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Our File No. 5839.00003
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Independence: A Family of Services, Inc.,
and JOHN and JANE DOE,

Plaintiffs,

v.

City of Newark Central Planning Board and
the City of Newark,

Defendants.

Civil Action No.

Civil Action

VERIFIED COMPLAINT

Plaintiff, Independence: A Family of Services, Inc., by way of Verified Complaint against the above-named Defendants, says as follows:

JURISDICTION

1. This action is brought for an injunction, damages, costs and counsel fees by reason of discrimination against persons with handicaps in violation of the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, (the "FHA") the Americans with Disabilities Act, 42 U.S.C. § 12131 (the "ADA"), the Rehabilitation Act, 29 U.S.C. § 794(a) (the "RA") and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*, (the "MLUL").

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4). State claims are brought under the Districts Court's powers of Supplemental Jurisdiction, 28 U.S.C. §1367.

3. Plaintiffs' claims are authorized by 42 U.S.C. §§ 3602(h), 3604(f)(1)(B) and (C), 3604(f)(3)(B), 3613(c)(2), 3615, 3617; 28 U.S.C. §§ 2201 and 2202; Fed. R. Civ. P. Rule 57; 42 U.S.C. §§ 12131 and 12132; 29 U.S.C. § 794a(2); N.J.S.A. 10:5-12.5b and N.J.S.A. 40:55D-17h.

PARTIES

4. Plaintiff, Independence: A Family of Services, Inc. ("Independence"), is a New Jersey nonprofit corporation, with offices located at 15 Smalley Terrace, Irvington, New Jersey 07111.

5. Plaintiffs John and Jane Doe (the "Does") are homeless veterans suffering from a variety of disabilities, including some degree of post traumatic stress disorder ("PTSD"), who are potential occupants in a proposed transitional bridge residence with supportive services (the "Residence"), to be renovated and operated by Independence. The Doe plaintiffs are either handicapped or so regarded.

6. Defendant Newark Central Planning Board (the "Board") is a municipal body organized by the City of Newark pursuant to the requirements of the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1, *et seq.*), with offices at Newark City Hall, 920 Broad Street, Newark, New Jersey 07102.

7. Defendant City of Newark ("Newark") is a municipal corporation of the state of New Jersey, with offices at Newark City Hall, 920 Broad Street, Newark, New Jersey 07102. Newark is named as a Defendant herein solely because it is the sole source of funding for the Board and is responsible for implementing any remedy the Court may grant to Plaintiffs.

Facts

8. Independence has been nonprofit provider of educational and social services in the Newark Ironbound section of Newark since the early 1970s. As the needs of persons in the region have changed, Independence has adjusted its services to meet those needs. Recognizing the near total absence of housing for homeless veterans, Independence has embarked on a mission to develop and operate bridge housing for such veterans.

9. In furtherance of that mission, Independence has proposed to renovate an existing structure that it owns at 179 Van Buren Street in the Ironbound, East Ward section of Newark (the "Structure"). When fully renovated the Structure will house 40 homeless veterans, who will receive a variety of supportive services. In addition to such services the veterans will served three meals per day and have access to other facilities such as a roof-top garden.

10. Plaintiffs, John and Jane Doe, are future residents of the proposed Residence.

11. The persons who would reside in the Residence are handicapped persons within the meanings of the ADA, the FHA and the RA. 42 U.S.C. §12102(2); 42 U.S.C. §3602(h); 29 U.S.C. §705(20). Such persons are protected by the ADA, FHA and RA because they suffer to some degree from PTSD.

12. Currently there is very little permanent or bridge housing for homeless veterans anywhere in New Jersey. There is no such housing in the City of Newark.

13. The Structure is located in the MX-1 Mixed Use Zone, which permits residential, commercial and industrial uses. The proposed use is a permitted conditional use, subject to three conditions. As proposed by Independence, the use met all three conditions. Beyond the question of use, the Structure and site upon which it is located, required several bulk variances. Those

bulk variances were not the result of work proposed by Independence, but rather due to preexisting nonconforming conditions.

