

BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740
732-870-2570
Pro Se Plaintiff

BRIAN D. ASARNOW
Plaintiff,

vs.

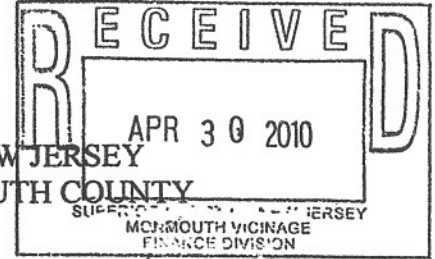
City of Long Branch,
A Municipal Corporation of NJ

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON:PW:
Civil Action

VERIFIED COMPLAINT
IN LIEU OF PREROGATIVE WRITS (Mandamus)
(R:4-69-1)



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Plaintiff, Brian Asarnow, located and doing business at those premises commonly known as 55 Community Place, referenced on the Municipal Tax Map as Block 237 Lot 22, in the City of Long Branch, County of Monmouth and State of New Jersey, by way of Complaint against the defendant herein says:

FIRST COUNT
(Voiding of Permit)

1. Plaintiff Brian D. Asarnow (hereinafter "plaintiff") as of August 1995, is the owner in fee of the above mentioned property which is located in the industrial zone adjacent to, within 200 feet of and directly across the street from lots illegally acquired and used by Ed Bruno & E & L Paving Co. (hereinafter "Bruno/E&L") The property is located at the end of a dead end street with no legal turnaround for trucks and other traffic. Plaintiff uses the property as an office, lab and for light manufacturing and rents space to other businesses.
2. E&L Paving Company is the owner in fee of lot 13.02, which when purchased in 1965 was in the R zone (no map available) and later became part of the I zone and is presently so, and upon which a garage and office was built as its headquarters. E&L also owns lots 19, 20, 21 which when purchased in 1972 were in the R7 zone, currently the R4 zone and which adjoin a brook in a flood zone. E&L also owns lots 32.02 (aka 32b), purchased 1974, 38.02 (1971), 39 (1965) and 40 (1977), all now known as lot 32.02, which were previously in the R(lot 39) and R7 zone and now the C-2 zone, and adjoin same brook opposite lot 13.02. E&L also owns lot 37.01 which was in the R7 zone then the C-2 zone and is now somehow part of lot 32.01 in the I zone. Lot 32.01 has always been in the I zone and contained a preexisting, non-conforming residential property which was demolished subsequent to Plaintiff's occupation.(see history of lots, tax maps

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unfairness. (See Joel v. Morroco) In fact, they gain by getting to illegally use the properties a little longer.

10. Any dismissal to be without prejudice. Within Dismissal Unsupported by findings or case law:

Due to the strong policy favoring hearing on the merits, dismissal with prejudice is especially rare - particularly when no findings exist! (i.e., Third Count). **See also 6. preceeding as to no laches when the public interest is involved and no prejudice to Defendants exists.** The sole case submitted by Defendants and the court in support of its dismissal with prejudice of all three counts, Harris v. Borough of Fair Haven, illustrates that the dismissal is to be without prejudice pending remand and exhaustion and finality of administrative remedies. (though not required in this matter - see above) The 45 days under R. 4:69-6 is tolled pending the judicial review. Though emphasizing the need to exhaust his remedies, the Defendants and court nevertheless seek to dismiss with prejudice. No discussion is had concerning whether Plaintiff slumbered on his right (he has not and immediately sought and obtained review by administrative officials) or how his matter differs from the case cited in order to warrant an extremely rare dismissal with prejudice.

*Plaintiff has given Tort Notice (Pa219-222) and as noted herein and in his 7/28/10 Certification, after expiration of the six month investigative period, Plaintiff will assert additional tort claims against the Defendants, including but not limited to: claims due to palpably unreasonable enforcement of the laws and breach of fiduciary trust as to Long Branch, and: nuisance, property damage, depreciation and other damages for using properties in violation of MLUA, trespass, harassment, tortious interference with business, and arson as to the private parties.

and by the State Constitution" Court of equity may exercise its power to enjoin the enforcement of invalid ordinances or the abuse of administrative powers granted by the Legislature." Plaintiff's submission to the lower court, as found below, meets the above criteria As argued above, The MLUL does not give a zoning officer the power to grant de facto use variances. Plaintiff has been specially affected and demonstrates severe inconvenience and irreparable harm from the public nuisance created. The zoning violations in the First and Second Counts may also be viewed as continuing violations and immune from laches.

B. The Court Failed to First Consider Evidence of the Unilaterally Created and Expanded Non-Permitted Use and that the De Facto Granting Of a Use Variance by the Zoning Officer and Underlying Corruption Violate the Aforestated Public Interest

The court is directed to Point 1B preceeding, T1 and C. following.

C. The Court Erred in Applying the Crowe v, DeGoia Standard and in Failing to Recognize the Serious Escalation of Events, Severe Inconvenience and Irreparable Harm Visited Plaintiff Due to the Public Nuisance Created by Issuance of the Permit

As argued below:

1. No legal basis exists for grandfathering use or issuing permit:

A review of Ord 235 (Adopted 5/31/1955 Pa12), the histories of lots acquired by Bruno/E&L (Pa1, all in the R-7 zone in the 1969 zoning map) and the lack of any previous permits granted to E&L as evidenced in Plaintiff's April 4, 2007 OPRA request, (Pa78) confirms his use was never permitted and was commenced illegally. Mr. Bruno never obtained a CO as required on page 19 under Sec. 12 .1.of Ord. 235 for his lots

first purchased in 1965 (Pa30). Nor would one likely be issued under section 13.3.f, pg. 21 as "no relief may be granted or action taken under the terms of this section unless such relief can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the master plan, if any, of the City of Long Branch and the zoning ordinance of the City of Long Branch." Section 7.49, pg. 12 for the **industrial zone** prohibits "any other trade or use that is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise. This would certainly apply to residential zones as well and the moving of heavy equipment and dirt outdoors certainly would be prohibited. Even the garage headquarters is illegal and is not permitted in any residential zone in 1955 or 1969. That is why a CO was not sought and continued evasion has occurred. On this basis alone, the grandfathering is illegal since there is nothing to grandfather.

