

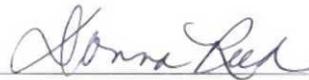
Drafted by	City Clerk/City Solicitor
Sponsored by/Referred by	City Clerk/City Solicitor
Introduced on	N/A
Advertised on	N/A

RESOLUTION NO. 81 2015

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

Denying the Conditional Use application submitted by Mr. Antonio Tineo, 515 Calabria Drive, Blandon, PA 19510 (applicant), **for four (4) additional rental units** at 549 North 10th Street and **approving** a Conditional Use permit **for only two (2) additional rental units** at the same property with conditions as attached in the following documents.

Adopted by Council Sept 14, 2015



Vice President of Council

Attest:



Linda A. Kelleher CMC
City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 14 day of Sept A. D. 20 15. Witness my hand and seal of the said City this 15 day of Sept, A. D. 20 15.



CITY CLERK

IN RE: APPLICATION OF : BEFORE THE CITY COUNCIL
ANTONIA TINEO :
FOR A CONDITIONAL USE : OF THE CITY OF READING,
PERMIT TO ADD FOUR :
ADDITIONAL DWELLING : PENNSYLVANIA
UNITS TO THE :
RENTAL PROPERTY :
AT 549 NORTH 10th ST., :
READING, BERKS COUNTY, PA :

**DECISION OF THE CITY OF READING
CITY COUNCIL ON A CONDITIONAL USE APPLICATION**

AND NOW, this 14th day of September, 2015, after a hearing held on August 17, 2015, upon the application of Mr. Antonio Tineo, 515 Calabria Drive, Blandon, PA 19510 (applicant) for a conditional use permit at 549 North 10th Street (subject property) notice of such hearing having been first sent, posted and advertised in accordance with the provisions of the Pennsylvania Municipalities Planning Code and the City of Reading Zoning Ordinance, as amended, the City of Reading City Council (hereinafter "Council") renders the following decision:

FINDINGS OF FACT

City Council finds the following facts:

1. Mr. Antonio Tineo (hereinafter Applicant), resides at 515 Calabria Drive, Blandon, PA 19510.
2. Applicant is the owner of the fee simple property at 549 North 10th Street (hereinafter Subject Property), at the time of application and at the time of the hearing.
3. The Subject Property is located in the R3 zoning district as that term and district is defined by the City of Reading Zoning Ordinance, as amended, (hereinafter referred to as "Zoning Ordinance").
4. Applicant is seeking a Conditional Use permit to add four (4) additional rental units to the Subject Property which is currently zoned as two (2) commercial units, one of which is occupied, and 2 dwelling units, as per Zoning Ordinance sections 600-804(B)(3), 600-1203 (D), 600-1204(D), 600-1602 (D), 600-1603 (A) (31) (a) and 600-2202.
5. The applicant testified that there is currently a first floor restaurant and second floor with two rental units at the property. He stated that eventually he obtained a permit for two (2) additional units and he is now seeking a permit for two (2) more units. He stated that he obtained five (5) parking spaces within 1000 feet of the

property to meet the zoning requirements. He stated that neighbors have not experienced increased traffic or criminal activity from his initial conversion of the property.

6. The applicant stated that the current 2nd floor units are occupied and that there are no rental units on the first floor. He stated that he obtained a permit for two (2) additional units and that he now is seeking to add two (2) more units to the building. He expressed the belief that the units meet the square footage required by the zoning ordinance. He explained that he met with the zoning administrator and that he believes he has complied with the direction of the zoning administrator.
7. The Applicant did not submit testimony on the Building and Trades permits used to convert the building and/or reconfigure the electrical, plumbing and mechanical equipment.
8. The Zoning Administrator and the Applicant's architect presented evidence that the applicant may have illegally converted two (2) additional rental units, in whole or in part, as he applied for permits for Trades permits for four (4) units without first seeking a Conditional Use permit to increase the number of rental units.
9. The zoning administrator's case report stated that three (3) of the four (4) units were below the square footage required by the zoning ordinance; however, he expressed the belief that the discrepancy was de minimus.
10. The Applicant's architect testified that the units were made smaller to allow the widening of the public corridor.
11. The zoning administrator provided a case report, in summary:
 - This property is situated at the intersection of North 10th Street and Greenwich Street. It is an irregularly shaped property, bounded on the north by Greenwich Street, on the east by parcel 1010 Greenwich Street and a ten foot wide alley, on the south by parcel 543, 545, and 547 North 10th Street, and on the west by North 10th Street. The subject parcel is 8,355.38 square feet which includes a two story brick structure.
 - There are two (2) dwelling units on the second and two (2) commercial units on the first floor. The property is located in the R-3 Residential District; the property is not located within an historic district, overlay district or the floodway or flood hazard area.
 - The applicant purchased the property in June 2010. The zoning permit for the two dwelling units was transferred to the applicant in April 2012 (#2012-1027). In August 2013, the applicant registered the entire building as two dwelling units and the restaurant, Pizza Villa. (#2013-1070). The second commercial unit is currently vacant.
 - In 2010 the applicant applied for a Conditional Use permit to convert the property to a six (6) unit rental – adding four (4)

