

**RESOLUTION
BOROUGH OF BUTLER
PLANNING BOARD
IN THE MATTER OF ROBERT J. SOVA
DECIDED ON SEPTEMBER 16, 2021
MEMORIALIZED ON OCTOBER ____, 2021
APPLICATION NO. 21-208V
EXSCIND CONDITION OF APPROVAL IN PRIOR RESOLUTION**

WHEREAS, the Applicant, Robert J. Sova, (hereinafter the “Applicant”) has filed an application with the Borough of Butler Planning Board (“Board” or “Planning Board”) seeking to exscind a condition contained in a prior Resolution in regard to real property designated as Block 201, Lot 2.21 on the Tax Assessment Map of the Borough of Butler which premises are located at 1546 Route 23, Butler, New Jersey in the HC-2 Highway Commercial Zone (hereinafter “HC-2 Zone”); and,

WHEREAS, a public hearing was held on September 16, 2021, after the Planning Board determined it had jurisdiction; and,

WHEREAS, the Applicant was represented by John A. Testa, Esq.

NOW, THEREFORE, the Planning Board makes the following findings of fact based on evidence presented at its public hearing, at which time a record was made.

Counsel for the Applicant represented that the Applicant, Dr. Robert J. Sova is a Doctor of Veterinary Medicine. Dr. Sova in 1993 presented an application to the Borough of Butler Board of Adjustment and obtained preliminary and final site plan approval as well as use variance approval in order to construct a commercial building with a veterinary office and animal hospital on the first floor and a residential one-bedroom apartment on the second floor. The residential apartment was not a permitted use and required use variance approval.

The Board of Adjustment in approving the application obtained a stipulation from Dr. Sova that the second-floor apartment would only be used in conjunction with his veterinary medical

practice. Thus, the apartment had to be occupied by someone who worked for the animal hospital in order to provide a 24-hour presence on the site. At the time that the application was brought before the Board, Dr. Sova testified that the apartment was required because critically ill animals needed to be observed periodically when staying overnight.

The residential apartment has existed on-site for over 27 years. The Applicant now seeks to remove the condition from the Resolution that the apartment must be occupied by someone who works for the animal hospital. Dr. Sova represented that he no longer keeps animals overnight. He confirmed that the business practice has changed over the years. At this time, if an animal needs 24-hour care, they are referred to another local emergency 24-hour facility. As a result, there will be no animals kept overnight at the facility.

The meeting was opened up to members of the public and there were no members of the public present who expressed an interest in this application.

NOW, THEREFORE, the Butler Planning Board makes the following conclusions of law based upon the foregoing findings of fact.

The application before the Board is a request to excise condition 1(a) in a prior Resolution of the Borough of Butler Board of Adjustment bearing Application No. SP.92-5 decided on January 11, 1993 which decision was memorialized in a Resolution adopted by the Butler Board of Adjustment on February 8, 1993. This application is in regard to property designated as Block 201, Lot 2.21 on the Tax Assessment Map of the Borough of Butler which premises are located at 1546 Route 23, Butler, New Jersey in the HC-2 Zone. The Board determines that at the time of the original approval on January 11, 1993 a veterinary office and animal hospital was a permitted use in the HC-2 Zone. More specifically, the Resolution states "The property is in a HC-2 Highway Commercial District Zone which is a zone designated to permit retail uses and commercial services.

The HC-2 Zone permits professional offices. The Butler Land Use Ordinance includes in its definition of professional offices veterinarian offices.” (1993 Resolution, Page 3).

The Butler Board of Adjustment in the 1993 Resolution also accepted the representations on behalf of the Applicant that an “on-site residential unit was necessary and a common functional requirement in any veterinary practice where surgery is performed since 24-hour surveillance is required by a caretaker for the recuperating animals.” (1993 Resolution, Page 5).

In connection with the 1993 approval, Dr. Sova stipulated that the second-floor apartment would only be used in conjunction with the veterinary medical practice (1993 Resolution, page 6).

The Board of Adjustment in the 1993 Resolution specifically found the following:

“5. That the use variance requested for a second-floor residential apartment in the HC-2 Zone is for a necessary accessory use to a veterinarian practice which is a permitted use in the HC-2 Zone. The Board finds that special reasons exist for such variance in that granting of the use variance, so long as the use is coupled with the veterinarian practice and animal hospital activities, promotes the general welfare by allowing the creation of a functionally useful animal hospital which inherently serves the public good. The Board concludes that the provision for good veterinarian care for pets and animals is in the public interest. The Board finds that the HC-2 Zone permits a veterinarian office for veterinarian care, but it is clear that better care of critically ill animals requires an on premises veterinarian or medical technician 24-hours a day which can best be provided by allowing a living unit on the premises of the veterinarian office and hospital. The use variance requested is granted for special reasons within the law.” (1993 Resolution, page 8).