Defendants previous enforcement attempts in the issuing of notice of violations, summonses, and a restraining order are evidence that the use **is not grandfathered** and is not "exempt from the requirements of legislative enactments" See City of Linden v Benedict Motel Corp, 370 NJ Super.372, 851 A2d 652 (A. Div. 2004) and Paul Kimball Hospital v Brick Twp. Hospital, 86 N.J. 429, 432 A2d 36 (NJ Sup. Ct 1981) Caselaw does not permit an illegal use to become a non-conforming use eligible for grandfathering. See Gross v. Allen, 117 A.2d 275, 37 N.J. Super (1955) wherein held "a use in violation of ordinance when begun cannot rise to status of a non-conforming use. R.S. 40:55-48, N.J.S.A. See also Ianieri v. Zoning Bd. Of Adjustment of East Brunswick , 468 A.2d

1072, 192 N.J. Super 15 (1983) where a homeowner sold antiques from home which was a non-permitted use and never obtained a variance. Held "zoning ordinance, which permits issuance of certificate of occupancy for any building or use of land existing at time of enactment of ordinance, did not validate uses of property which were illegal when ordinance was adopted." . " a non-conforming use is a use which was permitted when commenced but is prohibited by a subsequently adopted zoning ordinance" As held at [6], "the courts have uniformly rejected attempts by property owners to secure valid non-conforming uses by unilateral action which violates the zoning ordinances, and any attempt by a municipality to extend retroactive approval to illegal conduct can fare no better" referring to Hilton Acres v.Klien, supra 35 NJ at 581, 174 A.2d 465. As held at [10-12], " the enforcement of a zoning ordinance ordinarily may not be prevented on grounds of estoppel merely because a suit to terminate the illegal use could have been commenced earlier." **Most importantly, as a matter of law, the zoning officer is not authorized under NJSA 40:55D-70d to unilaterally grant use variances and substitute for the planning approval process so on this basis alone, the permit is invalid.**

2. Fresh attempts to restrict access to and damage Plaintiff's property and harass plaintiff, are causing severe inconvenience to Plaintiff Justifying temporary restraints. Evidence of corruption operating against Plaintiff is or should be considered a severe inconvenience in itself.

Pursuant to IIIA preceeding, Plaintiff is suffering special damages due primarily to the public and common nuisance set in play by Defendant Long Branch's issuance of the unlawful zoning permit.

Conclusion

For all the foregoing reasons, the Court should find;

1) The zoning permit in the First Count is ultra vires and utterly void and directly reviewable, as a matter of law. No exhaustion of remedies is required and doing so would nevertheless be futile with the current zoning board.

All parties occupying lots other than the main office at 63 Community Place, for which E&L or Atlantic Paving are permitted, are to vacate within 30 days. The lots are thereafter to remain vacant until proper site plan and sub-division approvals are obtained from the planning board.

2) Due to the strong public interest in enforcement of the zoning laws, and the presence of continuing violations of the zoning and land use statutes and ordinances, and the lack of any prejudice or repose as to Defendants, Plaintiff is not in laches under the First or Second Counts.

3) Enforcement of the notice of violation under the Second Count, as is, or as corrected to include all parties not on the zoning permit, is directly reviewable and not under the jurisdiction of the zoning board. Once undertaken, discretionary acts must be done correctly to gain compliance. The notice of violation is hereby ordered amended to include all parties other than Atlantic Paving, and is to be served within 10 days of this Order, and all such parties are to vacate all lots complained of including any buildings thereon within 30 days thereafter.

4) Under the Third Count, creation and enforcement of the no parking zones in Plaintiff's approved site plan is directly reviewable pursuant to contract law and is hereby ordered. The lower court erred in its application of the discovery rule and Plaintiff is within the 6 year statute of limitations to seek relief for this.

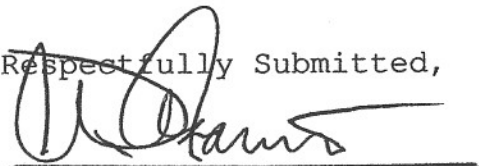
5) Public entities have no discretion to commit ultra vires acts and the issue of mandamus herein is irrelevant.

6) The denial of the temporary restraints was in error due to the severe inconvenience to Plaintiff arising from the primarily public nuisance created in issuing the permit, and irreparable harm should it fail to be voided.

The court failed to take note of the public interest in promptly countering corrupt and ultra vires actions and that this in itself constitutes a severe inconvenience demanding restraints.

7) Collateral attack including injunctive relief is available against the private defendants in the same or new matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "B. Asarnow", is written over a solid horizontal line.

Brian D. Asarnow

(A 118, 119) and is contrary to law. (N.J.S.A. 40:55D-18 and current Ord 345 (Ord 345-79, A148)

36. Bruno/E&L has received notice of violations, summonses and at least one restraining order for his illegal use and expansion thereof, and failed to fully prosecute 3 site plan applications. This information is contained in planning and zoning department files. (p78-96)

37. Despite knowledge of the above, on Aug. 3, 2009 Long Branch zoning officer Bernich unlawfully and ultra vires granted a zoning permit to Bruno/E&L and successor tenant/prospective owner Atlantic Paving to “continue pre-existing partially(?) non-conforming use for Paving company for two buildings, yard and parking area.” The comments “no stockpiling of soils or expansion of use permitted” appears though this has already been allowed to occur (p. 97-101).

38. The permit was discovered by Plaintiff the end of September following his OPRA request (4/27 Cert.@5),

39. No site plan approval per Ord 345 was granted prior to issuing the permit. (p 78-80, Certification)

40. Plaintiff’s approved site plan (A 11) shows yellow striped no parking zones to afford access to/from the property

41. Long Branch refuses to recognize, allow the establishment of, or enforce the no parking zones. (4/27/10 Certification @ 8, 10; LBr. Brief pg 10).