additional dwelling units. The application was denied by Council Resolution 42-2010 on April 26, 2010 (attached).

- On April 8, 2015 the Zoning Hearing Board granted relief as follows:

Appeal 2015-07 – 549-555 North 10th Street:

1. Remove the electronic projecting sign and limit window signage to 30% of glass area or 600 square inches per window.
2. Relocate and screen the dumpster for 549-555 North 10th Street.
3. Retain illuminated awnings along Greenwich and North 10th Street providing there is no unwanted glare to surrounding properties.
4. A Certificate of Occupancy Inspection shall be issued by the City of Reading's Division of Building and Trades.

Appeal 2015-08 – 550 Mulberry Street

1. There shall be no more than five (5) parking spaces at least twenty feet (20') in length. The parking area shall be clearly defined by painted lines and wheel blocks and adequately graded and properly drained.
 2. No access to the parking lot shall be allowed from Mulberry Street and concrete planters or other immovable device measuring at least 3 feet in depth by 8 feet in length shall be installed along Mulberry Street to prohibit through traffic.
 3. All asphalt shall be removed from the property line to the curb line and be replaced with concrete sidewalk and curb as approved by the City Engineer.
 4. In both cases, the applicant agreed on record to comply with the ZHB conditions in order to receive the proposed zoning relief. The expanded hours of operation for the sports bar are approved but contingent upon compliance of all the conditions set forth for 549-555 North 10th Street
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12. The Planning Commission, through the City Planner, expressed concern that the required off street parking is two full blocks away from the subject property and they expressed doubt that the tenants would walk two full blocks to use the off street spaces. They also expressed concern with the long-term viability of the lease agreement for the parking spaces.
 13. The zoning administrator and Planning Commission recommend approving the permit with conditions.

DISCUSSION

The Applicant is seeking a Conditional Use Permit to add four (4) additional residential rental units to the dwelling located at 549 North 10th Street. At the time of the application, the property has zoning for two (2) commercial spaces on the first floor and two (2) rental dwellings on the second floor.

The request for four (4) additional units was previously denied in Resolution 42-2010 on April 26, 2010 as the applicant failed to provide documentation that the

plumbing, heating, electrical equipment and facilities are adequate and appropriate for the proposed expansion as per Zoning Section 27-1203.4.C and the applicant failed to provide sufficient off street parking.

At the hearing on August 17, 2015, the Applicant provided a lease agreement for off street parking; however, the lot is two blocks away from the subject property and the Planning Commission expressed concern that the lot is too far away from the subject property, which would make the spaces unusable by the tenants who rent the dwellings. The applicant also failed to provide documentation that the plumbing, heating, electrical equipment and facilities are adequate and appropriate for the proposed expansion as per Zoning Section 27-1203.4.C

At the hearing on August 17, 2015, the Applicant, his architect and the Zoning Administrator presented testimony that two (2) of the four (4) new dwelling units requested in the application were already converted without a zoning permit. The zoning administrator stated that there may be an illegal rental dwelling located in the basement of the property.

