

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

November 5, 2019

PREMISES: BLOCK 46 Lot 24

27 Wall Street

CASE NO.: LUB-062

APPLICANT: Peter Hestevold

(Appeal of Zoning Official Determination)

RESOLUTION OF FINDINGS AND DETERMINATION

WHEREAS, Peter Hestevold, has appealed to the Land Use Board of the Borough of Rockaway (the “Board”) pursuant to N.J.S.A. 40:55D-70(a) seeking a determination that the issuance of a zoning permit to the property owner (Dharam Mehta) should be set aside as exceeding the scope of the prior construction.; and

WHEREAS, the Board did hold hearings on said application on September 3, 2019 and October 2, 2019 upon notice to all parties requiring notice of this application, and all such parties being properly noticed and given an opportunity to be heard, and

WHEREAS the Board considered the following documents/exhibits:

1. Application prepared by Alyse Landano-Hubbard, Esq. of Larry Weiner Law Office, dated May 20, 2019.
2. A series of email communications between Mr. Mehta, Mr. Hestevold, Mr. Phillip Dattolo, and Ms. Barrie Palumbo.

3. An architectural elevation of the proposed new structure prepared by Mr. Mehta dated 2/11/18.
4. A four page exhibit consisting of an overhead view and three pages of architectural floor drawings (by Mr. Mehata)
5. Administrative Checklist;
6. Schedule "A" Checklist Appeal/Interpretation/Conditional Use;

WHEREAS the Land Use Board, after hearing all of the evidence presented by the Applicant, has made the following findings of fact:

1. The applicant is represented in this matter by Alyse Landano Hubbard, Esq. of the law office of Larry I Wiener.
2. The proof of service and publication of notice are in order.
3. The property which is the subject of the appeal 27 Wall Street is owned by Mr. Dharam Mehta.
4. The applicant/appellant is Mr. Peter Hestevold who is the owner of an adjoining property at 25 Wall Street, Rockaway, NJ.
5. The applicant seeks a determination that the zoning officer's grant of a zoning permit exceeds the scope of the previous structure and that the approval should be revoked by the Board.
6. Factually, it developed that the property at 27 Wall Street did have building located on the lot. The structure was destroyed by fire some time ago and the owner was required to remove the remaining structure as it was unsalvageable and unsafe.
7. Sometime after purchasing the property on or about March of 2018 Mr. Mehta, engaged in some communications with Mr. Hestevold and another owner, Mr. Phillip Dattolo concerning his plans for a new building. Some concerns were raised by the abutting neighbors which Mr. Mehta attempted to address. Mr. Mehta is a licensed NJ Architect.
8. Theses communications appear to have ended in April of 2018 with nothing further outwardly occurring.
9. On or about May 8 of 2019, Mr. Hestevold noticed Borough officials walking the site and proceeded to investigate the status of 27 Wall Street. He determined that a zoning permit had been issued and filed this appeal of the issuance of the zoning permit within twenty (20) days of becoming aware of the permit. (N.J.S.A. 40:55D-70(a)).

10. At the initial hearing, after hearing the testimony of Mr. Hestevold, the Board unanimously voted that the appeal had been timely filed.
11. At the second and final hearing the Board heard and considered the substantive basis for the appeal.
12. The now vacant lot is in the Borough Center zone and does not meet several of the lot size criteria; specifically: the lot is approximately 2,300 feet in area whereas 2,500 square feet is required; the lot is approximately 20 feet wide whereas 25 feet is required. It is also noted that the proposed structure violated the front, side and rear yard setback requirements
13. Both Mr. Hestevold and Mr. Dattolo testified relative to structural concerns for their properties and restrictions on light and air if the proposed building were to move forward.
14. The Board listened to the testimony of Ms. Palumbo the zoning officer and she indicated that her initial interpretation was that the application constituted a re-construction of what had previously been on the site and therefore was a pre-existing, non-conforming use and thereby permitted. In preparing for her testimony Ms. Palumbo re-reviewed the development application and concluded that the better course would be to require the owner to secure variance relief for any new structure as the new proposal was greater in scope than that which previously existed. The Board specifically finds that Ms. Palumbo acted in good faith with regard to her initial review and throughout the subsequent proceedings.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined the following:

- A.** The applicant timely filed his appeal, i.e. within twenty days from when he knew or should have known of the issuance of the zoning permit. Trenkamp v. Township of Burlington, 170 N.J. Super 251 (Law Div 1979)
- B.** It is apparent that abandonment of the use is not an issue and that the owner always intended to replace the structure.
- C.** Objectively reviewing all of the facts and considering the testimony of the witnesses, it is apparent that the zoning approval would allow a

footprint larger than the previous footprint and therefore an expansion of the prior structure and would also entail additional variance relief.

- D.** The Board also notes that there are aspects of the development of this lot that are better reviewed at a public hearing before the Board with the input of the Board Engineer and Planner, these include such items as parking, the possible effect of construction activity on adjoining structures, affordable housing; the need for variance relief from the requirements of the Borough Center Zone.
- E.** The Board also requires guidance from the planner regarding Section 172-32 of the Zoning Ordinance which in summary provides that if a non-conforming structure is destroyed to an extent greater than fifty percent, it may only be reconstructed in a manner conforming to the zoning regulations.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that the application is granted and the zoning certificate is revoked for the reasons set forth herein.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Land Use Board held on November 5, 2019.

Colleen Reardon, Secretary