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

BRIAN D. ASARNOW,

Plaintiff,

vs.

City of Long Branch, A Municipal Corporation;
Edward Bruno and E&L Paving, Inc.;
63 Community Place, LLC;
Ray Grieco & Atlantic Paving (& Coating), LLC;
Jose A. Rosario, Jr. & Rosario Contracting Corp.,
Custom Lawn Sprinkler Co., LLC.;
R. Brothers Concrete, LLC

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. L-1422-22

Civil Action

NOTICE OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

To: Paul R. Edinger Esq,
211 Monmouth Road, Suite C,
West Long Branch, NJ 07764

PLEASE TAKE NOTICE that the undersigned on the 16th day of August, 2024 at 9:00 a.m. in the forenoon or as soon thereafter as may be heard, will move before the Monmouth County Superior Court, Freehold, NJ for an order granting partial summary judgment pursuant to R. 4:46-2 and, affording the Plaintiff the relief sought under the First and Second Counts of the Second Amended Complaint.

PLEASE TAKE FURTHER NOTICE that at the date and place of hearing to be fixed by the court, the undersigned shall rely up his Statement of Material Facts, Certification and Exhibits annexed thereto and Brief in support of partial summary judgment. Oral argument is requested and the opportunity to play videos.Trial date has been set for September 23, 2024

PLEASE TAKE FURTHER NOTICE that a proposed form of order is submitted hereto.

Mr. Brian D. Asarnow, Plaintiff

Dated: 7/8/24

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STATEMENT OF MATERIAL FACTS PURSUANT TO R. 4:46-2(a)

1. Atlantic Paving operates at 63 Community Place in the C-2 zone. Exhibit G,pg 68, Exhibit K pg 119, Exhibit S pg 223, Exhibit W pgs 271, 273; Exhibit Y pages 288-302, 303, 307, 308, 324-326, 333, 335

2. The paving company use is a non-conforming non-permitted industrial use in the C-2 zone. Exhibit B pgs 22,23, Exhibit O pg 169, Exhibit Y pgs 293, 300, 302

3. Rosario uses the garage and office on Community Place for his businesses. Exhibit V pgs 256-264, Exhibit X pg 277, Exhibit Y pgs 288-302, 329, 330

4a. The paving use was restricted to in/around the garage in the industrial zone on Community Place. Exhibit E pgs 37-42, 49 (lots 19, 20, 21) 57 lot C2 and rest, Exhibit J pgs 98-111, Exhibit Y pgs 289, 293, 299, 300, Fact 2

4b. Atlantic Paving or predecessor Bruno/E&L Paving did not contest or appeal the above summonses restricting use of lots 19, 20, 21 or 32.01 where a house once stood or the C-2 zone and filed its site plan instead to resolve the issues. Exhibit K pg 119 .

5. Atlantic Paving has ceased using the garage on Community Place and allowed an unauthorized demolition and lawn sprinkler businesses to take over the use of the garage and so by ordinance has abandoned the paving use. Exhibit B pg 24, Exhibit Y pgs. 289, 296, 300-302. Facts 1-4 preceeding.

6a. On July 10, 2017 Defendant's zoning board by Resolution denied with prejudice the application of Atlantic Paving, LLC for "preliminary and final site plan approval, use variance (d) approval, and bulk variance approval to effectuate a) subdivision of the existing lot 19.01 property into 3 new lots, namely new lot 19.02, new lot 19.03 and new lot 19.04, b) use variance/siteplan/bulk variance approval to utilize new lot 19.02 for 4 separate uses including a masonry/concrete use, an asphalt paving use, a contracting use and an irrigation company use. c) construction of a new single family home on Lot 19.03, d) construction of a new single family home on Lot 19.04, e) site plan approval to allow for installation of fencing, the installation of a sliding gate at the Community Place entryway, and the installation of material bins on proposed lot 19.02" Site Plan Map Exhibit M pg 144, Exhibit O, Pg 150, 161, 199

6b. The masonry company is R Brothers Concrete, the asphalt company listed is Atlantic Paving LLC, the contracting company is Rosario Contracting, LLC owned by Jose A. Rosario, Jr. which does demolition jobs and returns with dumpsters which it separates and processes as well as stockpiling its equipment and parking off site. The irrigation company is Custom Lawn Sprinkler, LLC also owned by Rosario. Exhibit O, pgs 161-167.

