

**CITY OF NEW BRUNSWICK
BOARD OF ADJUSTMENT
SEPTEMBER 23RD, 2013
MINUTES
7:30 p.m.**

I. ROLL CALL

	Nancy Coppola,
X	John Cox,
X	Margaret Chester
X	Sue McElligott
X	Doug Sheehan
	Peter Ventrice (alt)
	Jose Madera (alt)
X	Tierream Houser (alt)
x	Mike Manzella (alt)

II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETING ACT)

III. SALUTE TO THE FLAG

IV. MINUTES OF THE BOARDS JULY 22ND, 2013 MEETING

Motion to Approve: Manzella

Second: McElligott

Approved by voice vote

**V. COMMUNICATIONS AND REPORTS-
Resolutions of Memorialization of Approval**

None.

VII. OLD BUSINESS

None

VIII. NEW BUSINESS

- A. DEEPAK BHUMBRI, Z-2013-04**, Variance application for the expanded hours of operation of an existing convenience store located at 82 Senior Street, Block 87, Lot: 23, Zoning District: R-5A.

The applicant requested to postpone the hearing until the October 28, 2013 meeting, as there would not be a full board present to hear the use variance associated with this application.

The Board approved the postponement and notice was given to the public of the new date and time. No additional notice is required.

B. TRCB HOLDINGS THREE, LLC, NU-2013-03, Certification of a pre-existing legal non-conforming use or structure for the use of the existing property for mixed-use with ground floor residential units located at 151-153 Livingston Avenue, Block 181, Lot 2, Zoning District: C-3A

Vincent Loughlin, Esq. – The proposal is to continue the existing uses at the property. It is a bank-owned property, but they have set up an LLC as banks are not allowed to own the property directly. There are no improvements proposed to the property. The only issue is straightening out the zoning status for the property that arose after a code enforcement inspection.

The bank believes there has been no new construction since 1972 and can find no record of any construction since then. The 151 Livingston side of the property used to have a doctor office in the 2.5 story portion of the property. Currently the bank uses the ground floor as a mortgage office and the two upper floors are vacant. The upper floors may have had an apartment, which is a permitted use. 153 Livingston has a doctor's office, with 2 apartments to the rear on the ground floor. The apartments have existed for at least 40 years. The zoning ordinance does not allow ground floor apartments. The bank asks that the two apartments be found to be a legal, pre-existing, non-conforming use so that the property can be sold and made productive again.

Justin Auciello, Planner

He has visited the property four times.

A-1 thru A-6: photos of the project and project neighborhood

The photos show the buildings to be of not recent construction. There is no evidence of recent improvements as the bank inquired about improvements and he understands that the City did not have a record of any improvements. At this time, the Board Attorney and planners asked what records were examined or not provided. Mr. Loughlin said "the records", but did not define what records were requested to be seen.

Auciello stated there would be no detriment to granting a non-conforming use certificate as the use fits in harmoniously.

Board Attorney Aithal stated that the applicant has the burden to show the non-conforming use existed continuously since the zone created the non-conformity and was legally established when it began. He asked if the applicant had information about this. Mr. Loughlin said they did not as they were not given any records. Mr. Patterson asked if they have information on whether the building is contributing to the Livingston Ave historic district as evidence of the long-term nature of the existing condition. Loughlin said they had no information about the historic status of the property.

Mr. Aithal stated that the applicant has not provided testimony about the continuity of the existing use of ground floor apartment. There are also conflicting statements about no changes being made to the property and part of the building now being used as an office. Loughlin stated no existing tenants can provide long term status testimony and the Dr. Sharma who remains at the property will not cooperate in discussing how long he has been at the property or its history.

Mr. Bignell asked about the number of electrical meters as there appear to be 5 uses. Loughlin stated there are 4 meters.

Mr. Aithal suggested the applicant consider carrying the application to provide better information. Loughlin said he did not want to do this. McElligott said the 1972 tax card said there was only one apartment whereas they say they have 2 or 3 apartments, so this is contradictory.

Public: There were no public comments.

Board Discussion:

Ms. Chester – there is a lack of information about the continuity of use of the property and when the use was established. Other board member agreed with this.

Motion **to Deny**: McElligott

Second: Chester

	Yes	No
Nancy Coppola, Chair		
John Cox, Vice Chair	X	
Margaret Chester	X	
Sue McElligott	X	
Doug Sheehan	X	
Peter Ventrice (alt)		
Jose Madera (alt)		
Tierream Houser (alt)	X	
Mike Manzella (alt)	X	

C. TRCB HOLDINGS THREE, LLC, Z-2013-06, Variance application for the use of the property for mixed-use with ground floor residential units located at 151-153 Livingston Avenue, Block 181, Lot 2, Zoning District: C-3A

Mr. Loughlin started to present this alternate portion of the application as the Board had denied the non-conforming use certificate. Mr. Bignell again raised his objection to the application going forward as there is outstanding information needed to understand what is needed to support a use variance. He stated that there was no information as to number of bedrooms, parking spaces, etc and it was not clear if other variances were required.

Mr. Loughlin again stated that the proposal proposes no changes to the building. Mr. Patterson and Mr. Bignell stated that this was incorrect as the Board had just denied the continuation of the non-conforming use, therefore, the ground floor apartments do not legally exist and the applicant is

asking for de nouveau approval of these units. Mr. Aithal stated that the applicant could proceed and the Board could weigh Mr. Bignell’s comments and consider whether to carry the application or deny based on lack of information or approve.

Mr. Loughlin asked for waivers of items related to the site plan such as a site plan and parking calculation. Mr. Aithal, Mr. Bignell and Mr. Patterson said items such as variances cannot be waived. Applicant agreed to continue the application to a later date and to waive the time requirements. The applicant will provide additional information to the staff and the application will be rescheduled back to the TAC for additional review based on a use variance being sought and new units being sought.

	Yes	No
Nancy Coppola, Chair		
John Cox, Vice Chair		
Margaret Chester		
Sue McElligott		
Doug Sheehan		
Peter Ventrice (alt)		
Jose Madera (alt)		
Tierream Houser (alt)		
Mike Manzella (alt)		

D. DOUGLAS DALTON, NU-2013-02, Certification of a pre-existing legal non-conforming use or structure for the conversion of a garage into habitable area located at 23 North Pennington Road, Block 746, Lot 15, Zoning District: R-3

After the application announced, Mr. Houser, Ms. McEligott and Mr. Sheehan stated they had conflicts related to this application. After they recused themselves, only three members remained to participate. A quorum of board members was not present and therefore the application could not proceed.

	Yes	No
Nancy Coppola, Chair		
John Cox, Vice Chair		
Margaret Chester		
Sue McElligott		
Doug Sheehan		

Peter Ventrice (alt)		
Jose Madera (alt)		
Tierream Houser (alt)		
Mike Manzella (alt)		

IX. ADJOURNMENT

Motion: McElligott

Second: Chester

Approved