

**RESOLUTION OF FINDINGS AND CONCLUSIONS
PLANNING BOARD OF THE
BOROUGH OF WOODBURY HEIGHTS
2015-11**

WHEREAS Casa Dance Studio, LLC and Brian and Anne Deputy have applied to the Planning Board of Borough of Woodbury Heights seeking an interpretation, and in the alternative a use variance and site plan waiver to establish a mixed use consisting of a dance studio and single family residence; and

WHEREAS, the property in questions is located on Glassboro Road, Block 112, Lots 5.01, 6.03 & 6.04 in the HC (highway commercial) district; and

WHEREAS, the Borough of Woodbury Heights Planning Board has the right to exercise to the same extent and subject to the same restrictions, all the powers of the Zoning Board of Adjustment; and

WHEREAS, the Borough of Woodbury Heights Planning Board has had an opportunity to review the application for Casa Dance Studio, LLC seeking an interpretation, and in the alternative a use variance and site plan waiver to establish a mixed use consisting of a dance studio and single family residence and a hearing having been held thereon and proper notices having been served on all surrounding property owners as required by Statute; and

WHEREAS, the Borough of Woodbury Heights Planning Board has made the following factual findings:

1. Michael A. Aimino, Esquire appeared on behalf of the applicant. The applicant presently operates a dance studio in the Borough. She has purchased the property in question and will relocate the dance studio to the site and reside in the residential portion with her family.

2. The applicant is seeking a determination by the Board that the mixed residential/commercial use is a valid pre-existing non-conforming use. The applicant is also seeking an interpretation that a dance studio is a permitted use in the highway commercial zone. In the alternative, the applicant is seeking a use variance to permit the mixed use. The applicant is also seeking waiver of formal site plan review.

3. The property consists of approximately 6 acres, is irregular in shape with approximately 300' of frontage on Glassboro Road. Approximately 1 acre of the site is presently developed with a structure consisting of a commercial building with an attached residence and a parking area which can conceptually accommodate up to 34 parking spaces. Adjacent and surrounding uses are primarily commercial.

4. The applicant described her business as one that teaches dance to individuals from fourteen months of age and up. Hours of operation are generally Monday through Friday from 4:30 P.M. until 9:00 P.M. and Saturdays from 8:30 A.M. until 2:00 P.M. The applicant testified that the trash generated is comparable to a typical residential use. Several individuals from the public appeared in support of the application. No one appeared in opposition. It was established that there have been various commercial and mixed uses on the site throughout the years. However, testimony was not presented regarding the specific use or uses which existed at the time the Zoning Ordinance was established. Although a dance studio is not specifically set forth as one of the permitted uses in the zone, it is less intense than some of the permitted uses. The Board determined that the proposed use is not a valid pre-existing non-conforming use and that the mixed residential/commercial use is not a permitted use in the zone. Therefore, a use variance is necessary.

5. The applicant presented the testimony of J. Timothy Kernan, P.E., P.P., C.M.E. of Maser Consulting P.A. Mr. Kernan provided testimony regarding the positive and negative criteria necessary for the applicant to carry the burden of proof for a use variance. Mr. Kernan also provided testimony supporting the applicant's request for waiver of formal site plan review. In lieu of formal site plan review the applicant is willing to prepare plans to address parking, circulation, lighting and landscaping. There was significant discussion regarding site improvements which would be necessary to protect the safety of patrons of the dance studio. The Board carefully considered the review letters of the Planning Board Engineer, Mark R. Brunermer, P.E., C.M.E. dated September 10, 2015 and Planning Board Planner, Tiffany A. CuvIELLO, P.P. dated September 14, 2015.

6. The application submitted by the applicants substantially complies with the requirements of the Borough of Woodbury Heights Ordinance. The request by the applicants can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Borough of Woodbury Heights Ordinance. The applicants have shown the special reasons necessary to grant the variance. The Board determined that the site is particularly suited for the proposed use as the combined commercial/residential structure is already in existence and a mixed use has been conducted for a number of years. The

Board also determined that although a dance studio is not specifically listed as a permitted use in the zone, it is compatible with other permitted uses and is less intense than many other permitted uses.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Woodbury Heights that the application of Casa Dance Studio, LLC and Brian and Anne Deputy seeking a use variance and site plan waiver to establish a mixed use consisting of a dance studio and single family residence is hereby granted subject to the following conditions:

1. The applicant shall obtain any other applicable governmental approval which the applicant is required to obtain from any Federal, State, County or Local Governmental Agency or body.

2. The residential use shall be as a single family dwelling to be occupied by the owner/operator of the business conducted on site.

3. The following variances representing pre-existing conditions are granted:

a) Side yard set back of the principal structure of 7.9' where 10' is required.

b) Side yard set back of accessory building of 1' where 10' is required.

c) Parking closer to the street right of way than permitted by ordinance.

d) Failure to provide landscaping along the right of way. However, landscaping will be provided to satisfaction of Board professionals.

4. The applicant shall develop a plan in consultation with the Planning Board Planner and Engineer to address parking, circulation, lighting and landscaping. The Board professionals shall have discretion regarding the number of parking spaces necessary to safely accommodate the uses. A circulation plan shall allow appropriate access for emergency vehicles. In the event plans cannot be developed to the satisfaction of the Board professionals, the applicant will be required to return to the Board for approval of these items.

5. If the applicant is unable to utilize the existing signage then they will need to provide signage that conforms to the Borough Ordinance or make application for a variance.

6. The Board has no objection to the clothing donation box remaining on the property subject to compliance with Borough Ordinances and agreement between the property owner and sponsor of the donation box.

7. No parking, pick up or drop off shall be permitted on Glassboro Road in front of the property.

8. Final plans addressing all conditions set forth herein shall be prepared and submitted to the satisfaction of the Board professionals. No certificate of occupancy or temporary certificate of occupancy for the dance studio shall be issued until all site improvements are completed. The applicants shall however be permitted to occupy the residence pending completion of site improvements.

9. The Borough Engineer will conduct site inspections to assure compliance. Bonding shall not be required however, escrow shall be posted.

10. The applicant shall satisfy all outstanding fees and escrows prior to the granting of construction permits or issuance of a Certificate of Occupancy.

Adopted at a regular meeting of the Borough of Woodbury Heights Planning Board on November 2, 2015.

PLANNING BOARD OF THE BOROUGH
OF WOODBURY HEIGHTS

HARRY W. ELTON, JR., CHAIRMAN

ATTEST:

ANNE DEECK, SECRETARY