

10/12/20

To Whom It May Concern on the West Long Branch Housing Board,

Please accept the following application along with this letter of explanation. While there were no documents on the website that aligned itself to the information requested in this letter, I requested guidance on and used a form that seemed to allow us to give you as much information as possible.

We are looking for you to address the definition of a dwelling unit. The ordinances that define a dwelling unit consist of facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Because we had originally requested to add a second semi-permanent (*electric* oven and microwave) provision for cooking within the addition to support the care of my special-needs brother Nicholas, we proactively went before the board to request this permission before installing an electric oven and microwave to the addition of the house – and, after waiting almost a year to appear, were approved to do so.

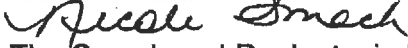
At this time, we have decided to try and sell the home and move to a location that will better serve our family's current personal needs. Upon the closing of the sale of the home and prior to the buyer obtaining a CO, we are proposing to remove the provisions for cooking in the addition – the oven and microwave. In doing so, the addition would no longer be considered, by statutory definition, a dwelling unit and therefore would not require permission of the board to remove it, leaving only the cabinets, sink and dishwasher. As there are no statutory limits on the number of cabinets, dishwashers or sinks that can be added into a dwelling unit, removal of the permanent provision for the second cooking (the addition's oven and microwave) prior to closing on the sale of the house, by definition, would meet the legal housing requirements and therefore, would not require board approval or variance.

Should we fail to sell the home and for as long as Nicholas Jr. lives here, we will not proceed with the process of removing the cooking elements previously approved, and will leave the special use in tact until such time as we do sell the single family property. However, we have, and will continue to make it clear to any buyer at any future point in which the home is sold, that the addition's permanent cooking provisions will be removed before closing, and remove them - in order for us to meet the legal requirements, as stated above.

Please let me know if there are any other forms I should fill out. We are asking, with all due respect, for you to review the definition and to respond with your agreement as quickly as possible.

Kindest Regards,

Nicole Smack


The Smack and Paolantonio Families
148 Whalepond Rd.
West Long Branch, NJ 07764

**BOROUGH OF WEST LONG
BRANCH**

965 BROADWAY
WEST LONG BRANCH, NJ 07764
TELEPHONE: 732-571-5984 FAX: 732-571-9185

Copy



November 27, 2017

Jeffrey Resnikoff, Esq.
41 Memorial Parkway
Long Branch, NJ 07740

Re: ZB 2017-01 Nicholas Paolantonio
148 Whalepond Road
Block 8.01, Lot 50

Dear Mr. Resnikoff:

For your files, enclosed please find an executed copy of Resolution of the Zoning Board of the Borough of West Long Branch for the above captioned application.

Very truly yours,

Martinha Sanders
Martinha Sanders
Zoning Board Secretary

Cc: Lori Cole w/attachment
Fran Mullan, P.E., via e mail
James Miller, Zoning Officer
Stan Midose, Construction Official
Scott Imbriaco, Tax Assessor

APPLICANT: NICHOLAS PAOLANTONIO
APPLICANT'S ATTORNEY: Robert L. Witek, II, Esq.
APPLICATION NO.: ZB 2017-01
BLOCK 8.01, LOT 50

**RESOLUTION OF THE
ZONING BOARD OF ADJUSTMENT
OF THE BOROUGH OF WEST LONG BRANCH**

**GRANTING INTERPRETATION THAT THE HOUSE AT THE
PREMISES CONSTITUTES A SINGLE-FAMILY DWELLING UNDER
THE FACTS AND CIRCUMSTANCES HERE AT ISSUE**

WHEREAS, NICHOLAS PAOLANTONIO, hereinafter referred to as the "Applicant",
filed an application with the Zoning Board of Adjustment of the Borough of West Long
Branch (hereinafter referred to as the "Board") seeking the following:

The applicant seeks an interpretation that the house at the subject property
with the proposed improvements will continue to constitute a single-family
dwelling; in the alternative, the applicant seeks D(1) variance relief if the
proposal is otherwise deemed to create a two-family dwelling.

WHEREAS, the application pertains to the premises designated as Block 8.01, Lot
50, on the Tax Map of the Borough of West Long Branch, which premises are commonly
known as 148 Whalepond Road, West Long Branch, New Jersey;

WHEREAS, all notice requirements were satisfied by the Applicant, and the Board
had jurisdiction to hear, consider, and decide the application at issue;

WHEREAS, the Board held a public hearing with regard to the referenced
application on October 26, 2017; and

WHEREAS, the Board, having given due consideration to the exhibits moved into
evidence and the testimony presented at said hearing, does hereby make the following
findings of fact:

1. The premises are located in the R-15 (single-family residential) zone.
2. The applicant submitted the following exhibits into evidence: Plans, prepared by Robert A. Hazelrigg, AIA, consisting of 7 sheets, dated 5/20/15, last revised 11/15/15 (A-1); and Two sheets of exhibit A-1 revised through 11/16/16 (A-2).
3. Ms. Nicole Smack testified in support of the application. She stated that she lives within the house at the subject property along with her husband and their three children, her mother and father, and her 43 year old brother. Ms. Smack advised that her brother has Down Syndrome and is unable to care for himself. She indicated that the house at the site has been expanded pursuant to construction permits issued for same. Ms. Smack testified that her brother has a special diet, and they propose to install a second kitchen within the house to facilitate the preparation of his meals.
4. No objectors or interested parties appeared with regard to this matter.
5. The Board finds that the house at the subject property has been expanded, with permits, to accommodate Ms. Smack and her husband and children, as well as her mother and father, and her adult brother. Ms. Smack's brother has Down Syndrome and requires assistance with his care. The Board finds that as a result of the layout of the expanded dwelling, and the fact that a second kitchen is proposed to be included therein, the issue arose as to whether the project constituted the creation of a two-family house; multi-family dwellings are not permitted uses in the zone at issue. The Board finds that the intention here is not to create two separate dwelling units at the site. Rather, the dwelling has been expanded expressly to accommodate the needs of this extended family. The Board finds that the family members will continue to function within the dwelling as one integrated family, notwithstanding the installation of the second kitchen, which kitchen itself is modest in size and intended to serve the needs of Ms. Smack's

brother. Nevertheless, as a result of the layout of the expanded residence, and to ensure that the structure will function as one integrated dwelling (without compartmentalization or separation into two distinct dwelling units), the Board requires that the door at the hallway of the Great Room be eliminated and replaced with an open archway, so as to allow one to travel unimpeded from one end of the dwelling to the other. Further, because the interpretation herein set forth is expressly dependent upon the specific facts and circumstances here at issue, particularly regarding the requirement for the second kitchen to serve the special needs of Ms. Smack's brother, and also to ensure that the dwelling is not otherwise used as a two-family dwelling at some point in the future when the specific circumstances here at issue cease to exist, the Board imposes the conditions/restrictions hereinafter set forth.

NOW, THEREFORE, be it hereby resolved by the Board that, based upon the specific facts and circumstances here at issue, the Board determines and interprets the ordinances to conclude that the house here at issue remains a single-family dwelling (and is not a two-family dwelling), notwithstanding the expansion of the house and the installation of the second kitchen as referenced herein, subject, however, to the conditions/restrictions hereinafter set forth.