LEGAL ARGUMENT

POINT I: BRUNO/E&L UNILATERALLY COMMENCED AND THEREAFTER EXPANDED A NON-PERMITTED USE AND FAILED TO OBTAIN SUBDIVISION APPROVAL ON ANY PARCELS ACQUIRED OR SOLD. THE ZONING PERMIT ISSUED AUGUST 3, 2009 TO “CONTINUE PRE-EXISTING PARTIALLY(?) NON-CONFORMING USE” IS THEREFORE INVALID AS NO GRANDFATHERING EXISTS

A review of Ord 235 (Adopted 5/31/1955), the histories of lots acquired by Bruno/E&L (all in the R-7 zone in the 1969 zoning map) and the lack of any previous permits granted to E&L as evidenced in Plaintiff’s April 4, 2007 OPRA request, confirms his use was never permitted and was commenced illegally. Mr. Bruno never obtained a CO as required on page 19 under Sec. 12 .1.of Ord. 235 for his lots first purchased in 1965. Nor would one likely be issued under section 13.3.f, pg. 21 as “no relief may be granted or action taken under the terms of this section unless such relief can be granted without substantial detriment to the public good, and will not substantially impair the intent and purpose of the master plan, if any, of the City of Long Branch and the zoning ordinance of the City of Long Branch.” Section 7.49, pg. 12 for the industrial zone prohibits “any

thereby grandfathering the illegal use. No other companies or uses are listed. Owners of Atlantic Paving and Rosario-Mazza had earlier approached and told Plaintiff that they wanted to buy the properties and continue the same use to which Plaintiff replied he would resist such efforts due to the detrimental effect on his property (as well as being illegal under the Statutes, common law and ordinances of the City of Long Branch).

Nevertheless, increasing intensity and detrimental use of the properties by various businesses occurred and Plaintiff called zoning and was informed a zoning permit had issued to Bruno/E&L and Atlantic Paving to continue the existing use. Upon obtaining a copy of the permit the end of September 2009 in response to his OPRA request (Exhibit H, pg 97), Plaintiff visited the zoning officer to point out the aforementioned facts, to no avail, and then delivered a letter to the Mayor and Administrator on October 1, 2009. (p. 104) Plaintiff continued to make public and otherwise try to have the illegal permit rescinded and presented these facts to the City Council on Jan.26, 2010 and Feb. 23, 2010 (Exhibit I, pg 102). The city attorney said a notice of violation was being issued to Atlantic Paving as Rosario Mazza was not on the illegal permit. and had established a demolition and recycling yard across from Plaintiff.

The March 13, 2010 letter from the City Attorney refuses to rescind the permit and instead targets and retaliates against Plaintiff who has already obtained permits following two administrative reviews, (including site plan approval), in effect at the time. (Exhibit J, pg 120) Plaintiff's permits have previously never been an issue. Defendant's arbitrary and capricious claim is evident particularly by the statement "The fact that zoning permits are issued does not cure the fact that site plan approval was and still is necessary" (for Plaintiff but not for Defendants?!) The April 7 letter from same attorney does nothing to change this. Defendant Long Branch's long time inability to stop the violations, refusal to rescind the permit and to illegally grandfather the non-permitted use stems from corruption, is causing severe inconvenience to Plaintiff and is a detriment to the general welfare. Defendant's special relationship with Bruno/E&L is evident as its zoning board, using a neighbor's application, unlawfully takes jurisdiction of matters involving subdivisions and site plans and includes subdivisions and consolidations and bulk variances thereto of lots owned by Bruno/E&L. Paving. (No use variance for Bruno/E&L was considered or granted and cannot therefore be the basis for Defendant's issuing the illegal zoning permit) No prior notice of consideration of these E&L lots was received. The

→ chairperson, and board attorney, previously recused themselves in front of the board and public in E&L's own site plan applications, which E&L evaded, and in which the zoning board again had no jurisdiction (minutes missing). Defendant's municipal judge, earlier heard the summons (p.86) against Bruno/E&L though simultaneously and continuing to serve as their attorney in real estate transactions. (p 9, 83) A councilwoman lives across the street from the Morris Ave. eyesore (lots 19, 20, 21) yet remains silent as the neighborhood deteriorates.

10. Prior to Plaintiff leasing a portion of the 6000 sf building, the building, which lacked sewer service, was used for automobile restorations and was in a deplorable and neglected condition with wrecks strewn about the outside. Residential neighbors also complained about the exhaust from the illegal paint spray booth. (No such neighbors have ever complained about Plaintiff's use of the building.)

11. Three months into the lease, Plaintiff was informed the building was in the process of foreclosure and that he had to leave or buy the building. Plaintiff purchased the building and obtained either informal minor site plan approval or waiver thereof and a zoning permit after renouncing the auto body shop use in his application. Plaintiff continues to use a portion of the building for his business and rents the rest out as provided for in his site plan approvals and zoning permit (Exhibit J, p 132, 135-141)

12. Since purchasing the property, Plaintiff will have expended \$200,000 in restoring, improving and expanding the building to include another tenant space and a 2 story office addition. Following litigation, sewer service was provided to the area and handicap baths have been installed to serve all occupants. Plaintiff was granted minor site plan approval for the expansion, with no neighbors appearing in opposition, and the board reaffirming the permitted use. The plan provides no parking zones around and opposite the entrances to Plaintiff property in order to provide full access thereto. Another zoning permit thereafter issued. (Exhibit J, pg 135)

13 All throughout Plaintiff's occupancy, Plaintiff has endured congestion in the narrow street due to parking on both sides by employees of Defendant and trucks from a previous adjoining commercial bakery. Plaintiff has endured vehicles trespassing onto his property and limited access thereto due to lack of a cul de sac and parking in the dead end area, which was subject to the whims of Mr. Bruno. Plaintiff has also endured unreasonable noise, dirty streets and dust from the operating of heavy machinery and stockpiling dirt, and a deplorable visual

Plaintiff in particular.

9. Despite knowledge of the above, on Aug. 3, 2009 Long Branch zoning officer Bernich unlawfully granted a zoning permit (p 98) to Bruno/E&L and successor tenant/prospective owner Atlantic Paving, to “continue pre-existing partially(?) non-conforming use for Paving company for two buildings, yard and parking area” thereby grandfathering the illegal use. No other companies or uses are listed. Owners of Atlantic Paving and Rosario-Mazza had earlier approached and told Plaintiff that they wanted to buy the properties and continue the same use to which Plaintiff replied he would resist such efforts due to the detrimental effect on his property (as well as being illegal under the Statutes, common law and ordinances of the City of Long Branch).