14. On August 21, 2017, Independence filed an application with the Board seeking site plan approval, conditional use approval, and bulk variances from the preexisting nonconforming conditions that exist at the subject site (the “Application”). Approval of the Application should have been relatively simple, given the fact that (1) the conditional use conditions were met, that (2) the bulk variances were necessitated by preexisting nonconforming site conditions and (3) that pursuant to New Jersey law the proposed use is an inherently beneficial use.

15. Prior to filing the application, Independence conducted one community meetings so as to introduce those in the surrounding neighborhood to the use and to answer questions and a subsequent community meeting prior to the hearing.

16. Prior to the hearing of the Application by the Board, Board Member Augusto Amador (“Amador”) publicly announced that he would vote against the Application. In addition to his position as a member of the Central Planning Board, Amador is a member of the Newark City Council representing the East Ward, who at the time of his announced opposition to the Application was running for reelection. Amador’s announcement took a variety of forms, including a number of social media postings that he would vote “No” on the Application and his intent to appeal the decision if same was approved by the Board. (See annexed Exhibit A.)

17. After numerous requests by Amador and the Board to adjourn the matter, on February 26, 2018, the Board heard and decided the Application. Prior to the taking of testimony, counsel for Independence requested that Amador recuse himself. Amador refused to do so, commenting on the record that in opposing the Application he was acting in his capacity

as a member of the Newark City Council. In addition to his refusal to recuse himself, Amador actively engaged in the hearing process, often in an argumentative fashion and always demonstrating his opposition to the Application. After the taking of testimony and hearing comments from the public, and without any discussion of its reasoning, on motion of Board Member Amador, the Board unanimously denied the Application. On April 23, 2018, the Board adopted a resolution formalizing its decision (the "Resolution"). (See annexed Exhibit B.) From the record it is clear that Independence presented more than sufficient evidence to demonstrate that it was entitled to the site plan and conditional use approval and variance relief that it sought.

18. It is clear from the Resolution that the Board had no legal basis for denial of the Application. All three conditions necessary for the proposed use were met and denial of variances for preexisting nonconforming conditions is clearly arbitrary and capricious.

19. In denying the Application, the Board has failed to make reasonable accommodations for the handicapped and, as such, has discriminated against such persons in violation of the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12131, the Rehabilitation Act, 29 U.S.C. § 794(a), and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.* Such accommodation involved bulk variances, due to preexisting nonconforming site conditions, which in any event should have been granted pursuant to New Jersey law. In addition to a failure to make a reasonable accommodation, pursuant to the cited statutory authority, the Board committed intentional discrimination by permitting Amador to participate in the hearing process after earlier publicly denouncing the Application.

CAUSES OF ACTION

FIRST COUNT

**The Board's Actions Constitute Discrimination
in Violation of the Housing Amendments Act of 1988**

20. The Plaintiffs incorporate by reference the allegations of paragraphs 1 through 19 as if fully set forth herein.

21. The actions of the Board were intentionally taken so as to deny housing opportunities on account of handicap and to interfere with the associational rights of Independence, which has attempted to aid and encourage the Doe Plaintiffs in the exercise and enjoyment of rights that the Fair Housing Amendments Act protects. The intentional acts include the Board's failure to make a reasonable accommodation in its rules, policies and practices, as is required by 42 U.S.C. § 3604(f)(3)(B). Such accommodation could have been made by granting of bulk variances necessitated by the existence of preexisting nonconforming site conditions. In addition the Board engaged in intentional discrimination by denying, without legal basis, a conditional use, and permitting Amador to engage in and in some respects lead the hearing process.

22. Board's actions described above make unavailable and deny a dwelling to persons because they suffer from some form of PTSD, a mental condition recognized as a protected disability.

23. Board's actions constitute interference with, and coercion and intimidation of, Plaintiffs and the Does in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged other persons in the exercise or enjoyment of their rights under the Federal Fair Housing Act.