BE IT FURTHER RESOLVED by the Board, that any relief not expressly granted by the Board herein, be and is hereby denied. Further, as a result of the interpretation here at issue, the request for D(1) variance relief in the alternative be and is hereby expressly denied and dismissed as being moot.

THE INTERPRETATION HERE AT ISSUE IS SUBJECT TO THE FOLLOWING CONDITIONS:

General Conditions

1. Subject to the development here at issue being undertaken in accordance with the testimony presented to the Board and the plans submitted to/approved by the Board.
2. Subject to the testimony of all witnesses called on behalf of the Applicant being true and accurate.
3. Subject to the Application, all attachments thereto, and all exhibits offered by the Applicant being accurate depictions of that which they purport to represent.
4. The Applicant shall furnish proof that taxes have been paid through the current quarter and through the quarter in which he receives his initial construction permits.
5. Subject to the Applicant paying in full all application fees, review fees, engineering and consulting fees, and escrows.
6. Subject to the Applicant obtaining and complying with the approval of any other reviewing agency having jurisdiction over the Property and/or the Project, including but not limited to the Board of Health, the municipal Engineer, the municipal Fire Official, and any County, State, or Federal agency; provided, however, that in the event that any other agency or authority shall require any changes in the plans herein approved, then any such changes must be submitted to this Board for review and approval. Further, if another governmental agency grants a waiver or variance of a regulation, which same affects this approval or any condition attached hereto, or otherwise requires any changes in the plans herein approved, then this matter shall be brought back before the Board for review of any such action, and the Board shall have the right to modify this approval and/or the conditions attached hereto as a result of any such action.
7. The action of the Board in granting the Interpretation set forth herein shall not relieve the Applicant from responsibility for any damage caused by the Project, nor does the Board of Adjustment or the Borough of West Long Branch or any of their respective professionals and consultants, accept any responsibility for the design or the installation of the Project.

Specific Conditions

1. Subject to the applicant complying with all requirements and recommendations set forth in the Board Engineer's review letter dated April 21, 2017.
2. Subject to the door at the hallway of the Great Room being eliminated and replaced with an open archway, so as to allow one to travel unimpeded from one end of the dwelling to the other; and subject further to the plans being revised to depict/note same, which plan revision shall be subject to review and approval by the Board Engineer.

DEED RESTRICTION AND RESTRICTIVE COVENANTS

THE PARTIES HERETO, specifically, John S. Smack, Nicole Smack, h/w and Nicholas J. Paolantonio and Ann Paolantonio, h/w, having taken title to the within premises shown on the tax map of the Borough of West Long Branch as Block 50, Lot 8.01, and which is commonly known as 148 Whalepond Road, by deed dated January 5, 2015, and the parties, having appeared before the West Long Branch Zoning Board of Adjustment for hearing on October 26, 2017 seeking variance relief to permit the installation of a second kitchen in the interior of the subject premises, and such relief being granted and memorialized pursuant to a Resolution dated November 16, 2017 subject to certain conditions, including the recordation of a Deed Restriction and Restrictive Covenants, do hereby grant the following Deed Restriction and Restrictive Covenants:

1. Pursuant to the subject Resolution, and in particular, Conditions 3, 4, and 5
 - a. The premises is and shall forever remain a single family dwelling and shall not be construed, marketed, sold, or otherwise considered a two family dwelling;
 - b. The second kitchen permitted by the Resolution in the interior of the premises must and shall be REMOVED upon the first of either of the following events to occur; the sale of the premises to a third party; or the vacation, death, or the ceasing to reside in the premises of the Adult Son of Nicholas and Ann Paolantonio and Adult Brother of Nicole Smack, being one and the same persons.

IN WITNESS HEREOF, the parties have on this date of September 2020 affixed their signatures hereto as their willing and voluntary act.

Nicole Smack

John S. Smack

Nicholas Paolantonio

Ann Paolantonio

Witness

Witness

Witness

Witness

In witness hereof, on this day of September, 2020, I Robert L. Witek, II, Esquire, an Attorney At Law of the State of New Jersey do hereby affix my signature and state that I am satisfied that the persons executing this instrument do so of their free and voluntary act and I am satisfied that all parties have provided sufficient proof of their identity.

By Robert L. Witek, II, Esquire
An Attorney at Law of the State of New Jersey

RECORD AND RETURN TO
ROBERT L. WITEK, II ESQUIRE
41 MEMORIAL PARKWAY, LONG BRANCH NJ
07740

3. Subject to the conditions that: (1) the premises is and shall remain a single-family dwelling; (2) the premises is not and shall not be or become a two-family dwelling; and (3) no part less than the whole of the dwelling shall be rented out.

4. Subject to the condition that one of the kitchens shall be removed from the premises (so that the dwelling shall thereupon contain only one kitchen) upon the first of the following to occur: (a) the subject property being sold; or (b) Ms. Smack's adult brother referenced herein ceasing to reside at the subject property.

*5. Subject to a Deed restriction, being satisfactory in form and content to the Board Attorney and the Board Engineer, being prepared and recorded at the County Clerk's Office by the Applicant, which Deed restriction shall incorporate therein as restrictions, the provisions of Specific Conditions 3 and 4 of this Resolution set forth above.

ROLL CALL VOTE

THOSE IN FAVOR: 7

THOSE OPPOSED: 0

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of West Long Branch at its meeting on November 16, 2017.

DATED: 11/16/17


Secretary

BOROUGH OF WEST LONG BRANCH, NEW JERSEY

ZONING BOARD OF ADJUSTMENT

VARIANCE APPLICATION (Page 1 of 3)

Applicant

Lot Definition

Name: Nicole Smack Lot No.: 50
Address: 148 Whalepod Rd. Block No.: 8.01
West Long Branch NJ 07764 Street Address: Same
Telephone: 732-272-4799 Zone Type: Residential

Property Owner

Person Preparing Plans

Name: Smack + Paolantonio Name: _____
Address: 148 Whalepod Rd. Profession: _____
West Long Branch NJ 07764 Address: _____
Telephone: 732-272-4799

no plans needed

Representative (Attorney)

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Existing use: _____

Proposed use: _____

Provide a brief narrative explaining the proposed application (attached additional page if necessary):

Applying for permission to remove cooking elements in the addition. leaving behind sink, cabinets - dishwasher as a wet bar.

colesmack@gmail.com

VARIANCE APPLICATION (Page 2 of 3)

Size of building(s) (present and/or proposed) at street level: _____

Frontage _____ Department _____

Have there been any previous variance applications or appeal involving these premises? *We have an approved special use permit.*

If so, note the date and resolution number: _____

List Specific Variance Requested

List Specific Requirement of Zone and State Specific Section of Ordinance Applicable

- | | |
|--|----------|
| 1. <i>Request review of definition</i> | 1. _____ |
| 2. _____ | 2. _____ |
| 3. _____ | 3. _____ |
| 4. _____ | 4. _____ |
| 5. _____ | 5. _____ |
| 6. _____ | 6. _____ |
| 7. _____ | 7. _____ |
| 8. _____ | 8. _____ |
| 9. _____ | 9. _____ |

Number of proposed lots: _____

Development plats (Check One)

- () (a) Sell lots only
() (b) Construct houses for sale
() (c) Site Plan
() (d) Other (specify) _____

Person preparing plat, if other than applicant

- (a.) Name: _____
(b.) Profession: _____
(c.) Address: _____
(d.) Telephone: _____

List of all accompanying papers, reports and plans

<u>Description</u>	<u>Number Submitted</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____

VARIANCE APPLICATION (Page 3 of 3)

Certification of Applicant:

I do hereby certify that all statements made herein and in any document submitted herewith are true and exact.