Nevertheless, increasing intensity and detrimental use of the properties by various businesses occurred and Plaintiff called zoning and was informed a zoning permit had issued to Bruno/E&L and Atlantic Paving to continue the existing use. Upon obtaining a copy of the permit the end of September 2009 in response to his OPRA request (Exhibit H, pg 97), Plaintiff visited the zoning officer to point out the aforementioned facts, to no avail, and then delivered a letter to the Mayor and Administrator on October 1, 2009. (p. 104) Plaintiff continued to make public and otherwise try to have the illegal permit rescinded and presented these facts to the City Council on Jan.26, 2010 and Feb. 23, 2010 (Exhibit I, pg 102). The city attorney said a notice of violation was being issued to Atlantic Paving as Rosario Mazza was not on the illegal permit. and had established a demolition and recycling yard across from Plaintiff.

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neighbor's application, unlawfully takes jurisdiction of matters involving subdivisions and site plans and includes subdivisions and consolidations and bulk variances thereto of lots owned by Bruno/E&L Paving.

(No use variance for Bruno/E&L was considered or granted and cannot therefore be the basis for Defendant's issuing the illegal zoning permit) No prior notice of consideration of these E&L lots was received. The chairperson, and board attorney, previously recused themselves in front of the board and public in E&L's own site plan applications, which E&L evaded, and in which the zoning board again had no jurisdiction (minutes missing). Defendant's municipal judge, earlier heard the summons (p.86) against Bruno/E&L though simultaneously and continuing to serve as their attorney in real estate transactions. (p 9, 83) A councilwoman lives across the street from the Morris Ave. eyesore (lots 19, 20, 21) yet remains silent as the neighborhood deteriorates.

10. Prior to Plaintiff leasing a portion of the 6000 sf building, the building, which lacked sewer service, was used for automobile restorations and was in a deplorable and neglected condition with wrecks strewn about the outside. Residential neighbors also complained about the exhaust from the illegal paint spray booth. (No such neighbors have ever complained about Plaintiff's use of the building.)

11. Three months into the lease, Plaintiff was informed the building was in the process of foreclosure and that he had to leave or buy the building. Plaintiff purchased the building and obtained either informal minor site plan approval or waiver thereof and a zoning permit after renouncing the auto body shop use in his application. Plaintiff continues to use a portion of the building for his business and rents the rest out as provided for in his site plan approvals and zoning permit (Exhibit J, p 132, 135-141)

12. Since purchasing the property, Plaintiff will have expended \$200,000 in restoring, improving and expanding the building to include another tenant space and a 2 story office addition. Following litigation, sewer service was provided to the area and handicap baths have been installed to serve all occupants. Plaintiff was granted minor site plan approval for the expansion, with no neighbors appearing in opposition, and the board reaffirming the permitted use. The plan provides no parking zones around and opposite the entrances to Plaintiff property in order to provide full access thereto. Another zoning permit thereafter issued. (Exhibit J, pg 135)

13 All throughout Plaintiff's occupancy, Plaintiff has endured congestion in the narrow street due to parking

BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740
732-870-2570
Pro Se Plaintiff

BRIAN D. ASARNOW,

Plaintiff,

vs.

City of Long Branch,
A Municipal Corporation of NJ

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. PW

Civil Action

CERTIFICATION (in support of Order to show cause)

BRIAN D. ASARNOW, of full age, being duly sworn upon his oath does hereby depose and say:

1. I am the Plaintiff in the above matter, am fully familiar with the facts thereto pertaining, and hereby certify to all the allegations of the complaint as the true and relevant facts in this matter and refer to the exhibits attached thereto

2. I purchased the commercial building in which I had run my business on or about August 14, 1995 due to foreclosure. I was only there 2-3 months when the bank advised me I had to buy the building or leave.

The premises were in a neglected condition and I have invested large sums to improve the property.

On Sept. 16, 2003 I was granted minor site plan approval to add another small unit and a 2 story office addition to the building. The resolution (p. 139) affirms the permitted use and that no opposition was received. The approved site plan (p. 11, 138) shows yellow striped no parking zones to afford access to/from the property.

3. The area in general was run down and an eyesore with an abandoned house across the street and a broken down worksite trailer adjacent. (photo) It was also not clear where one property ended and another began or whether the street continued past my property or not. Trucks belonging to E&L and others would park along the brook. and the mobilization and operation of equipment and stockpiling of materials was noisy and dirty. There was no cull de sac at the end of the narrow dead end street and use of the cul de sac area for trucks and the public to turn around, was subject to the whims of Mr. Bruno. Despite this, however,

11. These businesses have no right to be there and corruption is inhibiting abatement and operating against me which I feel is itself a severe inconvenience. While looking into the status of lot 52, which was to be subdivided and become part of Bruno/E&L's site plan application, I discovered this and other Bruno/E&L lots appearing in a neighbor's application which includes subdivisions and consolidations and bulk variances thereto of lots owned by Bruno/E&L. Paving and having nothing to do with that application. (p. 154-156)

No use variance for Bruno/E&L was considered or granted in that application

No prior notice that consideration of these E&L lots was to occur was received by me.

The chairperson, and board attorney, previously recused themselves in front of the board and public, on November 13, 2000 (p. 90, minutes missing) following a letter from myself and neighbors (p. 153) during E&L's own site plan applications, which E&L evaded. I don't believe they had jurisdiction since site plans and subdivisions are considered by the planning board.

During that site plan hearing I also provided a history of lots acquired by Bruno/E&L (p. 1) and certified as to their authenticity (p. 107-109) which I incorporate and recertify to herein.

Defendant's municipal judge, earlier heard the summons (p.86) against Bruno/E&L though simultaneously and continuing to serve as their attorney in real estate transactions. (p 9, 83) A councilwoman lives across the street from the Morris Ave. eyesore (lots 19, 20, 21) yet remains silent as the neighborhood deteriorates.