Plans submitted by the Applicant show that three (3) of the four (4) additional rental units fall below the square footage required by the Zoning Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Subject Property at 549 North 10th Street is located in the R3 Zoning District.
2. Hearing was held on August 17, 2015.
3. Applicant requests a Conditional Use permit to add four (4) additional rental dwelling units to the 549 North 10th Street, which is currently zoned for two (2) first floor commercial units, only one is currently in use, and two (2) second floor dwelling units (labeled as Apartment #5 and #6 on the plan labeled as A-5.
4. The burden of proof for an application for a Conditional Use is upon the Applicant.
5. City of Reading City Council is permitted to grant Conditional Uses, with conditions and other relief as set forth in the Zoning Ordinance of the City of Reading and Pennsylvania Municipalities Planning Code upon compliance with the requirements therefore set forth in the Zoning Ordinance.
6. The Applicant did present testimony and a lease agreement for off street parking; however, that lot is two full blocks away from the building and concern about the location was expressed at the hearing. The applicant did not present counter testimony.
7. The Applicant did not present testimony on the Building and Trades regulations required by the zoning ordinance, nor

documentation that the plumbing, heating, electrical equipment and facilities are adequate and appropriate for the proposed expansion as per Zoning Section 27-1203.4.C.

8. The case report prepared by the zoning administrator shows that three of the four (4) units proposed do not meet the square footage requirements in the zoning ordinance.

Dwelling Unit	Sq Ft of proposed DU	Minimum Req'd Sq Footage	Difference in Sq Footage
1 - 2 bedrooms	685	700	- 15
2 - 1 bedroom	538	550	- 12
3 - 1 bedroom	525	550	- 25
4 - 2 bedrooms	915	700	+ 215

9. The zoning administrator also stated that a possible illegal rental unit may exist in the basement of the property.
10. The Zoning Administrator and the Applicant's architect presented evidence that the applicant may have illegally converted two (2) additional rental units, in whole or in part, as he applied for permits for Trades permits for four (4) units without first seeking a Conditional Use permit to increase the number of rental units.
11. The Applicant did not file an application for other relief from the City of Reading Zoning Hearing Board.
12. The zoning administrator and Planning Commission recommended approving the application with conditions.

DECISION

After reviewing the Applicant's request in detail, City Council enters the following decision:

The application of Mr. Antonio Tineo, 515 Calabria Drive, Blandon, PA 19510, to **add four (4) residential dwelling units** to the 2nd floor at 549 North 10th Street is hereby **DENIED**; however, City Council **APPROVES** the addition of **only two (2) new residential units on the second floor**, the unit designated as Apartment #4 on the attached plan labeled A-5 and the combination of units designated as Apartments #1, #2 and #3 on the submitted and attached plan labeled as A-5, at 549 North 10th Street with conditions and deconverting the rental dwelling in the basement within 60 days for the following reasons:

1. The applicant failed to present testimony on the Building and Trades regulations required by the zoning ordinance, nor documentation that the plumbing, heating, electrical equipment and facilities are adequate and appropriate for the proposed expansion as per Zoning Section 27-1203.4.C

2. Three (3) of the four (4) units proposed do not meet the square footage requirements in the zoning ordinance.

Dwelling Unit	Sq Ft of proposed DU	Minimum Req'd Sq Footage	Difference in Sq Footage
1 - 2 bedrooms	685	700	- 15
2 - 1 bedroom	538	550	- 12
3 - 1 bedroom	525	550	- 25
4 - 2 bedrooms	915	700	+ 215

3. Testimony at the hearing indicates from the applicant, his architect and the zoning administrator that two additional rental units were added to the property without the required zoning permit or building permits.
3. Although the applicant leased an additional five (5) off street parking spaces, City Council finds that the spaces provided do not meet the definition of "off street parking" as per Zoning Ordinance Section 600-2202 Definitions, as the parking is not an accessory use to the subject property.

Prior to the issuance of the Conditional Use permit for the two (2) new rental units on the second floor, the unit designated as Apartment #4 and the combination of units designated as Apartments #1, #2 and #3 on the plan labeled as A-5 submitted and attached, the Applicant shall comply with the following conditions:

1. All applicable Building/Trades and Fire code requirements shall be met.
2. A certificate of occupancy certificate shall be issued by the City of Reading's Division of Building & Trades after the property is inspected.
3. A Property Maintenance inspection shall be performed at the property and the property owner must correct all code violations discovered during the inspection prior to renting the new dwelling units.
4. Deconverting the rental unit that may be located in the basement within 60 days.