Signature of Applicant: Debbie Smack Date: 10/11/20

Owner(s) Concurrence per Board Attorney's Letter:

Signature of Owner: D. Smack Date: 10/11/20

Signature of Owner: [Signature] Date: 10/11/20

Signature of Owner: [Signature] Date: 10/11/20
[Signature] 10/11/20

For Official Use Only:

Received By: _____ Date: _____ Fee: _____

Administrative Completeness Review Checklist: (Check if Provided or Not Applicable)

- | | | |
|--|--|--|
| <input type="checkbox"/> Application Form | <input type="checkbox"/> W-9 Form | <input type="checkbox"/> Owner Letter Authorizing Application |
| <input type="checkbox"/> Application Fee | <input type="checkbox"/> Escrow Fee | <input type="checkbox"/> Environmental Commission Review Form |
| <input type="checkbox"/> Zoning Officer's Denial | <input type="checkbox"/> Submission Checklist | <input type="checkbox"/> Architectural Floor Plans and Elevation |
| <input type="checkbox"/> Submission Checklist | <input type="checkbox"/> Property Survey | <input type="checkbox"/> Plot Plan/Variance Plan |
| <input type="checkbox"/> Brief Narrative | <input type="checkbox"/> Disclosure Statement of Names of Persons w/10% or More Interest/Stock | |

Administrative Completeness Determination

Complete Incomplete Date: _____ By: _____

Forwarded to Board Engineer: _____ Date: _____

Board Engineer Completeness Review: Complete Incomplete Date: _____

Board Decision: Approved Denied Date: _____

Conditions (Where Applicable):

Chairman's Signature: _____ Date: _____

Secretary's Signature: _____ Date: _____

BOROUGH OF WEST LONG BRANCH

PLANNING BOARD

ZONING BOARD

IN THE MATTER OF THE APPLICATION

OF Nicole Smack PETITION
(Name of Applicant)

FOR A VARIANCE

The petition/application of Nicole Smack
(Name of Applicant)

Residing at 148 Whaley Rd. West Long Branch, NJ 07769
(Home Mailing Address)

Respectfully shows:

1. They are the owners of the premises situated at 148 Whaley Rd.
(Street Address)

in the Borough of West Long Branch and have owned said

property since _____
(Date Property Was Acquired)

2. Said premises are known as Block _____, Lot(s) _____ and are located in
the _____ Zone.

3. Property is presently used as (list all uses) residential home.

4. Petitioners/Applicants desire a variance from the terms of the Board Ordinance to permit them to:

Review the definition as stated in
letter allowing us to remove the
provisions for cooking in the addition
upon selling our home.

5. Your Petitioner/Applicant prays that a day be fixed for a hearing on this application and states
that the proper notice will be sent or served on all people required by statutes.

Dated: _____

Petitioner: _____

IN THE MATTER OF THE APPLICATION
OF Smack / Paolantonio
BLOCK 50 LOT(S) 8-01
OF THE OFFICIAL MAP OF THE
BOROUGH OF WEST LONG BRANCH

BOROUGH OF WEST LONG BRANCH
 PLANNING BOARD
 ZONING BOARD

AFFIDAVIT
OF
SERVICE

STATE OF NEW JERSEY

:SS

COUNTY OF MONMOUTH

I, Nicole Smack, of full age, being duly sworn according to law, upon his/her oath, deposes and says:

1. I am the applicant/applicant's representative in the captioned matter.

2. **FOR THOSE INDIVIDUALS SERVED BY CERTIFIED MAIL:**

On _____, 20__, I mailed by Certified Mail, Return Receipt Requested, a copy of the Notice attached hereto as Exhibit "A", to each of the persons, municipal agencies and utilities at the addresses listed upon the Certified List of Property Owners within two-hundred feet (200') of the premises in question provided by the Borough of West Long Branch, which said list is attached hereto as Exhibit "B". Service of this Notice was hereby made at least ten (10) days in advance of the public hearing scheduled in this matter.

3. **FOR THOSE INDIVIDUALS SERVED PERSONALLY (IF ANY):**

On _____, 20__, I personally served a copy of the Notice, attached hereto as Exhibit "A", to the following persons on the attached list Exhibit "C", at the address set forth upon the original List of Property Owners. Service of this Notice was hereby made at least ten (10) days in advance of the public hearing scheduled in this matter. Everyone not served personally was served by Certified Mail, Return Receipt Requested.

If no one was served personally, please check None

4. I state that all the referenced persons are the owners of the property within a radius of two hundred feet (200') of the property in question, as set forth in Exhibit "B".

Nicole Smack
Applicant

Sworn to and subscribed

Before me this _____

Day of _____, 20__.

Notary

IN THE MATTER OF THE APPLICATION
OF
BLOCK _____ LOT(S) _____
OF THE OFFICIAL MAP OF THE
BOROUGH OF WEST LONG BRANCH

BOROUGH OF WEST LONG BRANCH
 PLANNING BOARD
 ZONING BOARD

AFFIDAVIT
OF
PUBLICATION

STATE OF NEW JERSEY
:SS
COUNTY OF MONMOUTH

I, Debra J. Jmed, the applicant in the captioned matter, who being duly sworn upon his/her oath, disposes and says that the Notice of Hearing in the matter, of which the annexed is a true copy, has been published in the *Asbury Park Press* on the date of _____, 20__.

Applicant

Sworn to and subscribed
Before me this _____
Day of _____, 20__

Notary

Zoning Permit: 2020-198

2020-198
148 WHALEPOND RD
Denied

Application Print

 Zoning Permit Application

Zoning Permit Info

Date of Acceptance 10/01/2020

Type of Work Interior Remodeling

Other Description

Survey / Plot Plan / Site

Plan

Architectural Plans

Location of Property

Parcel Data 148 WHALEPOND RD

Street Address 148 WHALEPOND RD

Unit #

Block 50

Lot 8.01

Zone R-15

Property Owner Info

Owner Last Name Smack

Property Owner Name PAOLANTONIO, N & A &
SMACK, J & N

Property Owner
Address 148 WHALEPOND RD

City, State Zip WEST LONG BRANCH, NJ
07764

Owner First Name John

Tel. No. 732-272-4799

Fax No.

Email colesmack@gmail.com

Owner Cell Phone 732-272-4799

Contractor/Proposed Business Info

Contractor Last
Name

Applicant Name

Applicant Address

City, State Zip

Contractor First
Name

Tel. No.

Fax No.

Email

Contractor Cell
Phone

Business Name

Uses

Existing Use

Proposed Use

Description of Work

Description of Work To turn our second kitchen "area" into a great room with a wet bar, we will remove a section of the cabinets and counter that houses all the cooking elements. Removing oven and microwave and sliding the refrigerator to the left. Please see photos illustrating proposed changes.