24. The Board acted knowingly and intentionally, willfully, wantonly, and with reckless disregard for the rights of Plaintiffs.

25. The Board acted under color of State law at all times relevant to this Complaint.

26. The Board's acts, unless enjoined, shall result in the denial of housing and treatment opportunities to the Does.

SECOND COUNT

The Board's Actions Constitute Discrimination in Violation of the Americans With Disabilities Act

27. The Plaintiffs incorporate by reference the allegations of paragraphs 1 through 26 as if fully set forth herein.

28. The Does are qualified individuals with a disability, as defined in the ADA.

29. The requested bulk variances are necessary for the Does to receive the benefits of the Independence's programs and services.

30. The ADA and regulations adopted pursuant thereto require that public entities must modify their policies, practices and procedures to avoid discrimination. Such modification could have been made by granting the requested bulk variances.

31. The Does have been discriminated against because of their disabilities.

32. The Board's acts, unless enjoined, shall result in the denial of the Residence's programs and services to the Does.

THIRD COUNT

The Board's Actions Constitute Discrimination in Violation of the Rehabilitation Act of 1973.

33. The Plaintiffs incorporate by reference the allegations of paragraphs 1 through 32 as if fully set forth herein.

34. The Defendants receive, either directly or indirectly, federal financial assistance for various programs or activities and are subject to the provisions of 29 U.S.C. §794.

35. The Does, as persons suffering from some level of PTSD are handicapped and eligible for the programs and services Independence would provide.

36. The Does have been denied the programs and services of Independence solely because of their handicapped condition.

FOURTH COUNT

**The Board's Action Constitute Violations of
the New Jersey Municipal Land Use Law.**

37. The Plaintiffs incorporate by way of reference the allegations of paragraphs 1 through 36 as if fully set forth herein.

38. The actions of the Board were arbitrary, capricious and unreasonable in violation of the New Jersey Municipal Land Use Law.

WHEREFORE, Plaintiffs respectfully request the Court to grant the following relief:

A. Enter a declaratory judgment that the actions of the Board constitute discrimination prohibited by the Fair Housing Act as amended in 1988.

B. Enter a declaratory judgment that the actions of the Board constitute discrimination prohibited by the Americans with Disabilities Act.

C. Enter a declaratory judgment that the actions of the Board constitute discrimination prohibited by the Rehabilitation Act.

D. Enter a declaratory judgment that the actions of the Board are arbitrary, capricious and unreasonable.

E. Enter preliminary and permanent injunctions directing the issuance of the requested bulk variances and associated land use approvals.

- F. Award Independence compensatory and punitive damages.
- G. Award Independence costs and reasonable counsel fees.
- H. Such other and further relief as the Court may deem equitable and just.

POST, POLAK, GOODSSELL,
& STRAUCHLER, P.A.
Attorneys for Plaintiffs

June 18, 2018

By: 
STEVEN C. ROTHER, ESQ.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Pursuant to 28 USC § 1746, I hereby certify under penalty of perjury that the matter in controversy is not related to any other pending matter or controversy.

POST, POLAK, GOODSSELL,
& STRAUCHLER, P.A.
Attorneys for Plaintiffs

June 18, 2018

By: 
STEVEN C. ROTHER, ESQ.

VERIFICATION

I, Margaret Woods, President and Chief Executive Officer of Plaintiff, Independence: A Family of Services, Inc., hereby verifies that I have personal knowledge of the facts set forth in the foregoing Verified Complaint, and that the facts and statements contained herein are true and correct to the best of my knowledge, information and belief.

June 18, 2018



Margaret Woods

EXHIBIT A

Councilman Amador's Social Media Postings

Text Message
Today 12:17 PM

Drew Icc

**Augie against
shelter?**



Augusto Amador

29 mins · 🌐



HOMELESS SHELTER IN THE IRONBOUND

Independence, a Family of Services with headquarters in Irvington, is asking the City's Planning Board permission to build a Homeless Shelter at the corner of Van Buren Street and Elm Street. The meeting is on Monday, September 25, 2017, at 6:30 pm. If you're against it, please pass by Little City Hall, and sign the petition, as of Monday, September 18, 2017.