6c. The application sought "variance/site plan approval to utilize new lot 19.02 as a construction yard, storing construction vehicles and construction materials in areas designated for a paving company." Lot 19.03 and 19.04 on Morris Ave. are zoned residential and were to each contain a single family home. Exhibit O pg 161

6d. Companies doing masonry, asphalt, contracting and irrigation work are industrial uses not permitted in the City's C-2 Commercial Zoning District and require use variance for that and for expansion of any approved uses Exhibit O pg 169 para 1&2, Exhibit Y pages 289-291, 297-302

6e. Atlantic Paving LLC, Rosario Contracting, LLC Custom Lawn Sprinkler, and R Brothers are engaged in industrial uses not permitted in C-2 commercial zone and require a use variance for that. Exhibit O Pg, 169 para 1+2 , Exhibit Y Exhibit Y pages 289-291, 297-302

7a. Rosario Contracting, LLC, Custom Lawn Sprinkler Co., LLC and R Brothers Concrete, LLC lack prior site plan approval or zoning permits resulting therefrom. Exhibit H, pgs 76-87, Exhibit I pgs 88-97

7b. . Rosario Contracting, LLC, Custom Lawn Sprinkler Co., LLC and R Brothers Concrete, LLC lack their own sets of permits Exhibit I, pg. 93

8. Atlantic Paving LLC, Custom Lawn Sprinkler Co., LLC and R Brothers Concrete, LLC operate an illegally expanded use on lot 19.01 for which Atlantic Paving was previously cited. Exhibit E pgs 43-64, Exhibit K pg 119, Exhibit S pgs 216-228, Exhibit V pgs 256-264, Exhibit X pgs 274-286, Exhibit Y pages 289, 298-336

9. No site plan approval was obtained to change the use of the I zone potion of lot 19.01 across from Plaintiff, which used to contain a house, to a contractors yard or any other use as evidenced by a summons to E&L Paving and guilty plea for same. Exhibit E pgs 37-42

10. The Order filed June 9, 2018 by Hon Jamie S. Perri, J.S.C. orders "that plaintiff Atlantic Paving's appeal of the actions of the Long Branch Zoning Board of Adjustment is denied and its action in lieu of prerogative writs is dismissed with prejudice" Exhibit P, pg. 201

11. Based upon facts 6 – 10 preceeding, the use of lot 19,01 as an outdoor construction yard is illegal and lacks site plan approval.

12. As the paving use has been abandoned per fact 5, the 8/3/09 zoning permit and ancillary permits containing the name Atlantic Paving are void. Exhibit G pgs 67-75

13. The January 19, 2020 certificate of occupancy for Atlantic Paving & Misc is void as no such lot 13.0 exists on the city tax maps. Exhibit Y, pgs 301, 311, Exhibit C pg 34.

14. Rosario Contracting, LLC, Custom Lawn Sprinkler, LLC and R. Brothers Concrete and others continue to use lot 19.01 as a construction yard, storing construction vehicles and construction materials including on the Morris Ave. residential portion. Exhibit K pg 119, Exhibit S pgs 216-228, Exhibit Y pgs 289, 297-336

15. A certificate of non-conforming use for an asphalt company on lot 19.01 predecessor lots does not exist. Exhibit L pgs 137-141

16. Raymond Grieco and Jose Rosario, Jr. are partners in 63 Community Place, LLC which owns 63 Community Place AKA Block 237 Lot 19.01 and are operating an illegal outdoor construction yard thereon. Exhibit K pg 119, Exhibit T pgs. 229-236, Facts 8, 11, 14.