Accessory Structure Info

Fence Style	Fence Height	
Patio Style	Patio Length	Patio Width
Pool Style	Pool Length	Pool Width
		Pool Depth
Shed Style	Shed Length	Shed Width

Area in Square Feet

Lot Area Length	Lot Area Width	
Existing Bldg Length	Existing Bldg Width	Existing Bldg Height
Proposed New Bldg Length	Proposed New Bldg Width	Proposed New Bldg Height
Existing	Existing	
Impervious Length	Impervious Width	
Proposed New	Proposed New	
Impervious Length	Impervious Width	

Prior Application

Prior Application Yes	Prior Application Date 11/16/2017
Board ZB	Resolution #
Copy of Resolution	

Payment Info

Fee \$45.00
Fee Date 10/01/2020
Payment Type Check
Check # 1633
Received By Zoning Officer

Workflow Information

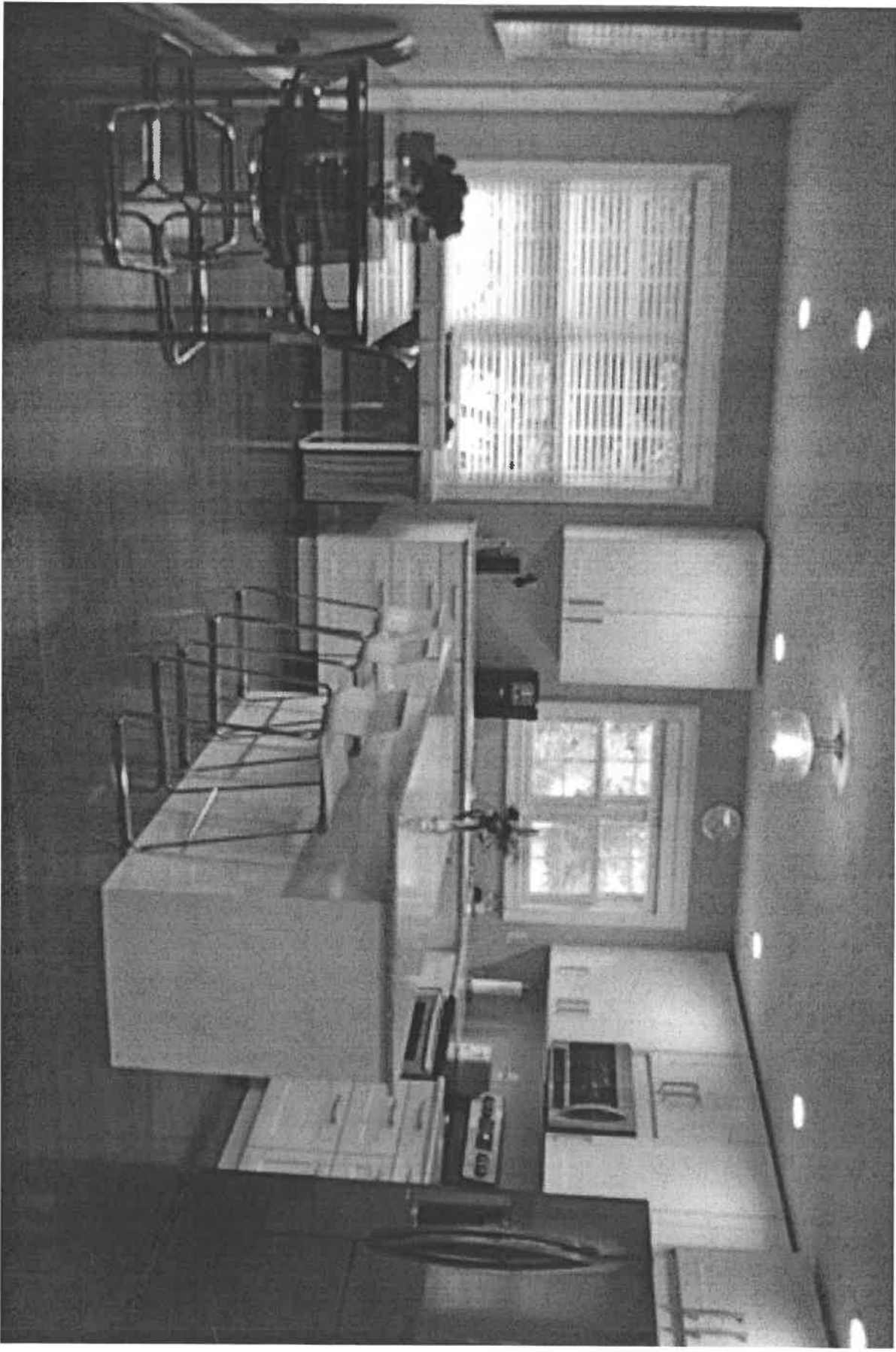
Workflow Status Denied	
Determination DENIED	
Determination Date 10/01/2020	Determination Due 10/15/2020
Comments In order to remove the kitchen and convert it to a wet bar you would have to receive	Expiration Date

permission from the Zoning Board of Adjustments. This would require a new application to amend their original approval or to remove their restriction as I do not have much discretion.

Reference Zoning Board resolution Dated November 16, 2017 Specific conditions Number 4.

18-3.2 - DWELLING UNIT Shall mean a room or series of connected rooms containing living, cooking, sleeping and sanitary facilities for one housekeeping unit. The dwelling unit shall be self-contained, and shall not require the use of outside stairs, common hallways passing through another dwelling unit, or other indirect route(s) to get to any portion of the dwelling unit, nor shall there be shared facilities with another housekeeping unit. Appeals of the Zoning Officer's determination must be filed within 20 days of the issuance to the Planning Board/Zoning Board as provided by the New Jersey Municipal Land Use Law. This Limitation is not imposed if the applicant is seeking a variance, site plan, or subdivisions. The Board reserves the right to deem additional information and/or variances required. Approved zoning permits are valid for one (1) year, and may be extended by action of the Zoning Board.





17 MONMOUTH STREET, P.O. BOX 8847
RED BANK, NEW JERSEY, 07701-8847
PHONE(732)747-6530•FAX(732)747-6778
OFFICE EMAIL :EMWASSOC@AOL.COM



PRINCIPALS OF FIRM ARE MEMBERS OF :
SOCIETY OF PROFESSIONAL ENGINEERS
SOCIETY OF MUNICIPAL ENGINEERS
PROFESSIONAL WOMEN NETWORK

E. M. WATERBURY & ASSOCIATES, P.A.
ENGINEERING • PLANNING • LAND USE & DEVELOPMENT

November 12, 2020

West Long Branch Zoning Board of Adjustment
c/o Ms. Chris Ann DeGenaro, Zoning Board Secretary
West Long Branch Zoning Board of Adjustment
965 Broadway, West Long Branch, N.J. 07764

File No. WLBZB 2017-01

Re: Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
Engineering Review No. 1
148 Whalepond Road; Block: 8.01, Lot: 50; Zone: R-15

Dear Board Members:

As requested, I have received the following as it relates to the referenced application:

- Application for Interpretation prepared by Nicole Smack dated October 12, 2020;
- Zoning Officer Denial dated October 1, 2020 (included in application);
- Resolution of Zoning Board of Adjustment granting interpretation dated November 16, 2017.