Thank you!

Uma organizacao de Irvington, vai pedir ao Planning Board de Newark autorizacao para construir uma casa para os "sem abrigo" na esquina da Elm Street com a Van Buren Street. A reuniao e no dia 25 de Setembro de 2017. Se nao concorda, por favor, passe no Little City Hall a partir de Segunda-Feira, 18 de Setembro de 2017, e assine a peticao.

Obrigado!

D

TAGGED LOCATION

- Anywhere
- Newark, New Jersey
- Choose a Location...

DATE POSTED

- Anytime
- 2018
- 2017
- 2016
- Jan 2018
- Choose a Date...



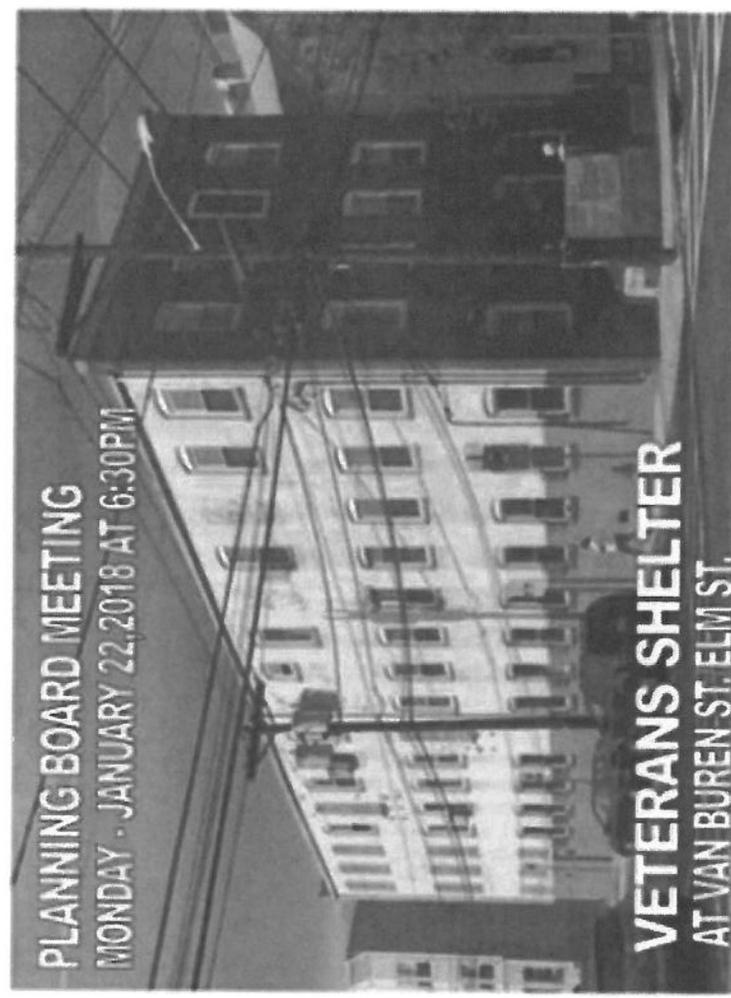
Augusto Amador
January 19 at 2:35pm · 🌐

VETERANS SHELTER
at Van Buren St/Elm St

In view of the fact that Independence, which owns the building, did not agree with our recommendation to relocate to a different location, the project will be before the Planning Board on Monday, January 22, 2018, at 6:30pm.

BE THERE!!!
#veterans

Por favor, nao faltem a reuniao do Planning Board, Segunda-Feira, 22 de Janeiro de 2018, as 6:30pm, no City Hall.
Juntos somos fortes!!!