17. Defendants park on the street in front of former lot 32.01 on the pre-consolidation tax map and as shown in photos and videos despite the rejected use. Egress of even small trucks from Plaintiff's parking lot is restricted Exhibit C pg 34, Exhibit F pg 66, Exhibit M pg 144, Exhibit N, pgs. 145-148, Exhibit O pg 199 Exhibit Y pages. 303, 304, 329 #62, 333, 334.
Videos Exhibit BB

18, Pursuant to Long Branch Solid Waste & Recycling Ordinance 293-3(O):
All municipal solid waste, bulk waste and brush shall be stored, prior to collection, in such a manner as not to become a nuisance or fire hazard to the occupants of any adjacent unit or property. Exhibit B pgs. 28-29

19. Pursuant to Long Branch Solid Waste & Recycling Ordinance 293-3(Q):
All municipal solid waste, bulk waste and brush shall be placed for pickup at the nearest curb in front of the building or property from which the municipal solid waste, bulk waste or brush was generated. Municipal solid waste, bulk waste and/or brush shall not be collected by the City or the City's authorized agents if the same is placed in front of adjacent or other properties, i.e., if placed in front of a property other than that from which it was generated. Exhibit B pgs. 28-29.

20. A loading zone is present at the end of Plaintiff's property per Ordinance 325-43. Exhibit B pages 30-32, Exhibit F pg 66, Exhibit M pg 144, Exhibit S pg 226, Exhibit Y pg 304.

21. Defendants continuously maintain trash receptacles and place trash and other objects in the dead end loading zone and on Plaintiff's grassy front buffer.including installing a wooden post thereon in violation of ordinances 293-3(O) and 293-3(Q) Exhibit S pages 218-220, 221, 226-228, Videos Exhibit BB

22. Defendants have attached piping to Plaintiff's adjoining 8 foot high concrete wall. Exhibit Y pg 330, photo # 68 therein.

23. Defendants' use of lot 19.01 encroaches the 50 foot riparian buffer area Exhibit Y pages 296, 302

24a. The buffers and associated tree plantings on Community Place portion of lot 19.01 are on the site plan rejected by the zoning board. Exhibit M, pg. 143, Exhibit N pgs. 146-147, Exhibit Y pages 298,301, 304, 328
24b.What remains of a concrete sidewalk or apron was removed without site plan approval. Exhibit N pg 146
24c The buffers on Community Place were installed 10/1/19-10/18/19. Exhibit N pg 146

25. The buffers and associated tree plantings on Morris Avenue portion of lot 19.01 are site improvement not on the site plan rejected by the zoning board and are otherwise illegal. Exhibit M pg 146, Exhibit Y pages 298, 301 304,

26. Rosario Contracting, LLC, Custom Lawn Sprinkler, LLC and R. Brothers Concrete each require their own sets of permits on lot 19.01 as no prior site plan approval otherwise, Exhibit I pg 93

27, Atlantic Paving does very little paving. Exhibit U pg 249

28. The history of the property and zoning changes over time is thorough in Plaintiff's land use report. Exhibit Z, pg 349.

29. The paving use, once abandoned, needs a use variance to begin anew. Exhibit Y pg 302.

Date: 7/8/24

Brian D. Asarnow, Plaintiff

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Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. L-1422-22

Civil Action

BRIEF IN SUPPORT OF PARTIAL SUMMARY JUDGMENT

Dear Judge Acquaviva:

Please accept my letter brief in support of my motion for partial summary judgment as to the First and Second Counts of the Second Amended Complaint. I rely upon my Certification with Exhibits and Statement of Material Facts and incorporate same herein. Oral argument is requested and opportunity to display videos showing use of Community Place and my property emanating from lot 19.01.

Respectfully,

Mr. Brian D. Asarnow, Plaintiff

TABLE OF AUTHORIITIES

PRELIMINARY STATEMENT

Plaintiff brings this partial summary judgment on the First and Second Counts post discovery for an Order enforcing his rights under the municipal land use law due to the neighbors' operation of an outdoor construction yard which lacks site plan approval and was previously rejected by the zoning board and upon appeal. Plaintiff's summary judgment brought prior to discovery was denied without prejudice because discovery was incomplete. .