The 1993 Resolution also contains Condition 1(a) on page 8 of the Resolution which required the second-floor apartment to only be occupied by an employee of the veterinarian practice/hospital situated on the first floor of the subject property. Further, Condition 1(a) provides that:

“In the event that the first floor ceases to be used as a veterinary practice or hospital, the right of the Applicant to utilize the second floor apartment for a residential unit shall cease and the use of the second floor shall revert back to

any use permitted in the Zone in which the premises is then located under the Ordinance and regulations then pertaining.” (1993 Resolution, page 9).

Condition 1(a) of the 1993 Resolution also required the Applicant to execute and record a Deed with a restrictive covenant that the second-floor apartment only be occupied by an employee of the veterinarian practice/hospital. (1993 Resolution, page 9).

The Board accepts the representations of Dr. Sova that the veterinary practice has changed since 1993 and Dr. Sova’s animal hospital no longer provides 24-hour care. The Board also accepts the representations of Dr. Sova that should an animal need 24-hour care, Dr. Sova will refer the animal to another local emergency facility that provides 24-hour care. Thus, the business practice of Dr. Sova no longer provides 24-hour care thereby eliminating the necessity of having an employee of the veterinarian practice and hospital remain on premises in the apartment on the second floor.

The Board finds that the apartment has been in use at this location since 1993 and since that time there has been no substantial detriment to the public good, no substantial detriment to the adjoining properties and no substantial impairment of the zone plan and zoning ordinance. As a result, the Board concludes that it is appropriate to grant relief thereby excising Condition 1(a) of the 1993 Resolution and thereby allowing the Applicant to have someone other than an employee of the business occupy the second-floor apartment above the veterinary hospital and practice. The Board also notes that due to the passage of time and the change in business practices that excising Condition 1(a) is appropriate and is supported under the case law Gayatriji v. Borough of Seaside Heights, 372 N.J. Super. 203 (Law Div. 2004) as well as Orloski v. Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989). The Board finds that excising Condition 1(a) in the 1993 Resolution is fair and appropriate and that the original approval granting preliminary and final site plan approval along with bulk variance relief to permit

the premises to be occupied and used as a veterinarian office and animal hospital on the first floor is still valid even though the apartment on the second floor may now be occupied by a non-employee of the business.

Upon consideration of the complete submission package, testimony and application, the Board determines that the request to excise Condition 1(a) of the 1993 Resolution meets the minimum requirements of the Municipal Land Use Law, Case Law and Borough Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested.

A Motion was made to deny the application. The Motion was seconded. Upon a roll call vote, there were three (3) votes in favor of the motion to deny the application and six (6) votes opposed to the motion to deny the application. Thus, the Motion to deny the application failed to pass. A motion was then made to approve the application. The Motion to approve the application was seconded. A roll call vote was taken and the Motion to approve the application passed by a vote of six (6) votes in favor of granting the application and three (3) votes opposed to granting the application.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board that the application of Robert J. Sova for property designated as Block 201, Lot 2.21 on the Tax Assessment Map of the Borough of Butler which premises are located at 1546 Route 23, Butler, New Jersey in the HC-2 Zone, requesting land use relief is determined as follows:

1. Condition 1(a) of the 1993 Resolution in the matter of Dr. Robert J. Sova and Barbara Sova, his wife, bearing Application No. SP92-5 decided on January 11, 1993 which Resolution was memorialized on February 8, 1993, be and is hereby excised, but the remainder of the Resolution shall remain in full force and effect except as satisfied or amended and not in conflict with this approval.

IT IS FURTHER RESOLVED that the application is granted subjected to the following terms and conditions:

1. The Applicant represents that all of his representations and stipulations made either by or on behalf of the Applicant to the Borough of Butler Planning Board are true and accurate and acknowledges that the Planning Board specifically relied upon the Applicant's stipulations in the Board's granting of this approval. If any representation or stipulation is false, this approval is subject to revocation.

2. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the public hearing on September 16, 2021.

3. The Applicant shall record a Deed that eliminates the restrictive covenant in the Deed that limits the occupancy of the second-floor apartment to an employee of the veterinary office and animal hospital. The Applicant shall provide a copy of the Deed to the Board Attorney for review and approval prior to the Deed being recorded. The Deed shall also reference this Resolution of the Planning Board.

4. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of request by the Board's Secretary.

5. Certification that taxes are paid to date of approval.

6. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Butler, County of Morris, State of New Jersey, or any other agency having jurisdiction hereunder.

VOTE ON APPLICATION

Motion Introduced By:

Seconded By:

In Favor:

Opposed:

VOTE TO APPROVE RESOLUTION

Motion Introduced By:

Motion Seconded By:

In Favor

Opposed

Butler Planning Board

_____, Board Secretary

_____, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Butler Planning Board on September 16, 2021 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on October ____, 2021.

_____, Board Secretary