The applicant received an interpretation from the Board in their resolution memorialized November 16, 2017', interpreting the ordinances to conclude that the "house here at issue remains a single family dwelling (and is not a two-family dwelling), notwithstanding the expansion of the house and the installation of the second kitchen...". The resolution required the applicant address conditions found in the General and Specific Conditions sections of the resolution and comments contained in the Board Engineer report dated April 21, 2017. A copy of the approving resolution was attached to the application. In particular, Specific Condition 4 of the resolution noted the following:

"Subject to the condition that one of the kitchens shall be removed from the premises (so that the dwelling shall thereupon contain only one kitchen) upon the first of the following to occur; (a) the subject property is being sold; or (b) Mrs. Smack's adult brother referenced herein ceasing to reside at the subject property."

The applicant has noted the property is being marketed for sale, thereby triggering the condition. The applicant has requested to remove the stove and microwave in the second kitchen to address this condition and requests the cabinets, sink and dishwasher be allowed to remain as a wet bar. The Zoning Officer issued a denial dated October 1, 2020, noting noncompliance with Specific Condition 4. The applicant has submitted an application to the Board for determination if the proposed revisions to the property meet the condition of the resolution.

I offer the following for the Board's consideration:

1.0 General Comments

1.1 In support of this request, the applicant has attached a copy of the definition of a dwelling unit and indicated that they feel there are no restrictions relating to these items remaining. The definition provided is general to any property in the Borough. However, the 2017 resolution of the Board was specific to this property. The resolution defined the condition under which the subject premises would be considered as remaining a single-family dwelling, based on the plans provided at that time. As noted above, the resolution contained Specific Condition no. 4 required that one of the kitchens is to be removed upon sale of the home. (See comment 1.2 to



Le: West Long Branch Zoning Board of Adjustment
Ms. Chris Ann DeGenaro, Zoning Board Secretary
Re: Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
Engineering Review No. 1
148 Whalepond Road; Block: 8.01, Lot: 50; Zone: R-15

November 12, 2020
Sheet 2 of 6

follow for other conditions of approval). The ordinance does not contain a definition of a kitchen, nor does the MLUL. I defer to the Board to clarify their understanding of the extent the improvements in the kitchen were to be removed when the condition of the resolution was included in the resolution memorialized by the Board. After review of the file, I offer the following:

- a. The following Exhibits were put into evidence during the 2017 public hearing:
 - Exhibit A-1-Architectural plans prepared by Robert A Hazelrigg & Associates Architects dated May 20, 2015 last revised November 15, 2015 consisting of eight (8) sheets.
 - Exhibit A-2- Architectural plans prepared by Robert A Hazelrigg & Associates Architects dated May 20, 2015 last revised November 16, 2016 consisting of two (2) sheets.

The resolution indicates the applicant testified that the home was constructed in accordance with the building permits. The resolution does not indicate if that was in accordance with Exhibit A-1. The floorplan depicted in Exhibit A-1 depicted a wet bar in a small portion of the room labelled as a 'Great Room' on the plan. I have attached the portion of this plan for your review in Attachment B.

- b. The plans submitted into evidence as Exhibit A-2 dated last revised November 16, 2016 depicted the second kitchen they intended to construct in the room labeled on the plan as a 'Great Room'. A partial view of those plans is also attached to this report in Attachment C. It is my understanding photos of the were provided to the Zoning Officer. These should be provided to the Board.
- c. As you know, I was not representing the Board at the time of the application. The file indicates both of these plans were entered into evidence at the time of the public hearing and memorialization of the resolution containing the Specific Conditions. I defer comment to the Board if their findings which lead to the inclusion of Specific Condition 4 requiring the removal of the kitchen, anticipating that when the kitchen was removed the area would revert back to the configuration of a small wet bar as shown on Exhibit A-1, or was it more general in nature with the removal of the cooking elements as the applicant has proposed. I defer comment on the manner to proceed to the Board Attorney; However, I offer the following comments pertaining to options moving forward:
 - i. Should the Board conclude that their understanding was not tied to Exhibit A-1 plans showing a small wet bar but concur with the applicant's representation, then the Board should clarify their finding for the Zoning Officer as to what exactly they are to remove beyond cooking elements, if any, to conform to this condition of the resolution. I note there is an enforcement concern with only the slight removal of the cooking elements that the kitchen can be easily reestablished without coming before the town. I would recommend that the kitchen be removed to a point that it does not reflect a kitchen, and so as to make reinsertion of the cooking elements is not easily achieved.
 - ii. Should the Board determine that it was their understanding that when the kitchen was removed it would revert to the configuration as shown on Exhibit A-1, the applicant would have to remove improvements to reflect that configuration in order to meet the conditions of the resolution. I defer comment to the Board Attorney as to the procedure required should the applicant choose to pursue removal of only the cooking elements. It is my understanding the applicant has provided public notice. I have noted, in item (i) above, my concerns with the minimal removal of only cooking elements.



Le: West Long Branch Zoning Board of Adjustment
Ms. Chris Ann DeGenaro, Zoning Board Secretary
Re: Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
Engineering Review No. 1
148 Whalepond Road; Block: 8.01, Lot: 50; Zone: R-15

November 12, 2020
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1.2 Besides a conclusion of the current request before the Board, the applicant is required to address all the conditions of the approving resolution and receive a resolution compliance sign off from the Board Engineer. In am not in receipt of a resolution compliance submission nor correspondence from the prior Board Engineer indicating these items have been met. Based on that, I find the conditions of the resolution as **not met**. Following, please find the Specific Conditions of the approving resolution. Please note the resolution also contained General Conditions. These are found in Attachment A of this report. The following are the remaining specific conditions. The applicant should address the status of these items. I have noted comment to these items in **bold italic**:

- SC1. Subject to the applicant complying with all requirements and recommendations set forth in the Board Engineer's review letter dated April 2, 2017, and supplements thereto, if any. ***A copy of the report is attached.***
- SC2. Subject to the door at the hallway of the Great Room being eliminated and replaced with an open archway, so as to allow one to travel unimpeded from one end of the dwelling to the other; and subject further to the plans being revised to depict/note same; which plan revision shall be subject to review and approval by the Board Engineer. ***The required plans should be provided for review. The photos of the completed work should be provided for review by the Board.***
- SC3. Subject to the conditions that; (1) The premises is and shall remain a single family dwelling. (2) the premises is not and shall not be or become a two-family dwelling; and (3) no part less than the whole of the dwelling shall be rented out. ***This is a continuing condition.***
- SC5. Subject to a Deed Restriction, being satisfactory in form and content to the Board Engineer and Board Attorney, being prepared and recorded at the County Clerk's Office by the applicant, which Deed Restriction shall incorporate therein restrictions, the provisions of Special Conditions 3 and 4 of this resolution set forth above. ***The applicant should provide the status of the deed. An unsigned form of deed has been provided in the application. The form is required to be approved by the Board professionals. The condition will be considered met when proof of filing of the deed with the County Clerk's office is provided to the Board.***

I recommend both the General and Specific Conditions of the prior approval be included into any resolution of interpretation the Board may approve.

I reserve the right to make additional comments once the above information is requested. If you have any questions or require additional information, kindly advise.

Very truly yours,

Elizabeth M. Waterbury, P.E., P.P.