Enforcement of zoning laws is mandatory. Per N.J.S.A. 40:44D-18, "the governing body of a municipality shall enforce this act and any ordinance or regulation made and adopted hereunder" and "provisions of the municipal land use law are mandatory." Pop Realty Corp. v. Springfield Bd. of Adjustment of Springfield Twp., 176 N.J. Super. 441, 423 (Law Div. 1980). "A substantial public interest exists in the preservation of the integrity of a zoning ordinance." Sod Farm Associates v. Twp. of Springfield, 366 N.J. Super. 116 (App. Div. 2004). Plaintiff is prejudiced each day the law is not enforced.

PROCEDURAL HISTORY

An Order to Show Cause and two count Complaint for declaratory and injunctive relief to abate zoning and code violations was brought against the neighbors in Chancery on 12/21/21 and temporary restraints were obtained. A motion for contempt was filed 4/20/22. After several weeks, it was determined by the chancery court and assignment judge to be a prerogative writ matter necessitating the inclusion of Long Branch and an Order to transfer the complaint and motion to Law Division was entered 5/24/22. The complaint was thereafter amended 7/7/22 to add a third count against Long Branch under 42 USCS section

1983 for violating Plaintiff's civil rights. The private and public defendants defaulted which was vacated in the Law Division hearing of 9/16/22 and the contempt also denied. Partial summary judgment for equitable relief was filed 10/26/22 on 2 counts and opposition and cross motions filed and on 3/9/23 summary judgment was denied and the cross motion by Long Branch for dismissal was granted, On 3/30/23 Plaintiff's motion for leave to file a second amended complaint for equitable relief and nuisance was filed, then granted 4/14/23 and filed on 4/21/23. A motion for reconsideration of the 3/9/23 Order was filed 4/11/23 and denied 5/12/23. A motion to recuse was filed 5/8/23 and denied 5/26/23. Several motions to compel discovery were filed 8/29/23 – 3/21/24. On 12/29/23 default was entered against Bruno, E&L Paving and R Brothers Concrete. On 4/12/24 a case management Order set 9/23/24 as the trial date.

LEGAL ARGUMENT

POINT 1
STANDING

Plaintiff is an interested party pursuant to N.J.S.A. 40:55D-18. As defined under N.J.SA.40:D-4 "Interested Party means (a) in a criminal or quasi-criminal proceeding, any citizen of the State of New Jersey; and (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under this act, or whose rights to use, acquire, or enjoy property under this act, or under any other law of this or of the United States have been denied, violated or infringed by an action or a failure to act under this act." One need not incur

special damages or claim or prove a nuisance to be an interested party. N.J.S.A. 40:55D-18 of the Municipal Land Use Law entitles any "interested party" to secure an injunction against a zoning ordinance violation.

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POINT 11
SUMMARY JUDGMENT STANDARD OF REVIEW

Per R 4:46-2C, "The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. The court shall find the facts and state its conclusions in accordance with R. 1:7-4." See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), In Brill, the New Jersey Supreme Court propounded the standard for granting summary judgment under Rule 4:46-2:

> Consistent with [the] national trend, we hold that under Rule 4:46-2, when deciding summary judgment motions trial courts are required to engage in the same type of evaluation, analysis or sifting of evidential materials as required by Rule 4 37-2(b) in light of the burden of persuasion that applies if the matter goes to trial.
>
> Under this new standard a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. N. at 539-540 (emphasis added). Also, when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to g rant summary judgment. Id. at 540.