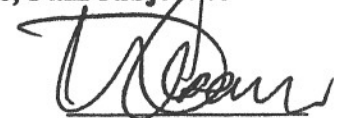
In March/April the assessor printed maps for me and confirms the illegal sale of Bruno/E&L lot 40 to Seashore Day Camp (p. 9) and still lists it as owned by E&L since no subdivision approval obtained. (p 7,8)

All the other Bruno/E&L lots in this matter are therefore similarly illegal and lack valid subdivision approval as none were received in response to my OPRA request

The situation has become untenable and requires immediate relief.

I certify the foregoing statements by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 27, 2010


Brian D. Asarnow

Mr. Brian D. Asarnow
55 Community Place
Long Branch, NJ 07740
(732) 870-2570
FAX: (732) 870-0606

November 2, 2000

Mr. Michael A. Irene, Jr., Esq.
Attorney for Long Branch Board of Adjustment
422 Morris Ave.
Long Branch, NJ 07740
via fax: 229-1892

Re: E&L/Bruno Application for lots 37.01 and 32.01
Meeting: November 13, 2000, 8:00 P.M.

Dear Mr. Irene:

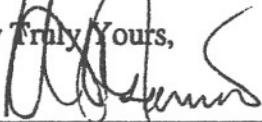
At the September 11, 2000 meeting, during recess between the Villapiano and abovementioned application, the three undersigned witnessed the Chairperson, Ms. Janeczek leave the podium and pass by the audience while going into the hallway stating that "I must go talk to "Eddy"" (Bruno) who was also in the hallway, presumably about the decision to add his other lots to the site plan. Considering this apparent personal relationship and interest in Mr. Bruno's application, and Ms. Janeczek's often expressed hope during Mr. Villapiano's hearing that Mr. Bruno sell his parcel to Mr. Villapiano, hopefully not at the expense of compromising the rights of the undersigned, the undersigned request that the chairperson properly recuse herself from this application and that a impartial, disinterested hearing occur.

Thank you in advance for your bringing this to her's and the board's attention.

Certification:

We hereby certify that the foregoing statements made by us are true. We are aware that if any of the foregoing statements made by us are wilfully false, we may each be subject to punishment.

Very Truly Yours,



Brian D. Asarnow, 55 Community Place

** Her father, Frank Torchia
previously owned my bldg. next to Bruno!*

Ave.

RESOLUTION**WEST AVENUE, LLC
APPLICATION FOR SITE PLAN, SUBDIVISION, CONSOLIDATION AND
VARIANCE APPROVAL
BLOCK 237 LOTS 35.01, 38.01, 40, 50, 51, 52
APPLICATION NO. ZB-03-12**

WHEREAS, SEASHORE DAY CAMP, the applicant, desires to establish soccer and baseball fields along the easterly side of Morris Avenue, construct a one-story extension to its cafeteria facility at 404 Broadway, establish a basketball court/hockey rink to the east of the proposed athletic fields, and redraw the property lines and exchange parcels of land with neighboring properties owned by E & L Paving by way of subdivision and consolidation; and

WHEREAS, the Zoning Board of Adjustment of the City of Long Branch has jurisdiction to hear this application; and

WHEREAS, the applicant was represented at the hearings by James M. Siciliano, Esq.; and

WHEREAS, after proper notice, a public hearings were held on September 8, 2003 and November 10, 2003, at which time the Zoning Board and members of the public were presented with the opportunity to view the exhibits, hear the testimony of witnesses, question said witnesses, and express opinions regarding the application; and

WHEREAS, the Board has received into evidence the following exhibits:

a. Site plan by Charles C. Widdis, PE dated 6/18/02 (A-1);

and

b. Architectural Plans drawn by Tomaino, Tomaino & Iamello last revised 10/22/02 (A-

1); and WHEREAS, testimony was presented by:

John Villapiano, chief operating officer of Seashore Day Camp.

BASED ON THE FOLLOWING, the Zoning Board makes the following findings of fact:

1. The Zoning Board has jurisdiction to hear this application.
2. The subject property straddles the C-2 commercial zone, R-4 residential zone, and industrial zone.
3. Part of the tract in question, to wit, Lots 35.01 and 38.01 was the subject of prior applications and approvals by this Board, whereby the elementary school use was

approved along with certain bulk variances and site plan approval. The most recent approvals were dated October 23, 2000, and incorporated herein by reference.

4. The following variances are required for this application:
 - a. New Lot 19.01 -- Allow side yard of 4.93 ft. and rear yard of .06 ft;
 - b. New Lot 39.01 -- Allow lot frontage of 0 ft. and lot depth of 76';
 - c. New Lot 32.03 -- Allow minimum lot area of 10,948 sq. ft and lot depth of 130 ft.;
 - d. Lot 35.01 -- Allow lot coverage of 71.62% and front yard setback of 29.57 ft.;
 - e. Lot 38.01 -- Allow lot area of 41,423.4 sq. ft, front setback of 29.63 ft. and side setback of 11.91ft.;
 - f. Use variance to permit athletic fields in C-2 and R-4 zones.
5. The applicant seeks the subdivision of Lot 52 and consolidation of the lots as follows:
 - a. Part of Lot 52, Lot 40 into new Lot 52.01;
 - b. Lot 50 and 51 into New Lot 50.01;
 - c. Lot 32.01 and 32.02 into new Lot 32.03;
 - d. Lot 39 and part of Lot 52 into new Lot 39.01; and
 - e. Lot 19, Lot 20, Lot 21 and Part of Lot 50 into new lot 19.01.
6. The general intent of the subdivision and consolidations are to create a logical property line by using Lane's Brook as a natural boundary. Property north of the brook will belong to Seashore Day Camp, and E & L Paving will own the property south of the brook. E & L has consented to this application and will execute all conveyances necessary to effectuate the intent of this aspect of the application.
7. The Seashore Day Camp for the most part consists of two main buildings located at 404 Broadway (Lot 35.01) and 410 Broadway (Lot 38.01), together with open space including the new athletic facilities proposed herein.
8. The applicant proposes to construct a one story addition to the cafeteria at 404 Broadway. This will add up to 2000 sq. ft. to the existing cafeteria; but is not intended to increase the capacity of the school and related traffic flow.

approved along with certain bulk variances and site plan approval. The most recent approvals were dated October 23, 2000, and incorporated herein by reference.