West Long Branch Zoning Board Engineer

cc: James Miller *via/ email*
Borough Zoning Code Enforcement Officer
Michael Irene, Esq. *via email*
Board Attorney
Nicole Smack, applicant *via email*



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Ms. Chris Ann DeGenaro, Zoning Board Secretary
Re: Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
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148 Whalepond Road; Block: 8.01, Lot: 50; Zone: R-15

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Attachment A

Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
148 Whalepond Road
Block: 8.01, Lot: 50; Zone: R-15

General Conditions of Resolution Memorialized November 16, 2017

- GC1. Subject to the development here at issue being undertaken in accordance with the testimony presented to the Board and the plans submitted to/approved by the Board. ***This is a continuing comment.***
- GC2. Subject to the testimony of all witnesses called on behalf of the Applicant being true and accurate. ***This is a continuing comment.***
- GC3. Subject to the Application, all attachments thereto, and all exhibits offered by the Applicant being accurate depictions of that which they purport to represent. ***This is a continuing comment.***
- GC4. The Applicant shall furnish proof that taxes have been paid through the current quarter and through the quarter in which he receives his initial construction permits. ***This is a continuing comment.***
- GC5. Subject to the Applicant paying in full all application fees, review fees, engineering and consulting fees, and escrows. ***This is a continuing comment.***
- GC6. Subject to the Applicant obtaining and complying with the approval of any other reviewing agency having jurisdiction over the Property and/or the Project, including, but not limited to the Board of Health, the municipal Engineer, the municipal Fire Official, and any County, State, or Federal agency; provided, however, that in the event that any other agency or authority shall require any changes in the plans herein approved, then any such changes must be submitted to this Board for review and approval. Further, if another governmental agency grants a waiver or variance of a regulation, which same affects this approval or any condition attached hereto, or otherwise requires any changes in the plans herein approved, then this matter shall be brought back before the Board for review of any such action, and the Board shall have the right to modify this approval and/or the conditions attached hereto as a result off any such action. ***This is a continuing comment.***
- GC7. The action of the Board approving this Interpretation shall not relieve the Applicant from responsibility for any damage caused by the Project, nor does the Board of Adjustment or the Borough of West Long Branch or any of their respective professionals and consultants, accept any responsibility for the design or the installation of the Project. ***This is a continuing comment.***

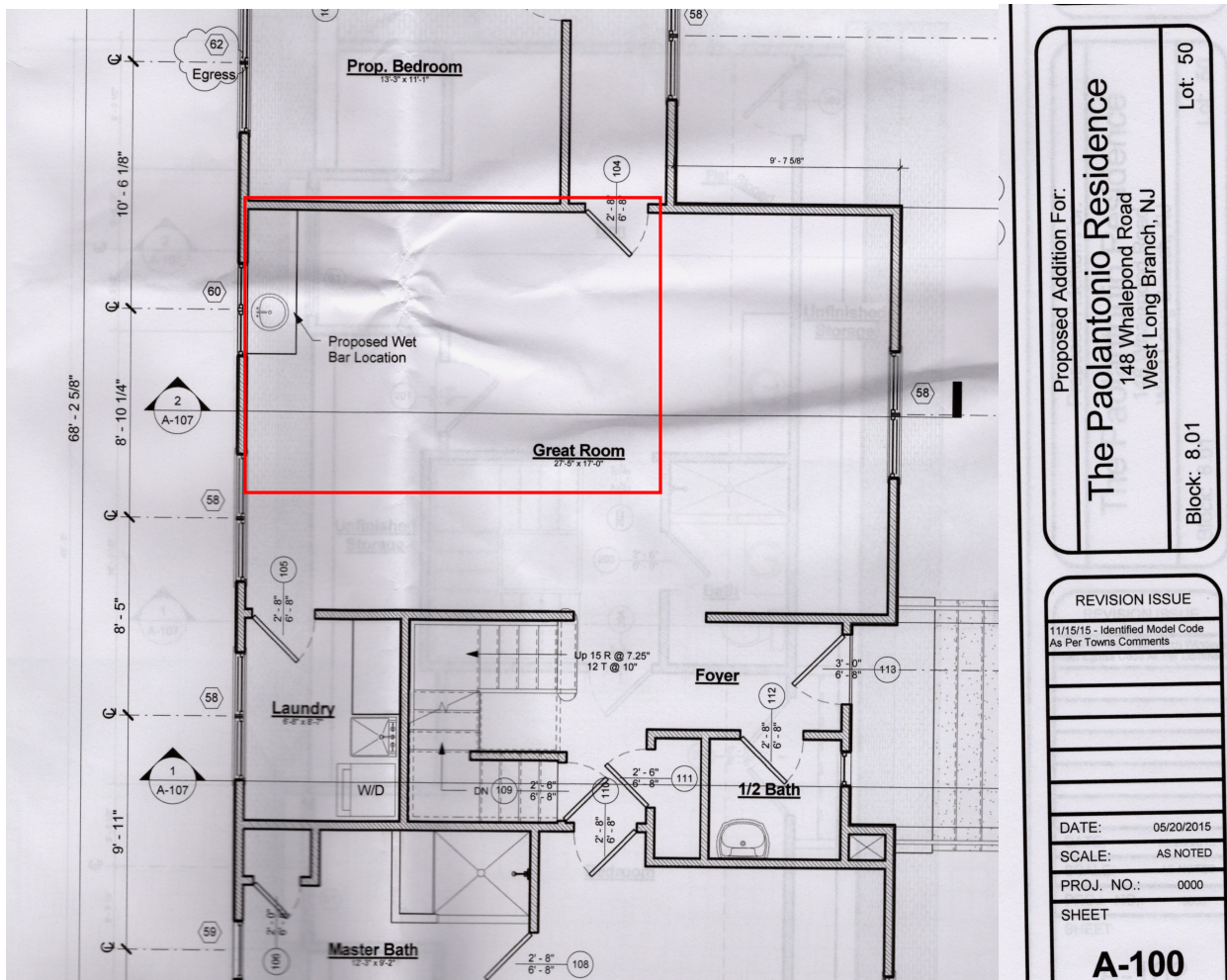


Le: West Long Branch Zoning Board of Adjustment
Ms. Chris Ann DeGenaro, Zoning Board Secretary
Re: Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
Engineering Review No. 1
148 Whalepond Road; Block: 8.01, Lot: 50; Zone: R-15

November 12, 2020
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Attachment B
Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
148 Whalepond Road
Block: 8.01, Lot: 50; Zone: R-15