This is the decision of the City of Reading City Council by a vote of 7 to 0.

IN RE: APPLICATION OF ARISMENDY TINEO	:	BEFORE THE CITY COUNCIL
FOR A CONDITIONAL USE PERMIT	:	OF THE CITY OF READING,
RELATIVE TO THE PROPERTY	:	PENNSYLVANIA
LOCATED AT 549-555 NORTH 10 th	:	
STREET, READING, BERKS COUNTY	:	
PENNSYLVANIA	:	CONDITIONAL USE
	:	CONVERSION INCREASE THE
	:	NUMBER OF UNITS & EXPAND THE
	:	SIZE OF THE RESTAURANT SPACE

**DECISION OF THE CITY OF READING
CITY COUNCIL ON A CONDITIONAL USE APPLICATION**

AND NOW, this 26th day of April, 2010, a hearing have been held on March 31, 2010, upon the application of Arismendy Tineo, notice of such hearing having been first sent, posted and advertised in accordance with the provisions of the Pennsylvania Municipalities Planning Code and the City of Reading Zoning Ordinance, as amended, the City of Reading City Council (hereinafter "Council") renders the following decision:

FINDINGS OF FACT

City Council finds the following facts:

1. The Applicant is Arismendy Tineo, "Applicant" with a registered mailing address of 549-555 North 10th Street. The Applicant authorized Architect Louis Masciotti to appear and testify at the hearing on his behalf.
2. Applicant was the fee simple owner of the property of 549-555 West Oley Street at the time of application and time of hearing.
3. The Subject Property is located in the R-3 Zoning District as that term and district is defined by the City of Reading Zoning Ordinance, as amended, (hereinafter referred to as "Zoning Ordinance").
4. Applicant is seeking a Conditional Use for the addition of four (4) rental units and the expansion of the restaurant at the Subject Property per §27-1203.4 of the City of Reading Zoning Ordinance.
5. Applicant seeks the conversion to permit four (4) additional units and the expansion of the restaurant seating area at the Subject Property which is currently permitted as a two (2) family rental units, a pizza shop with alcohol and a used furniture business.
6. Applicant testified that currently the Subject Property is a three story structure which contains two (2) apartment units with individual bathrooms, kitchens and bedrooms, one unit on each floor, along with a restaurant, a machine shop and a used furniture business. Zoning records show zoning permits for the two (2) existing rental

units, a pizza shop and the used furniture business; however, there is no zoning permit on record for the machine shop.

7. Applicant testified that only six (6) off-street parking spaces will be created at the rear of the property for the sole use of the tenants occupying the rental units, if approved. There is currently no off street parking for the existing rental units. The Applicant was informed that the Zoning Ordinance requires 1.5 off-street parking spaces for each rental unit. Applicant testified that no additional off-street parking will be provided for the tenants. He suggested that tenants could also park on the street.

8. Applicant testified that the expansion of the restaurant would allow the addition of a 28 seat area that would compliment the existing counter and booth seating arrangement. There is no off-street parking for the restaurant. No additional off street parking will be provided for the restaurant expansion.

9. The Zoning Administrator testified that as restaurants are not a permitted use in a R-3 Zoning District that the business remains a pre-existing non-conforming use until the size of the restaurant is expanded beyond 10%, as stated in the Zoning Ordinance Section 607 (4) A. Any expansion of a non conforming use beyond 10% requires application to and consideration by the City of Reading Zoning Hearing Board.

10. Applicant stated that the size of the restaurant will be expanded by 20%.

11. Applicant stated that no live entertainment or amplified music is planned for the restaurant.

12. The City of Reading Planning Commission recommends that the Conditional Use application be approved if adequate parking is provided for the rental units, as required by the Zoning Ordinance.¹

13. Zoning Ordinance Section 27-1203 (4) B defines the square footage for rental units. The proposed and existing units comply with the square footage requirements for apartment units of the Zoning Ordinance.