- Canine influenza**
The dog flu is spreading for the first time in year: ...
- Nike, Inc.**
Nike's Illuminating 'Play: Sneaker Will Console...'
- Kalamazoo, Michigan**
Polish doctor who came 'better life' faces... - dai
- Mike Pence**
Pence meets Netanyahu, won't travel to... - busin
- Paris**
Paris dustmen film swar rats as Paris faces... -
- Oxfam**
82% of the World's Wea Richest 1% in 2017 - tim
- Niels Högel**
A Nurse Already Servin Was Charged With Killin
- Office of National Drug**
Trump's 24-year-old of appointee was let... - g
- [Learn More](#)

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Augusto Amador



Jan 23 at 8:04am • 

**THE VETERANS SHELTER at Van Buren St
and Elm St**

At the suggestion of the Planning Board's attorney , the application to build a shelter for homeless veterans was rescheduled to January 29, 2018. This was due to the fact that there were two Redevelopment Plans on the Agenda which would take up most of the time available.

Realizing that our veterans need these services, let me state, once again, I AM AGAINST THE LOCATION OF THE SHELTER and will vote NO on the application. And, if the application is approved by the Board, I will do my best to appeal that decision in the Courts.

THE VETERANS SHELTER at 179 Van Buren Street

We were just informed that the application for the building of the Veterans Shelter at 179 Van Buren Street, will NOT be heard this Monday, January 29, 2018. Therefore, there is no need for anyone to be here.

The date for the new hearing is February 26, 2018, at 6:30pm.

Stay strong!

Fomos informados hoje de que a proposta de construcao do Centro de Apoio aos Veteranos no 179 Van Buren Street nao sera apresentada esta Segunda-Feira, 29 de Janeiro de 2018. Portanto, nao e necessario estar presente nessa noite.

A nova data e Fevereiro 26, 2018, as 6:30pm.

Unidos, sempre!



Re-Election Fund of AUGUSTO AMADOR

P. O. Box 5583
Newark, NJ 07105

Dear Friend and Neighbor:

I need your help!

Since my first election in 1998, I have dedicated most of my life to fight for the interests of ALL the residents of the East Ward.

As you know, I have proposed, several times, to the organization that wants to build the veterans' shelter at 179 Van Buren Street, a plan that includes the sale of the building and the relocation of the project to a more appropriate area. However, since they're asking for 3.1 million dollars for the property and relocation, which seems extremely high, I have informed them that my involvement on this matter has ceased. Therefore, my position regarding this project is very clear. **I AM AGAINST BUILDING THE SHELTER AT THIS LOCATION!**

Please note that there is an election in May 2018 and I'm running, once again. If you intend to vote for me, please sign the enclosed petition and return it to the P. O. Box 5583, Newark, NJ 07105.

Thank You!

Paid for by the Re-Election Fund of Augusto Amador, Manuela Cardoso-Treasurer

EXHIBIT B

CENTRAL PLANNING BOARD'S RESOLUTION

Denial

MEMORIALIZATION RESOLUTION

APPLICATION: CPB 17-40
REPORT DATE: January 18, 2018
HEARING DATE: January 22, 2018
PROJECT: Change of Use – Office Building to Homeless Shelter
ADDRESS: 179 Van Buren Street
(Block 2036, Lot 18)
SITE PLAN: Preliminary and Final Site Plan, Conditional Use Approval,
C Variances
VARIANCES:
1. Non-conforming Front Yard Setback (existing)
2. Insufficient Rear Yard Setback (existing)
3. Non-conforming Side Yard Setbacks (existing)
4. Insufficient Façade Transparency (Front and Side)
5. Insufficient Parking
6. Insufficient Shade Trees

**APPLICANT/
OWNER:** Independence: A Family of Services, Inc.

WHEREAS, an application has been filed with the Central Planning Board, City of Newark, New Jersey and;

WHEREAS, the Central Planning Board, City of Newark, New Jersey, after considering the evidence presented by the applicant and/or representative, notification to adjoining property owners and the general public and after consulting with the appropriate municipal departments has made the following factual findings:

NEIGHBORHOOD/AREA:

Ward: East

Zone: MX-1 Mixed Use Residential / Commercial

Property Description: The subject property is an irregularly shaped property at the northwest corner of Elm Street and Van Buren Street. The site is developed with a three-story brick building that occupies nearly the entire site. This building had been used as an office building and is currently vacant.