4. The following variances are required for this application:
 - a. New Lot 19.01 -- Allow side yard of 4.93 ft. and rear yard of .06 ft.; *E+L Lots*
 - b. New Lot 39.01 -- Allow lot frontage of 0 ft. and lot depth of 76'; *See below - illegal consolidation*
 - c. New Lot 32.03 -- Allow minimum lot area of 10,948 sq. ft and lot depth of 130 ft.; *E+L Lots*
 - d. Lot 35.01 -- Allow lot coverage of 71.62% and front yard setback of 29.57 ft.; - *SSDC - ok*
 - e. Lot 38.01 -- Allow lot area of 41,423.4 sq. ft, front setback of 29.63 ft. and side *SSDC - ok* setback of 11.91ft.;
 - f. Use variance to permit athletic fields in C-2 and R-4 zones.
5. The applicant seeks the subdivision of Lot 52 and consolidation of the lots as follows:
 - a. Part of Lot 52, Lot 40 into new Lot 52.01; *lot 40 - E+L - illegal subdiv. (no approval) and illegal sale to SSDC - confirmed by assessor*
 - b. Lot 50 and 51 into New Lot 50.01; - *SSDC - ok*
 - c. Lot 32.01 and 32.02 into new Lot 32.03; - *E+L Lots*
 - d. Lot 39 and part of Lot 52 into new Lot 39.01; and *Lot 39 - E+L, lot 52 - SSDC*
Illegal consolidation - 2 different owners
 - e. Lot 19, Lot 20, Lot 21 and Part of Lot 50 into new lot 19.01. - *E+L Lots*
6. The general intent of the subdivision and consolidations are to create a logical property line by using Lane's Brook as a natural boundary. Property north of the brook will belong to Seashore Day Camp, and E & L Paving will own the property south of the brook. E & L has consented to this application and will execute all conveyances necessary to effectuate the intent of this aspect of the application.
7. The Seashore Day Camp for the most part consists of two main buildings located at 404 Broadway (Lot 35.01) and 410 Broadway (Lot 38.01), together with open space including the new athletic facilities proposed herein.
8. The applicant proposes to construct a one story addition to the cafeteria at 404 Broadway. This will add up to 2000 sq. ft. to the existing cafeteria; but is not intended to increase the capacity of the school and related traffic flow.

9. The applicant has proposed the addition of a hockey rink/basketball court to the site. This will result in the loss of five of eight parking spaces, which were used for overflow parking only, and never used when children were present. This rink/court has been located so that none of the old cottonwood will be removed.
10. The applicant will replace an old 100 sq. ft. wooden shed with a new 200 sq. ft. shed behind the building at 410 Broadway.
11. Refuse and recycling facilities will remain unchanged.
12. The proposed soccer and baseball fields have been graded and seeded in anticipation of receiving the approvals applied for herein. Neither field is regulation size, and are meant for practice or games involving younger children. The soccer goals will be removable. The applicant will erect a decorative gazebo between the baseball and soccer fields. The location of the baseball and soccer fields will not result in the loss of any trees on the site.
13. The applicant proposes to establish a new parking area north of the soccer field. There is currently a 16 ft. Right-of-way with a 10 ft. cartway with ingress from Morris Avenue. The applicant intends to widen the cartway, so that vehicular traffic can access the paved parking area. The applicant will endeavor to preserve trees and enhance landscaping along the newly widened right-of-way. The right-of-way is not suitable for two-way traffic flow. The final plan for widening and traffic flow will be based on the review and recommendations of the City engineer with input from the Public Safety officials (police and fire).
14. The applicant will also establish a parking area west of the baseball field, which will allow parking for five more cars or a bus. Taken as whole, the applicant has provided 70 spaces on the site, which is more than adequate.
15. The applicant will erect a stockade fence along Lane's Brook for safety purposes.
16. The applicant has demonstrated special reasons for the grant of the use variance. Although private, the Seashore Day Camp is a licensed elementary school, which is an inherently beneficial use. The athletic fields should be considered an accessory to the school facility but for the fact that they are located on separate properties.

Additionally, the location of the athletic field provides a superior buffer between the residential and commercial uses in the area. The fields also preserve open space in both the Commercial and High-density residential zones. The Board also finds that there will be no negative impact from the operation of the athletic fields as an adjunct to the school/camp.

17. The benefits to be derived from the granting of the bulk variances far outweigh any potential detriment. At the very minimum, the granting of these variances will foster logical property lines, primarily by using Lane's Brook as a natural boundary.

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the City of Long Branch that the application for Site Plan, Subdivision, and Consolidation is hereby GRANTED, subject to the following conditions:

- a. Production of Stream Encroachment Permit or Letter of Intent from New Jersey Department of Environmental Protection;
- b. Compliance with the recommendations of Board Engineer, City Engineer, and Public Safety Department including but not limited to issues of access and egress along the Right-of-way from Morris Avenue, through parking areas, and exit onto Broadway, as well as lighting, landscaping and drainage;
- c. Compliance with all representations made during the public hearings of this matter whether incorporated in this resolution or not;
- d. Review by Monmouth County Planning Board if required;
- e. Review by Health Department and Public Works Department;
- f. Review by Freehold Soil Conservation District;
- g. Payment and posting of all bonds and inspection fees;
- h. Recording and/or filing of appropriate subdivision/consolidation deeds or maps, and review of same by Board attorney, City Attorney, and Tax Assessor prior thereto;
- i. Compliance with such other conditions as may be imposed by other reviewing agencies at any level.

BE IT FURTHER RESOLVED that the following variances are granted:

- g. New Lot 19.01 --Allow side yard of 4.93 ft. and rear yard of .06 ft;
- h. New Lot 39.01 -- Allow lot frontage of 0 ft. and lot depth of 76';
- i. New Lot 32.03 -- Allow minimum lot area of 10,948 sq. ft and lot depth of 130 ft.;
- j. Lot 35.01 -- Allow lot coverage of 71.62% and front yard setback of 29.57 ft.;
- k. Lot 38.01 -- Allow lot area of 41,423.4 sq. ft, front setback of 29.63 ft. and side setback of 11.91ft.;
- l. Use variance to permit athletic fields in C-2 and R-4 zones.