Public Hearing Exhibit 1
Plans dated last revised November 15, 2015



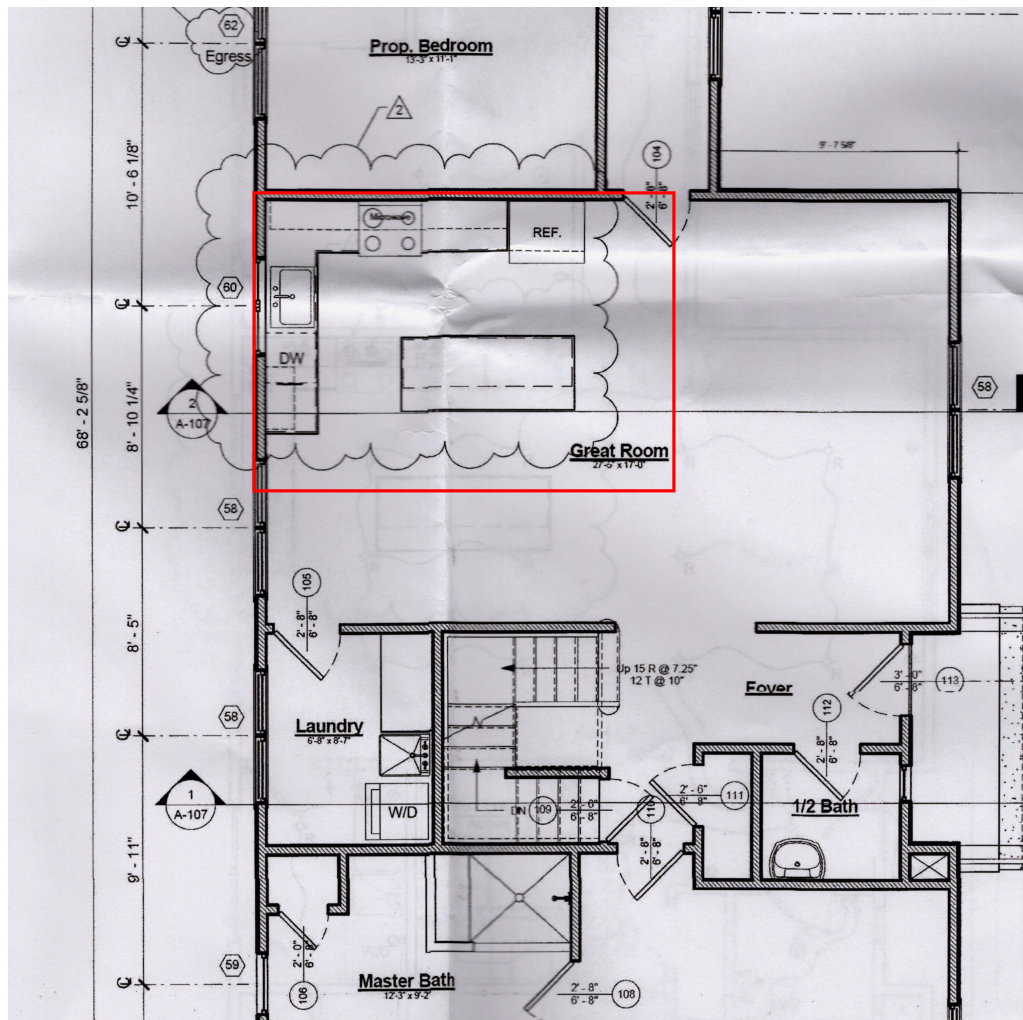


Le: West Long Branch Zoning Board of Adjustment
Ms. Chris Ann DeGenaro, Zoning Board Secretary
Re: Paolantonio ZB 2017-01)
Appeal of Zoning Officer Determination
Engineering Review No. 1
148 Whalepond Road; Block: 8.01, Lot: 50; Zone: R-15

November 10, 2020
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Attachment B
Paolantonio (ZB 2017-01)
Appeal of Zoning Officer Determination
148 Whalepond Road
Block: 8.01, Lot: 50; Zone: R-15

Public Hearing Exhibit 2
Plans dated last revised November 16, 2016



Proposed Addition For:
The Paolantonio Residence
148 Whalepond Road
West Long Branch, NJ
Block: 8.01 Lot: 50

REVISION ISSUE	
11/15/15 -	Identified Which Windows Meet Egress Code As Per Comment
11/16/16 -	Provide Location Of Proposed Kitchen On Plan
DATE:	05/20/2015
SCALE:	AS NOTED
PROJ. NO.:	0000
SHEET	
A-102	