Neighborhood Description: The property is located in North Ironbound Neighborhood about two blocks south of Ferry Street and one block north of Independence Park. The adjacent properties are a mix of residential and commercial uses. The block of Van Buren Street on which this building is located is predominantly residential buildings between two and four stories. There are a mix of commercial uses, several garages, and some vacant lots in the immediate vicinity. Overall, the location is characteristic of the North Ironbound Neighborhood and has a mostly residential character.

PROJECT SUMMARY: The applicant is seeking site plan approval to change the use of the existing building from an office building to a shelter for homeless veterans. A total of forty (40) beds are proposed along with reception and intake space, offices, and a conference room. The exterior of the building will be rehabilitated and the interior of the building will be reconfigured to accommodate the proposed use.

Site Layout/Circulation

The existing building is built to the property lines at the Elm Street and Van Buren Street frontages. The front portion of the north side of the building is built to the lot line and then the building angles in and is set back two (2') feet from the lot line of the adjacent properties. The Elm Street, west side, of the building is set back just over two (2') feet from the adjacent property. The proposed conditions will not change the building footprint.

The main entrance to the building is provided on the Van Buren Street frontage. A secondary entrance is located toward the rear of the building on the Elm Street frontage.

Floor Plans and Elevations

The floor plans show a partial basement that will serve as a storage room. The ground floor will have the main entrance from Van Buren Street, a security, reception, and intake area, several offices, a conference room, a kitchen, a dining room, bathrooms, and two bedrooms with a total of four beds. The second and third floors will have the same layout with a sitting room, a laundry room, bathrooms, and three bedrooms with a total of eighteen beds. The roof will have four garden plots, an area covered by an awning, and the HVAC condensing units.

The elevations show additional windows and an ornamental element added to the existing façade. The roof will have an ornamental fence around the awning area, and a new stair tower that will match the existing brick exterior. The height of the building to the top of this stair tower will be approximately 46' 3".

We note that the window placement on the floor plans and building elevations is not entirely consistent.

Landscaping Plan

Three (3) shade trees (Pin Oaks) are proposed along the Elm Street property frontage. Four garden beds, each planted with a Dwarf Alberta Spruce, are shown on the roof top deck area.

Lighting Plan

Light fixtures are shown on the building elevations. Details and photometric plotting have been provided on the plans to indicate that the entrances to the building will be appropriately illuminated.

Signage

No signage has been indicated on the plans. If a sign is proposed, a separate application will be required.

Operations

The proposed facility will be in operation 24 hours a day with 40 beds for homeless veterans. According to the application materials, there will be approximately 6 employees.

ZONING/VARIANCES:

The applicant is seeking site plan approval for a change of use. The proposed use is conditionally permitted in the MX-1 Zone.

Conditional Use Standards (40:6-2-27)

1. *Location. A homeless shelter shall be located on a collector or arterial street. Per the City functional classification standards, Van Buren Street is a collector street from South Street to Raymond Boulevard.*
2. *Bulk / Building Requirements. Each homeless shelter shall provide a lobby or indoor waiting area for the indoor queuing of its clients sufficient to meet its needs. A waiting / reception area is provided with a security room and intake room.*
3. *A homeless shelter must comply with the Essex County Homeless Plan. There is no formal Essex County Homeless Plan. Essex County prepares an annual Consolidated Plan for the expenditure of CDBG funds that has homelessness prevention services as a component. The services proposed here are generally consistent with the Consolidated Plan, although there is no specific reference to this project.*
4. *Condition of Approval. The applicant shall agree as a condition of approval to:*
 - a. *Obtain a license pursuant to NJAC 5:15, Title 5 Community Affairs, Chapter 15 Emergency Shelters for the Homeless. A copy of all licenses shall be placed on file with the Newark Office of Uniform Construction Code (UCC) prior to the issuance of a certificate of occupancy.*
 - b. *Comply with all of the relevant regulations pursuant to NJAC 5:15, Title 5 Community Affairs, Chapter 15 Emergency Shelters for the Homeless*

The applicant will be required to comply with these conditions as part of any resolution of approval.

