

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON
NEW JERSEY**

Case # 2015-2-V

Motion by: Mr. James Hochberg

Second by: Mr. Anthony Nardone

FINDINGS AND CONCLUSIONS

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and the testimony and evidence presented at the hearings on January 27, 2015, the following findings of fact and conclusions are made:

1. The applicant is Allwood Associates I.
2. The property is located at 354 Eisenhower Parkway and is taxed as Block 106 Lot 11. The property is in the RL-2 Zone.
3. The applicant is represented by Stephen Geffner, Esq.
4. The applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or arrearages.
5. The applicant requested an interpretation of Section 170-116A and B(1) that a personal training fitness facility as a tenant serving both the tenants of the office building and the public was a permitted use in the property and appealed the determination of the Zoning Review Officer by letter dated December 24, 2014 that such use was not a permitted use. Due the express language in Section 170-112D which expressly permits such use in the P-B2 Zone and the lack of such provision applicable to the RL-2 Zone, the Board determined that it could not grant the interpretation requested.
6. The applicant then requested that the Board grant it a use variance for such use. No site plan approval or amendment is requested as all activities will be within an existing building.
7. The applicant presented its first witness, Peter Schofel, a principal in the applicant, testified that due to substantial market competition for all types of office tenants that amenities to attract tenants have become an important part of keeping the office building a viable economic venture. Further, in addition to cafes, childcare facilities, personal training and fitness facilities were high on the list of tenants of the property that the applicant had surveyed. The applicant has Living Fitness, a personal training company, as a potential tenant and would like to install it in the building. Mr. Schofel said that this kind of health and fitness facility would enhance the building and due to its policies would not take much room or require more parking than an office use. Further, the tenant would require that the non-tenant public be permitted to patronize its facilities.

8. Elisa Montgomery, a principal of Living Fitness, then testified for the applicant. She testified that the company was now on Microlab Road in Livingston and wanted to relocate to larger building where it could look to tenants as potential customers. She described its operations. Living Fitness offer by appointment only personal training sessions with four personal trainers who usually work a 50 minute training session. Clients arrive a few minutes prior to the session to warm up on a treadmill and then either leave directly after the session or shower in the on-site facilities. The operation is not like a health club that has many members who can appear to work out without an appointment. No client can come and use the equipment or training facilities without an appointment for a training session and there can only be four appointments working at a time.

9. Michael Lanzafama, PE and PP, was the next witness for the applicant. Mr. Lanzafama was recognized as a professional engineer and planner by the Board. He said that the proposed use has become an essential amenity in office buildings and that this building was particularly suited due to the size of the building, large parking area and the fact that the site is on a major road, Eisenhower Parkway. He said the "special reasons" required by the Medici case were that this would benefit the health and wellbeing of the tenants and public which was one of the general purposes of the land use laws. He opined that there was adequate parking in light of the limited clients that can attend at any one time.

Conclusions of the Board

A. The Board concluded that the Applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(1) for the relief sought, the use has demonstrated "special reasons" and is particularly suited due to the location and parking available, thereby demonstrating that the benefits of the proposed use far outweigh any detriments which might be caused by the granting of the variance.

B. The Board accepted the testimony of the Applicant's witness and expert and concluded that applicant met the standards for a Medici use variance.

C. The Board found very few detriments to the application and the use was compatible with permitted uses in the zone, but so particular that it was not called out in the Ordinance.

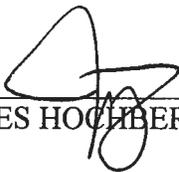
Based upon the above findings, there will be no detriment resulting to the public good, nor will there be an impairment of the zoning plan or municipal zoning ordinance.

Now, therefore, be it **RESOLVED** for the reasons set forth above and on the record of testimony, by the members of the **ZONING BOARD OF ADJUSTMENT** of the Township of Livingston, that the use variance is hereby are granted for a personal training use open to the tenants of the building and the public subject to the terms and conditions set forth herein and as are reasonably consistent with the plans submitted and as testified to at the hearings before the Board.

This approval is subject to all other requirements of the Township ordinances, building code, and the right of appeal by any interested party. Also, as required by Livingston Ordinance 170-27(A), the use must be commenced within one year of the date hereof or the variance shall expire.

The Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on January 27 2015, in which Board unanimously voted six in favor and none opposed to approve the application in accordance with and subject to the conditions and terms set forth herein on the record.

CHAIRMAN:



JAMES HOCHBERG

Dated: February 24, 2015

Prepared by: Herbert S. Ford, Esq.