Great Room Photo 1



Great Room Photo 2



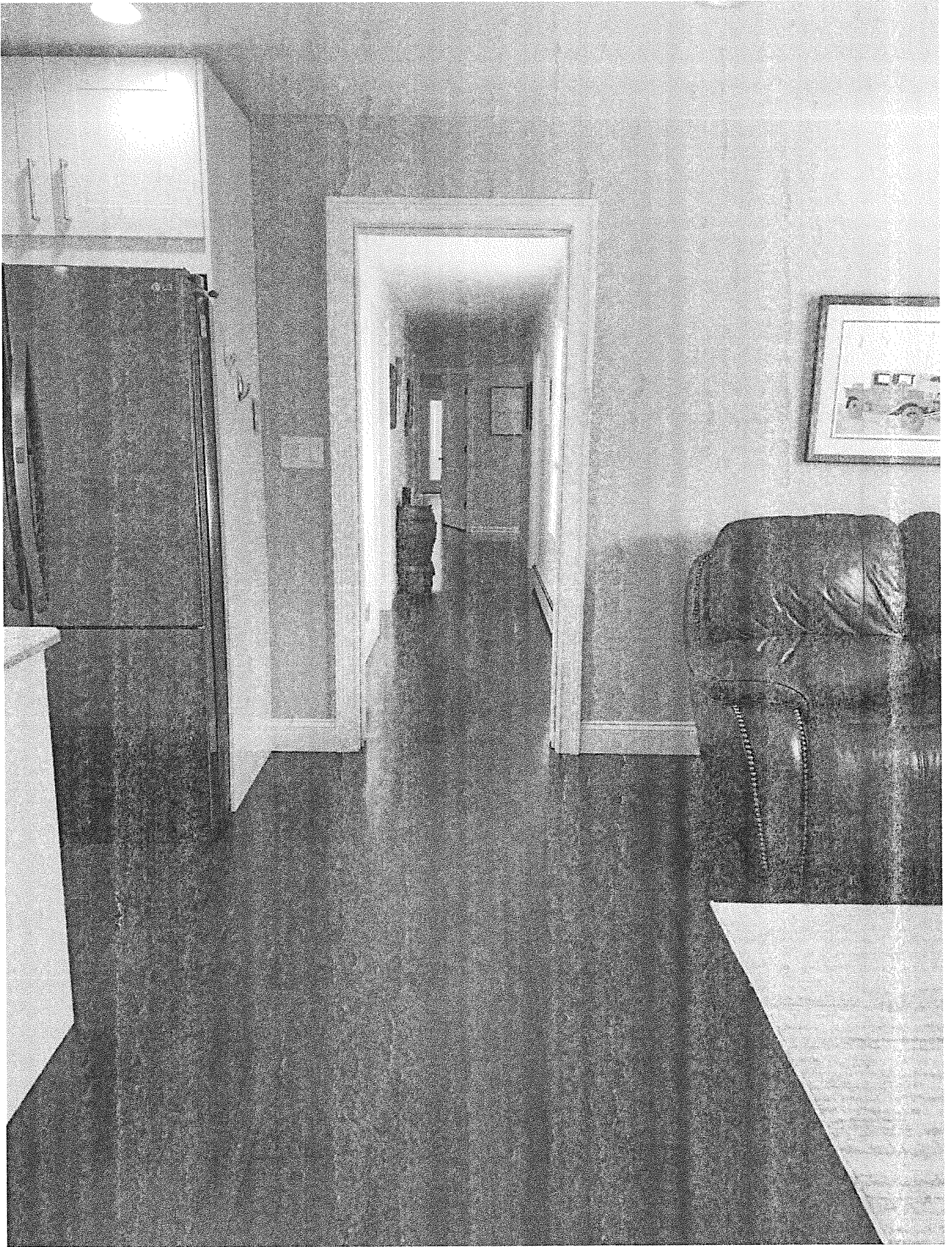
Photo 3



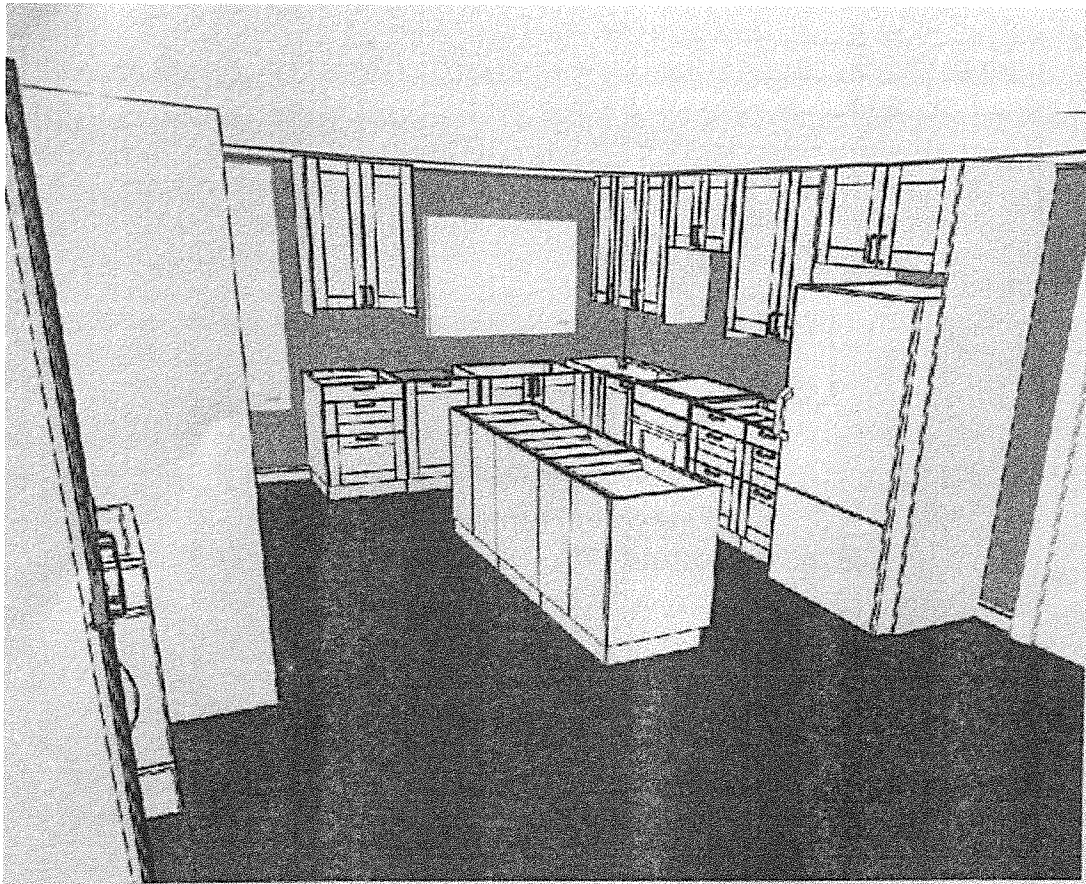
Photo 4



6.



6.

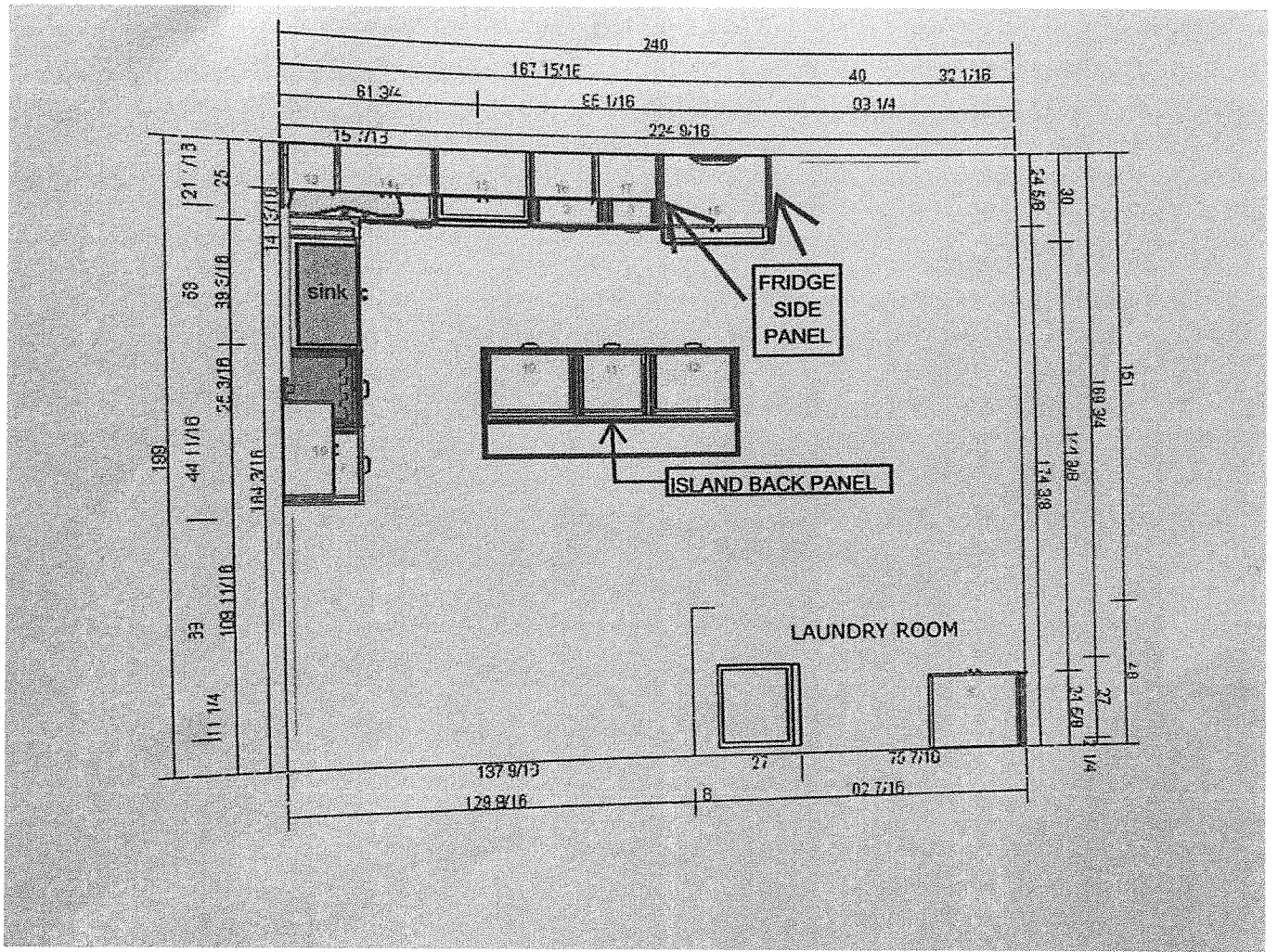


Project name
Ann Paolantonio
Project number
0000-9462-5480

Included in the total price
Li
A
S

Email address or IKEA FAMILY number)

7.



Thanks!