing: The Applicant, Eric Sacks, the Applicant’s architect, John James A.I.A, and the Applicant’s planner, Richard Kelleher. The Applicant was represented by Stephen Geffner, Esq.
7. The following persons objected to or expressed interest in the application at the hearing: Ken Mei, neighbor living at 32 Hazel Avenue.
8. The applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(4) for the relief sought by demonstrating that there are particular reasons for allowing the building to be used as an orthodontic office. The Property has been used primarily as an orthodontic office for many years, and many Livingston residents use its services. The use of the building for residential purposes has become undesirable. The Applicant proposes aesthetic improvements to the Property that will make it blend in better with the neighboring properties.

The Applicant states that there will be no expansion of professional services to the portion of the property previously dedicated to residential use. The portion of the property previously used for residential purposes will be used solely for storage or office functions related to the medical use. The elimination of the residential portion of the property will not result in expansion of the professional activity beyond its current level. The Property will fit within the streetscape and the property can accommodate the proposed changes

The applicant has satisfied the statutory requirements of N.J.S.A. 49:55D-70(c)(1) for the relief sought by demonstrating that there is a hardship due to the pre-existing location of the house on the lot. The house is not being enlarged, and the variances requested are intended to improve the aesthetics of the house. Changes for parking will increase the number of parking spaces. Changes for signage are reasonable and will improve its visibility and make the property safer. The Board found that granting the proposed variances will not result in any substantial detriment to the public good, nor will there be any impairment of the zoning plan or municipal zoning ordinance. Now, therefore, be it **RESOLVED** by the ZONING BOARD OF ADJUSTMENT of the Township of Livingston that the application herein submitted is granted the following variances from the Ordinance:

The residential portion of the Property can be eliminated, and the property can be used exclusively as an orthodontics office.

Section 170-94 Parking – a variance for 9 spaces is granted;

Section 170-94 B(10) Parking Tandem Spaces- a variance allowing 2 tandem spaces is granted;

Section 170- 94 B(10) Parking Aisle Widths - a variance for aisle widths is granted for the tandem stalls;

Section 170-94B(11) Driveway Widths - a driveway variance of .4' is granted;

Section 170-90 A(1) – Signs - a 10.5 square foot variance is granted for signage;

Section 170-99 C(3) a Side Yard Setback variance of 1.13' is granted;

Section 170-3 Parking Space for Residential Zones –a .5' variance per parking space is granted; and

Section 170-91 (3)(b) Height of Fence for Side Yard – a variance of 42 inches is granted.

This approval is subject to all other requirements of the Township ordinances, building code, and the right of appeal by any interested party. Also, as required by Livingston Ordinance 170-27(A), construction must be commenced within one year of the date hereof or the variance shall expire.

Copies of the Applicant's survey showing the proposed improvements and architectural plans are attached hereto as an exhibit to indicate the final version thereof.

This Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on November 10, 2015 in which Board voted six in favor and none opposed to approve the application in accordance with and subject to the conditions and terms set forth herein on the record.

CHAIRMAN:



JAMES HOCHBERG

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Livingston on November 10, 2015 by the affirmative votes of Mr. Gillman, Mr. Nardone, Ms. Hwang, Mr. Resnick, Ms. Tabak Fass and Mr. Bier; they being all of the Members present and eligible to vote.

PLANNING ADMINISTRATOR:



JACKIE COOMBS-HOLLIS

Prepared by: Alan Ozarow, Esq.