In so ruling, the Court emphasized that summary judgment is designed to provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at trial. [id. at 530 (Citation omitted)]

'... [A] court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged'. That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Id. at 529 (underlining added). Neither fanciful arguments nor disputes as to irrelevant facts will make an issue such as will bar a summary decision. [Merchants Exp. Money Order Co. v. Sun National Bank, 574 N.J. Super 556, 563 (App. Div. 2005) (Citation omitted)] "The law is well settled that [b]are conclusions in the pleadings without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.' Brae Asset Fund. L. P. v. Philip A Newman, 327 N.J. Super. 129, 1 34 (App. Div. 1999). "By the same token, bare conclusory assertions in an answering affidavit are insufficient to defeat a meritorious application for summary judgment." id

The Court observed that the summary judgment rule serves not only to protect litigants from the expense of Mitigating against groundless claims and frivolous defenses, but also "to reserve judicial manpower and facilities to cases which meritoriously command attention." Brill at 542 (quoting Robbins v. Jersey City. 23 N.J. 229, 240-41 (1 957)). The Court warned that sending a case to trial, where a rational fact finder can reach but one conclusion is "worthless" and serves "no useful purpose." Brill at 541 . The Court further stated that a "fear of reversal" should not discourage trial courts from granting summary judgment. Id.

In the present matter, there is no "genuine issue of material fact" in dispute. As set forth in the Statement of Material Facts, the competent evidence presented is not sufficient to permit a

rational fact finder to resolve the issues in Defendants' favor, even when viewed in the light most favorable to each of them. A rational fact finder can only resolve the matters presented in favor of Plaintiff as there is no genuine issue of material fact in dispute, and the law mandates enforcement of ordinances, a task left to courts, not juries. Plaintiff's Motion for Summary Judgment should be granted as to Points III, IV and V of this brief. .

POINT III
THE PAVING COMPANY USE WAS RESTRICTED TO THE INSIDE OF THE GARAGE HEADQUARTERS AND HAS BEEN REPLAC3ED BY OTHER UNAUTHORIZED BUSINESSES AND USES SO THE PAVING USE SHOULD BE FOUND TO HAVE BEEN ABANDONED

Two separate uses operate on lot 19.01 - a paving company use with conditions, as best evidenced by the 8/3/09 zoning permit to Atlantic Paving, (Fact 1) and an illegal multi contractor's yard as best evidenced by Defendant's admitting same in its amended zoning board application. (Fact 8) See Fact 7 which confirms no prior site plan approvals or zoning permits exist for the three associated contractors and Fact 26 wherein former head of planning and zoning Carl H. Turner, confirms each business needs their own sets of permits. This is discussed further in Point IV.

The fraud is evident as Atlantic Paving does very little paving, operates with revoked business status, does no advertising, carries no insurance for the paving equipment, has no website and serves as a front for Rosario and others to occupy and attempt to morph the use into an alleged preexisting legal construction yard. See Fact 27 Point IV below for more on this.

A certificate of non-conforming use for an asphalt company on lot 19.01 predecessor

lots does not exist (Fact 15), however the paving use was granted limited preexisting non conforming status and confined to the garage headquarters industrial area per deposition of Carl H. Turner, Jr., Assistant Director of Planning & Zoning who supervised zoning officer Michelle Bernich who issued the 8/3/09 zoning permit. despite other lots appearing on the zoning permit. The related violations were never challenged or appealed by Defendants who instead filed their site plan to resolve the issues which concedes the violations. Fact 4.

However the paving use has been operating illegally in the C-2 zone, not the garage and has ceded the garage to Rosario for heavy equipment repairs for his businesses which constitutes abandonment of the paving use. See Fact 5 including the deposition portion of Raymond Grieco, owner of Atlantic Paving admitting use of the C-2 zone and not garage.B-2 (pg 289) and photos showing Rosario's use of garage B area and office and the deposition portion of mechanic Taha Siyouf confirming Rosario's use of the garage and office and Atlantic Paving's use of the C-2 zone along the creek.