All bulk conditions for the site are existing and are not proposed to change.

Low-Rise Multi-Family Bulk Standards (40:5-3)			
	Required	Proposed	Variance?
Minimum Lot Size	10,000 square feet	3,101	Yes (existing)
Minimum Lot Width	100	26.09'	Yes (existing)
Maximum Building Height	4 stories / 48 feet	3 stories / 46.3 feet	No
Front Yard Setback	0 feet	0 feet	No
Minimum Side Yard Setback	0 feet or 5 feet	2.2 feet / 2 feet	Yes (existing)
Minimum Rear Yard Setback	30 feet	n/a	n/a
Maximum Lot Coverage by Buildings	66%	+/- 88%	Yes (existing)
Transparency	Primary Front- 50%	17%	Yes
	Street Facing Side – 35%	14%	Yes
	Non-Street Facing – 20% (or code)	13% / 12%	Yes
Parking (40:7-2) Landscaping and Lighting (40:16) Standards			
Minimum Parking Requirement	Use not listed, per 40:7-2-6.2 similar use should be used. <i>Assisted Living / Nursing Home: 1 / 8 Beds:</i> staffed facilities where residents are unlikely to have cars = 5 Spaces	0	Yes
Shade Trees (40:16-2-2.3)	1 Tree / 35' of Frontage Van Buren = 1 Tree Elm = 3 Trees	3 (Van Buren)	Yes
Lighting at Entrance and Exit (40:16-6-2.2.iii)	Minimum 1.0 foot-candle / Maximum 5.0 foot-candles	1.0+	No

REQUIRED VARIANCES:

1. Existing Conditions:
 - a. Insufficient Lot Area
 - b. Insufficient Lot Width

- c. Non-conforming Side Yard Setback
- d. Excessive Lot Coverage

These variance conditions all exist as a result of the lot size, shape, and building footprint, which are not changing as a result of this application.

2. Insufficient Façade Transparency (40:5-3) – A minimum of 50% transparency is required for the primary front façade, where approximately 28% is proposed, and a minimum of 35% is required for a secondary street facing façade, where approximately 9% is proposed. The application is adding additional transparency to the front façade.
3. Insufficient Parking (40:7-2) – The application is not proposing any parking. There is not a parking requirement for homeless shelters listed in the City's ordinance. However, where a use is not listed, the requirement for a similar use shall be utilized. In staff's opinion, the most similar use is an assisted living facility or nursing home, which are staffed residential facility in which the residents are unlikely to have cars of their own. Therefore, the parking requirement is 1 space / 8 beds. 40 beds are proposed, so 5 spaces are deemed to be required.
4. Insufficient Shade Trees (40:16-2-3) – One shade tree is required per 35 feet of street frontage. One (1) tree is required along the Van Buren Street frontage, and three (3) are required along the Elm Street frontage. Three (3) are proposed along Elm Street, so the application is deficient by one (1) shade tree.

NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL PLANNING BOARD, CITY OF NEWARK, NEW JERSEY THAT the application presented by:

APPLICANT/ Independence: A Family of Services, Inc.

Is DENIED for the following reasons:

The granting of the variances shall be detrimental to the neighborhood.

The project will not revitalize the neighborhood.

The applicant has failed to meet both the requisite negative and positive criteria necessary to grant the variances.

There is insufficient parking to support project.