TERRY JANACZEK, Chairperson

ATTEST:



, Secretary

MOTION BY: Terry Janaczek

SECONDED BY: Jeffery Ging

AYES: 4

NAYS: 0

ABSTAIN: 0

RESOLUTION MEMORIALIZED: January 26, 2004

BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740
732-870-2570
Pro Se Plaintiff

BRIAN D. ASARNOW,

Plaintiff,

vs.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. PW

City of Long Branch,
A Municipal Corporation of NJ

Civil Action

ORDER TO SHOW CAUSE
WITH TEMPORARY RESTRAINTS
PURSUANT TO RULE 4:52

Defendants,

THIS MATTER being brought before the court pro se by plaintiff Brian D. Asarnow, seeking relief by way of temporary restraints pursuant to R.4:52, based upon the facts set forth in the verified complaint filed herewith; and it appearing that Defendant having notice of this application; and for good cause shown.

It is on this day of April, 2010 ORDERED that Defendant Long Branch, appear and show cause before the Superior Court at the Monmouth County Courthouse in Freehold, New Jersey at o'clock in the forenoon or as soon thereafter as counsel may be heard, on the day of April, 2010 why an order should not be issued preliminarily enjoining and restraining Defendant Long Branch and why Defendant Long Branch;

1. Should not rescind and void the permit 080309-3 issued to E&L Paving and Atlantic Paving Company
2. Should not enforce the Notice of Violation of January 27, 2010 issued to Atlantic Paving and include all companies, businesses, individuals and equipment therefrom other than E&L Paving and Atlantic Paving and cause the violations to be completely cured within 5 days of the date set forth below with Atlantic Paving to store its vehicles and equipment in the garage and up to 3 vehicles adjacent to the office.
3. Should not provide full and unfettered access to and from Plaintiffs property as indicated on site plan PB-03-4.V. approved by resolution September 16, 2003, and otherwise.

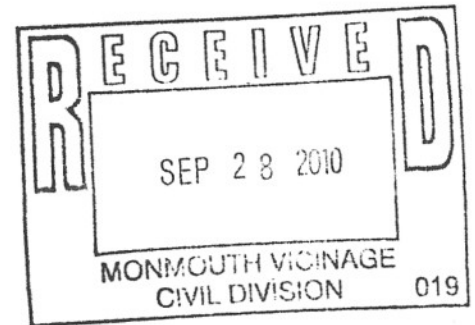
Mr. Brian Asarnow
55 Community Place
Long Branch, NJ 07740

732-870-2570
Fax: 732-870-0606

September 28, 2010

Superior Court of New Jersey
Hon. Patricia Del Bueno Cleary, J.S.C.
Monmouth Vicinage
Monmouth County Courthouse
Monument Park
Freehold, NJ 07728

RE: Asarnow vs. Long Branch
Docket: MON. L-2153-10



Dear Judge Cleary:

Please accept this supplementary certification with exhibits, and Statement of Facts thereupon, in support of my motion for reconsideration.

STATEMENT OF FACTS

1. The within Certification further demonstrates the ultra vires actions of Long Branch regarding the private defendants's use of the subject properties and helping them to evade the zoning laws.(criminal).
The documents were discovered August 16, 2010 following a public records request and is within the 45 days period for direct review of ultra vires actions and is part of Plaintiff's Amended Complaint.
2. The zoning permit lists only E&L & Atlantic Paving for use as a paving company yard.
3. Joe Rosario and his companies, Rosario Contracting Corp. dba Rosario Mazza Demolition & Recycling, and Custom Lawn Sprinkler and that of other parties do not appear on the zoning permit.
4. To obtain a mercantile license or certificate of occupancy in Long Branch, per the MULA, a zoning permit must first be obtained by the party applying for them.
5. Mercantile licenses and certificates of occupancy are granted to one company per application.
6. The granting of a mercantile license to Atlantic Paving & Misc. Contractors is in obvious and flagrant violation of the above ordinances and statute.
7. The granting of a commercial certificate of occupancy on Jan. 19, 2010 to Atlantic Paving "& Misc." and issued to Joe Rosario though applied for by Raymond Greico, owner of Atlantic Paving. is in

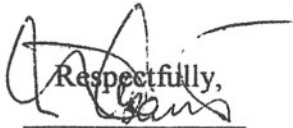
obvious and flagrant violation of the above ordinances and statute. The issue date follows by one week
the arson at Plaintiff's premises which Plaintiff contends was planned by Rosario.

8. Notwithstanding, the Notice of Violation to Atlantic Paving to remove Rosarios's Demolition/Disposal
business was issued Jan. 27, 2010, following the arson at Plaintiff's premises.

CONCLUSION

The court should take note of this further evidence of irregular, contrived and ultras vires actions by Long
Branch in the primary sense (bad faith and not authorized by statute) in violation of the public interest and trust,
and should grant the motion for reconsideration in full. This will by, default, then also remedy the ultra vires
mercantile license and CC.

Dated: Sept 28, 2010


Respectfully,
Brian D. Asarnow

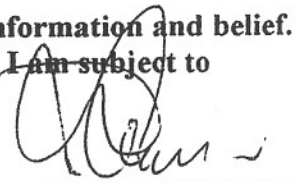
9. A commercial certificate of occupancy issued 1/19/2010 to Joe Rosario with signature of applicant being Raymond Grieco, owner of Atlantic Paving, previously served and listed in NJ corporate records as such, is attached hereto as Exhibit D.

10. The notice of violation at issue is again attached hereto as Exhibit E.

11. Each and every commercial tenant at my premises has had to obtain their own zoning permit, mercantile license and commercial certificate of occupancy.