While zoning ordinances of many local governments have time provisions as an indicator whether abandonment has occurred (See Abandonment, Discontinuance and Amortization of Nonconforming Uses: Lessons for Drafters of Zoning Regulations Nonconforming Uses: Lessons for Drafters of Zoning Regulations Patricia E. Salkin Touro Law Center, 2010). time alone is not enforced by the courts and Long Branch's ordinance 345-69 has no time provision. Instead, as held in S&S Auto Sales, Inc. v. Zoning Board of Adjustment for the borough of Stratford, 373, NJ Super 603, 613-614 (App. Div. 2004)

> " The traditional test of abandonment requires the concurrence of two factors: (1) an intention to abandon, and (2) some overt act or failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. Id. at 16-17"

This two pronged test applies both a subjective (party's intention to abandon) and objective (overt act or failure to act that implies the owner does not retain any interest) standard. Thereby, the Courts have determined the issue of abandonment to be a "matter of intent," and that "intent must be continuing and definite and the owner bears the burden of proof by competent evidence."

> "We are convinced that N.J.S.A. 40:55D-68 does not authorize land use boards to deprive a nonconforming user of the right to resume the use after a temporary cessation without regard to whether the owner intended to abandon the use. The intent must be continuing and definite, and the owner bears the burden of proof by competent evidence"
>
> "Of course, if S&S did conduct some activity other than car sales, that change in use would be strong evidence of intent to abandon. Failure to conduct any activity other than that embodied in the nonconforming use supports S&S's asserted intent not to abandon".

In the current matter, the change in use of the garage and Grieco's statement he uses the C-2 zone indicates the intent to abandon and the continued use of the C-2 zone thereafter by Atlantic Paving constitutes the overt act or failure to act evidencing a lack of interest in using the garage. It couldn't be any clearer though Rosario may try to claim he now does paving in his unauthorized demolition business or Grieco may state he now intends to kick Rosario out of the garage and use that instead, especially since he does very little paving and is retiring. The public interest is served by the lawful elimination of nonconforming uses when possible which is why the landowner has the burden of proof.

The paving use, once abandoned requires a use variance to begin anew. Exhibit B pg 24, Fact 29. Per Borough of Saddle River v. Bobinski, 108 N.J. Super. 6, 16 (Ch. Div. 1969). "Abandonment of a nonconforming use terminates the right to its further use."

Finally, even arguendo, under NJ Admin. Code 19:4-6.1 @ 3 (b) 5: which solely prescribes a time period of 12 months as evidence of abandonment and is not enforceable

(supra) google photos from 9/3/22, Sept. 2019 and Sept. 2022 (Exhibit Y pages 289, 333, 334 respectively) show the Atlantic Paving equipment in the C-2 zone more than 12 months prior to Grieco's 2/19/24 deposition (Exhibit Y, pg 335)

As these facts are not in dispute and "the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540." (supra) Juries do not decide matters of law and this is, respectfully, not a matter for trial.

POINT 1V
THE USE OF LOT 19.01 AS A MULTI CONTRACTOR'S YARD IS ILLEGAL AND SHOULD BE TERMINATED AND LOT 19.01 CLEARED PENDING SITE PLAN APPROVAL

Defendants' Amended site plan application admits lot 19.01 is presently used as a contractor's yard for paving and associated contractors and seeks to resolve issues (violations) due to unlawful expansion of use due to the presence of multiple unauthorized businesses and uses around the lot, (Exhibit k pg 119, Fact 26, Exhibit l pages 93, 95-97) by seeking a use variance for same.. The conditions of the 8/3/09 zoning permit (Exhibit G pg 68) prohibiting expansion of use and stockpiling are permanent and per Fact 14, this expansion of use is ongoing.

According to the zoning board Resolution, the recognized applicant, Atlantic Paving, LLC, sought:

> "preliminary and final site plan approval, use variance (d) approval, and bulk variance Approval to effectuate a) subdivision of the existing lot 19.01 property into 3 new lots, namely new lot 19.02, new lot 19.03 and new lot 19.04, b) use variance/siteplan/bulk variance approval to utilize new lot 19.02 for 4 separate uses including a asonry/concrete use, an asphalt paving use, a contracting use and an irrigation company use. c) construction of a new single family home on Lot 19.03, d) construction of a new single family home on Lot 19.04, e) site plan approval to allow for installation of fencing, the installation of a sliding gate at the Community Place entryway, and the installation of material bins on proposed lot 19.02" Fact 6a.