14. Applicant provided a site plan, drawn to scale.

15. Applicant presented no exhibit or documentation that all plumbing, heating and electrical equipment and facilities are adequate and appropriate for all units in the Subject Property as required by the Zoning Ordinance. Applicant testified that they had attended a One Stop meeting with the City of Reading Building/Trades and Fire Officials and foresaw no difficulty in meeting the requisite Code requirements in undertaking the conversion.

16. Applicant stated that the restaurant has a liquor license for carry-out beer and in house consumption and that they will not seek an expansion of these privileges.

¹ Representative for the Planning Commission testified that the recommendation for approval was based on the mistaken understanding that the expansion of the rental units would result in a total of four (4) units not a total of six (6) units.

17. Neighbors of the Subject Property, M. Maria Kost and Tom Purcell testified that this neighborhood is stressed by a severe lack of parking and that the neighborhood is already too overcrowded.

DISCUSSION

Applicant requests a Conditional Use to undertake a conversion of the Subject Property located in an R-3 Residential Zoning District to obtain an additional four (4) permitted rental units to expand the rental use to six (6) unit rental units and expand the size of the restaurant located on the first floor of the property.

CONCLUSIONS OF LAW

1. The Subject Property is located in the R-3 Zoning District.
2. A hearing was held on March 31, 2010.
3. Applicant requests a conversion as a Conditional Use permit to add four (4) additional rental units to this mixed use property, for a total of six (6) units and requests a Conditional Use permit to expand the restaurant located on the first floor of the building.
4. The burden of proof in an application for a Conditional Use is upon the Applicant.
5. City of Reading City Council is permitted to grant Conditional Uses, with attached conditions and other relief as set forth in the Zoning Ordinance of the City of Reading and Pennsylvania Municipalities Planning Code.
6. The requirements for a conversion as a Conditional Use in an R-3 Zoning District are set forth in §27-1203.4 of the City of Reading Zoning Ordinance.
7. In order to grant the relief, Applicant must show that he has satisfied §27-1203.4 of the City of Reading Zoning Ordinance.
8. Applicant failed to meet the burden of proof to meet the requirements of conversion as a Conditional Use for an additional four (4) rental units, a total of six (6) units, as set forth in §27-1203.4 of the City of Reading Zoning Ordinance. Specifically, Applicant failed to prove:
 - a. Documents indicating that the plumbing, heating, electrical equipment and facilities are adequate and appropriate for the proposed expansion §27-1203.4.D and
 - b. There were at least 1.5 off street parking spaces delegated to each unit of the Subject Property per §27-1203.4.C
9. The City of Reading City Council does not have jurisdiction for expansion of the restaurant as a Conditional Use.
10. Applicant did not file an application for other relief from the Zoning Hearing Board for the City of Reading.

DECISION

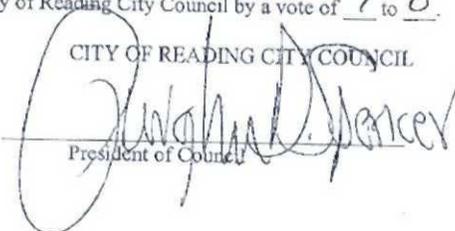
After reviewing the Applicant's request in detail and hearing testimony, City Council enters the following decision:

Applicant is hereby denied a Conditional Use for a Conversion of the Subject Property to add four (4) additional rental units creating a total of six (6) rental units at this property, as the applicant failed to provide 1.5 off-street parking spaces for each rental unit.

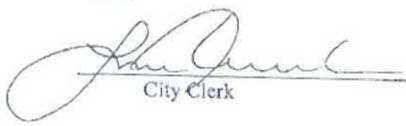
The Applicant also applied for a Conditional Use permit to expand the restaurant space. Restaurant use is not a permitted use within the R3 zoning district; therefore the use is a pre-existing non-conforming use. The application seeks to increase the floor size of the restaurant beyond the 10% provided in the Zoning Ordinance Section 607 (4) A. Jurisdiction for an expansion of a non conforming use beyond 10% lies with the Zoning Hearing Board for the City of Reading. City Council does not have jurisdiction over this use; therefore the application for Conditional Use for expansion of the restaurant is denied.

This is the decision of the City of Reading City Council by a vote of 7 to 0.

CITY OF READING CITY COUNCIL


President of Council

Attest:


City Clerk