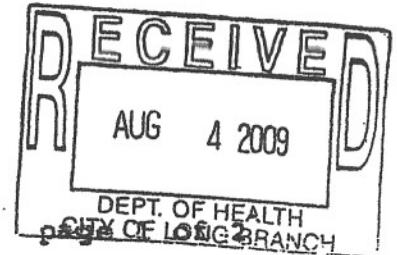
I certify the foregoing statements by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 28, 2010



Brian D. Asarnow

**BUSINESS/MERCANTILE/ORGANIZATION
LICENSE APPLICATION**



CITY OF LONG BRANCH, MUNICIPAL BUILDING, 344 BROADWAY, LONG BRANCH, N.J. 07740 (732) 571-5665

FOR OFFICIAL USE ONLY:

Date 8-4-2009 *(Signature)*

To: Police Department
 Zoning Office
 Building Department
 Fire Prevention Bureau
 Tax Collector
 Community & Economic Dev. Off.

Please review and submit in writing to the mercantile office any concerns or objections to this application within 72 hours of above date.

Type of License/Fee: Business/Mercantile/Peddler 50.00
Retail Food Establishment _____
Plan Review _____
Food/Amusement Vending Machines _____
(\$25.00 for each machine)
of machines _____ X \$25 = _____
Recreational Bathing License _____
Late Fees _____
Total Fees 50.00

NOTE: It is solely the applicant's responsibility to complete this application form in its entirety. Failure to do so will automatically deem the application incomplete and may subject the application to be denied without prejudice by the appropriate City agency.

Type of Application: New _____ Renewal

Proposed Business/Organization Name: Atlantic Paving & Misc. Contractors

Description/Type of Business: Paving company & contractors

Location: Address 63 Community Place

Block: 237 Lot: 19, 20, 21, P/050, P/052, 39, 38.02, 37.01, 32.01, 32.02, 13.02 Bus. Phone # 732-870-6876

Business is located on: 1st floor: 2nd floor: _____ Other: _____

* If other - Please explain: _____

Size/area of business location: 2400 sq.ft. # of employees 5-10

Ex. C
254a

Previous or current use located in this specific space Paving Company & mixed use

Are any other uses located on this property: Yes _____ No:

* If yes please explain (i.e., commercial, residential, office etc.)

Name, Address, Telephone number, and title of principals in the business:

Name	Home Address	Home Telephone #	Cell Phone #	Title
Raymond Grieco	511 Springdale Ave, L.B.	732-571-0068	908-513-5842	Owner ^{POS} 7/9/6
Jose Rosario	7 Catherine Street, L.B.	732-229-6505	732-768-5669	Owner 1/1/6

Landowner: Name Edward Bruno
 Address 122 Monmouth Blvd, Oceanport NJ 07758
 Telephone 732-229-0833

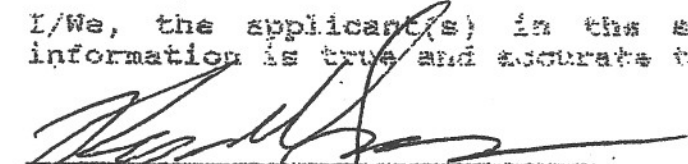
Will there be any building renovations or expansions involved in this new or continuing use of the property? Yes _____ No

If yes explain: _____

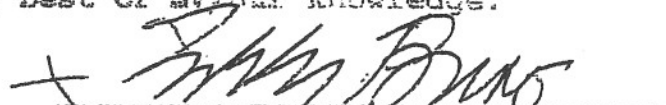
PLEASE BE ADVISED THAT ACCEPTANCE OF A FEE DOES NOT INSURE ISSUANCE OF A LICENSE. ALSO BE ADVISED THAT YOU MUST NOTIFY AND/OR SUBMIT PLANS TO BUILDING, FIRE AND HEALTH DEPARTMENT WHEN NECESSARY BEFORE OCCUPYING OR RE-OCCUPYING PREMISES.

THIS FORM MUST BE SIGNED BY AN AUTHORIZED AGENT OF THE APPLICANT BEFORE PROCESSING.

I/We, the applicant(s) in the above entitled matter, certify that the information is true and accurate to the best of my/our knowledge.



 Signature of applicant



 Signature of landowner



City of Long Branch
Office of the Fire Marshal

344 Broadway
Long Branch, NJ 07740
phone: 732-571-5651, fax: 732-222-4493

COMMERCIAL CERTIFICATE OF OCCUPANCY

CCO#: 09-102

This certifies that the building located at Block: 237 , Lot: 13.0 Floor / Suite#: _____

Business Name: Atlantic Paving & Misc. Business Address: 63 Community Place

conforms to the Property Maintenance Code of the City of Long Branch, NJ and is approved for occupancy.

This Certificate is issued based on the issuance of a new construction Certificate of Occupancy under the NJ Uniform Construction Code.

Issued To:

Joe Rosario

511 Springdale Avenue
Long Branch, NJ 07740

Inspector's Signature

1/19/2010

Date Issued:

8. Building Owner Address:

122 Monmouth Blvd
Occupant NJ 07757

Money Order#: _____

9. Telephone # of Building Owner:

732-513-7339

Check#: _____

10. Zoning/ Planning Approval Attached:

Yes:

No: _____

(check one)

NO CASH

(Before a Commercial Certificate of Occupancy can be issued, a copy of the Zoning Permit MUST be submitted to this office)

11. Outstanding Building Permits:

*Yes: _____

No:

*Inspections will not be made until all permits have been finalized by the Building Department.

(construction, plumbing, electrical, fire sub-code, etc.)

Note: In food establishments a Certificate of Inspection from the Health Department must be provided at time of inspection or C.O. will not be issued.

12. Signature of Applicant:

[Handwritten Signature]

Official Use Only:

Date of Inspection: _____

Time: _____

Initial: _____

Date Issued: _____

Inspector's ID#: _____

Inspector's Signature: _____

COMMERCIAL CERTIFICATE OF OCCUPANCY FEE IS \$50.00 (payable to City of Long Branch)

FAILURE TO MAKE APPLICATION FOR INSPECTION AND OBTAIN A CO MAY BE PUNISHABLE BY FINE IN MUNICIPAL COURT. THE BUILDING MUST MEET THE STANDARDS OF THE BOCA NATIONAL PROPERTY MAINTENANCE CODE 1996 AND THE NJ UNIFORM FIRE CODE (NJAC 5:70). Copies of these standards are available with the City Clerk. APPLICATION IS GOOD FOR 60 DAYS, INCLUDING RE-INSPECTION.

IF CANCELLED, FEE IS NOT REFUNDABLE

EXD 256a