On page 169 of the Resolution under Variances the board found:

> "USE VARIANCE: A Use Variance is required **to permit** a masonry / concrete use, an asphalt paving use, a contracting use, and an irrigation company use {i.e. industrial uses) which are not permitted in the City's C-2 Commercial Zoning District" Exhibit O pg 169.

Nor are the uses permitted in either the R-4 or I zone portion of former lot 13.02 where a house once stood and no prior site plan approval obtained to change use and for which Bruno previously pled guilty. Fact 9. Exhibit Y pg 289, 300, 301

The board found a use variance was also required to expand the various uses (the paving use is/was the only approved use) due to consolidation of the legal paving use and illegally operating (supra) non conforming associated contractor uses into the C-2 and I zone areas near Plaintiff, due to the subdivision, and denied this as well. Exhibit O pg 169, 199:

.

> "USE VARIANCE FOR THE EXPANSION OF A_ NON-CONFORMING USE: The existing mother lot is currently utilized to host various non-permitted uses, including a masonry / concrete use, an asphalt paving use, a contracting use, and an irrigation company use. In that the said mother lot is to be subdivided, and in that the aforesaid 4 industrial uses will be operating on a smaller parcel of land (than currently exists), the Application as presented requires Use / "d" Variance for the expansion of non-conforming uses;"

This is a different expansion of use then expansion due to the presence of multiple businesses and uses. Since a use variance is required to **permit** the 4 uses (supra), they cannot be considered legally preexisting prior to the subdivision and should not be operating and come before the board with essentially unclean hands.

Also, pursuant to Ord. 345-113 (application for use variance and site plan approval), Exhibit B pg. 19, the requirement of an "application" means that an approval must be first obtained before using the lots subject to the application. Ord. 345-79 C (Exhibit B pg 27)

entitles 'the owner of any property in the City of Long Branch by appropriate action or proceeding in equity or otherwise to **prevent and enjoin** any threatened violations or any existing violation of this chapter or any provision or section thereof."

Both variances were rejected by the zoning board July 10, 2017 (Fact 6a.) and upon appeal 6/19/18 (Fact 10) regardless the focus or reasons given (Exhibit Z). Plaintiff was not allowed to intervene (Exhibit Q) Nevertheless, the use continues to operate illegally causing harm to Plaintiff. See Facts .6-11, Exhibit AA

Importantly, the application was denied despite applicant's submission as exhibit A-19 into the board record (Exhibit O pg 153) its zoning and ancillary permits (Exhibit G pages 67- 75) which it desperately claims as evidence of lawful preexisting use by the 3 other businesses which lack their own zoning permits. See Fact 7, Exhibit Z, pages 341, 342, 345, 348.

The history is not in dispute (Fact 28) "while thorough as to the history of the property and zoning changes over time....."

Considering the above, a court is compelled to find that any ongoing use of the site as a contractor's yard is therefore illegal as lacks site plan approval and that the associated contractors lack any prior legal status or foundation for same.

Per material Fact 16 , the court must, respectfully, find that Defendants 63 Community Place, LLC and partners Grieco and Rosario are operating an illegal construction yard, storing construction vehicles and construction materials thereon.

The court should conclude the foregoing premise and abandonment of the paving use means lot 19.01 should be vacant of those businesses and uses until site plan approval is obtained regardless of how long lot 19.01 or predecessor lots may have been used illegally.

See prior zoning officer Juska's letter of violation of 9/24/98 which confirms this. (Exhibit D pg 36). Since Atlantic Paving has abandoned the paving use (supra), the 8/3/09 zoning permit and any ancillary permits such as a certificate of occupancy (CO) or mercantile license containing the name Atlantic Paving and upon which Defendants rely as evidence of lawful preexisting use, are now void. Fact 12.

A recent appraisal shows that the use as an illegal construction yard which spills over and uses adjoining properties and the street (infra) has significantly diminished Plaintiff's property value. (Exhibit AA pg 350-354) Plaintiff's land use expert also noted this problem (Exhibit Y, page 299)

This objectionable operation can easily and legally be done a few miles away on Shafto Road or elsewhere, not in the middle of a city block in close proximity to residential and commercial zones and neighboring properties. The trucks and equipment at the site are mobile and also fully capable of removing stockpiled materials and trailers. Enforcing the law will not deprive defendants their opportunity to earn a living but will encourage them to find a legal and more appropriate use of the subject property and also protect the public interest and the integrity of Long Branch zoning laws.

Based upon the foregoing, pursuant to R 4:46-2C, "The judgment or order sought shall be rendered forthwith" as there is no genuine issue as to any material fact challenged and Plaintiff, the moving party, is entitled to a judgment or order as a matter of law." As above,

> when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to g rant summary judgment. Id. at 540.

Termination (Exhibit B pg 26) can only mean that lot 19.01 is to be vacated until proper site plan approval is obtained to change the use before a properly constituted zoning board. Exhibit D, pg 26.

POINT V
DEFENDANT'S USE THE STREETS AND PLAINTIFF'S PROPERTY ANCILLARY TO ITS ILLEGAL CONSTRUCTION YARD WHICH MUST ALSO END

1. Occupants of Lot 19.01 use the street across from Plaintiff's driveway which interferes with access thereto:

Per material facts 11, 17 parking on the street in front of former lot 32.01 shown on the pre-consolidation tax map and as shown in location in photos, is illegal and or a nuisance due to lack of site plan approval for lot 19.01 and lack of provision for off street parking. Were it not for the illegal use of lot 19.01 there would be no need to park there. No curbs exist and doing so restricts egress of even small trucks from Plaintiff's main parking lot. Videos show the vehicles are used by employees walking to and from lot 19.01.

2. Occupants of Lot 19.01 use the dead end loading zone and Plaintiff's grassy right of way 24/7 for placement of garbage receptacles, trash and objects and restrict access of larger trucks and use by Plaintiff.

Per material facts 18 and 19, property owners may not place their garbage for collection in front of someone else's property under sections O and Q of Solid Waste & Recycling Ordinance 293. The end of the street in front of Plaintiff's property is also a marked loading zone per ordinance #21-20 (Fact 20) so no parking of vehicles or placement of equipment is allowed there either though occurring. (Fact 21)

The placement of trash and objects such as vehicles and use of the loading zone by Defendants to repair heavy equipment prevents larger trucks from pulling up in the dead end

and backing into Plaintiff's parking lot and the vehicles across the street prevent them from getting out. Facts 17, 21

. Pipes are also attached to Plaintiff's 8 foot high western boundary wall adjoining Defendants which should be removed and any damage repaired.(Fact 22)

POINT VI
THE BUFFERS AND TREE PLANTINGS ON COMMUNITY PLACE & MORRIS AVENUE USED TO COVER UP THE ILLEGAL USE, ARE ILLEGAL IMPROVEMENTS AND SHOULD BE REMOVED ALONG WITH THE ILLEGAL USE OF LOT 19.01

Per material fact 24., the buffers and associated tree plantings on the Community Place portion of lot 19.01 are on the site plan rejected by the zoning board 7/10/17 and are therefore illegal. Photos show the buffers were installed 10/1/19-10/18/19. What remains of a concrete sidewalk or apron was removed without site plan approval while installing the buffer.

Per material fact 25. the buffers and associated tree plantings on the Morris Avenue portion of lot 19.01 are a site improvement not on the site plan rejected 7/10/17 by the zoning board and are otherwise illegal.

If the use is vacated, in Point IV preceeding, so should the illegal buffers that are associated with them be removed. They encroach on the public ROW and If good uses existed for lot 19.01, they wouldn't be needed and more attractive buffers and fencing would be added instead.

CONCLUSION

Based on the foregoing, it is respectfully submitted that summary judgment of the within claims asserted under the First and Second Counts of the Amended Complaint is warranted as no genuine issues of the within material facts exist warranting a trial. The public interest is also well served enforcing the laws.

Respectfully submitted,

Dated: 7/8/24

Brian D. Asarnow, Plaintiff