I so move

CPB 17-40 DENIAL

MEMBERS VOTING

MOTION MADE BY BOARD MEMBER _____

MOTION SECONDED BY BOARD MEMBER _____

	<u>BOARD MEMBERS</u>	<u>YES</u>	<u>NO</u>	<u>N.V.</u>	<u>ABSENT</u>
1.	WAYNE RICHARDSON Chairman				
2.	PAUL L. OLIVER Vice Chairman				
3.	JACQUELINE CEOLA				
4.	MARSHALL COOPER				
5.	MALIK-ABDUL ALI				
6.	ALEX JURGELEVICIUS				
7.	KALEHAH WITCHER				
8.	MICHAEL LOCKETT				
9.	AUGUST AMADOR				
10.	MIGUEL RODRIGUEZ				
11.	LEON PURDIE				

CERTIFICATION

I, WAYNE RICHARDSON THE DULY APPOINTED AND QUALIFIED CHAIR OF THE CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, NEW JERSEY, DO HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT RECORD OF VOTE RELATING TO THE MATTER AT HAND AND ON FILE AND /OR RECORD WITH THE CENTRAL PLANNING BOARD OF NEWARK, NEW JERSEY.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND THE SEAL OF SAID BOARD THIS _____ DAY OF _____, 2018.

WAYNE RICHARDSON, CHAIR
CENTRAL PLANNING BOARD

KEM WILBUSH, SECRETARY
CENTRAL PLANNING BOARD

CPB17-40

179 Van Buren Street
Block: 1978 Lot: 27

Memo
4/23/18

MEMBERS VOTING SHEET

MOTION MADE BY BOARD MEMBER A Amador

MOTION SECONDED BY BOARD MEMBER J. Ceola

APPROVED _____ ADJOURNED _____

DENIED 8-0 COMMENTS _____

	<u>BOARD MEMBERS</u>	<u>YES</u>	<u>NO</u>	<u>N.V.</u>	<u>ABSENT</u>
1.	WAYNE RICHARDSON Chair	✓ <i>m</i>			
2.	PAUL L. OLIVER, JR				<i>Excused</i>
3.	AUGUSTO AMADOR	✓			
4.	MIGUEL RODRIGUEZ	✓ <i>m</i>			
5.	JACQUELINE CEOLA	✓ <i>m</i>			
6.	MARSHALL COOPER				<i>Absent</i>
7.	MICHAEL LOCKETT	✓			
8.	ALEX JURGELEVICIUS				<i>Absent</i>
9.	KALENAH WITCHER Co-Chair	✓ <i>m</i>			
10.	LEON PURDIE	✓ <i>m</i>			
11.	ABDUL-MALIK ALI	✓ <i>m</i>			

CERTIFICATION

I, **WAYNE RICHARDSON** THE DULY APPOINTED AND QUALIFIED CHAIR OF THE CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, NEW JERSEY, DO HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT RECORD OF VOTE RELATING TO THE MATTER AT HAND AND ON FILE AND /OR RECORD WITH THE CENTRAL PLANNING BOARD OF NEWARK, NEW JERSEY.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND THE SEAL OF SAID BOARD
THIS 26 DAY OF February, 2018.

Wayne Richardson

WAYNE RICHARDSON, CHAIR
CENTRAL PLANNING BOARD

Kim Wimblish

KIM WIMBLISH, SECRETARY
CENTRAL PLANNING BOARD



CITY OF NEWARK, NJ
CENTRAL PLANNING BOARD STAFF REPORT

APPLICATION: CPB 17-40
REPORT DATE: January 18, 2018
HEARING DATE: January 22, 2018

PROJECT: Change of Use – Office Building to Homeless Shelter

ADDRESS: 179 Van Buren Street
(Block 2036, Lot 18)

SITE PLAN: Preliminary and Final Site Plan, Conditional Use Approval,
C Variances

VARIANCES:

1. Non-conforming Front Yard Setback (existing)
2. Insufficient Rear Yard Setback (existing)
3. Non-conforming Side Yard Setbacks (existing)
4. Insufficient Façade Transparency (Front and Side)
5. Insufficient Parking
6. Insufficient Shade Trees

**APPLICANT/
OWNER:** Independence: A Family of Services, Inc.

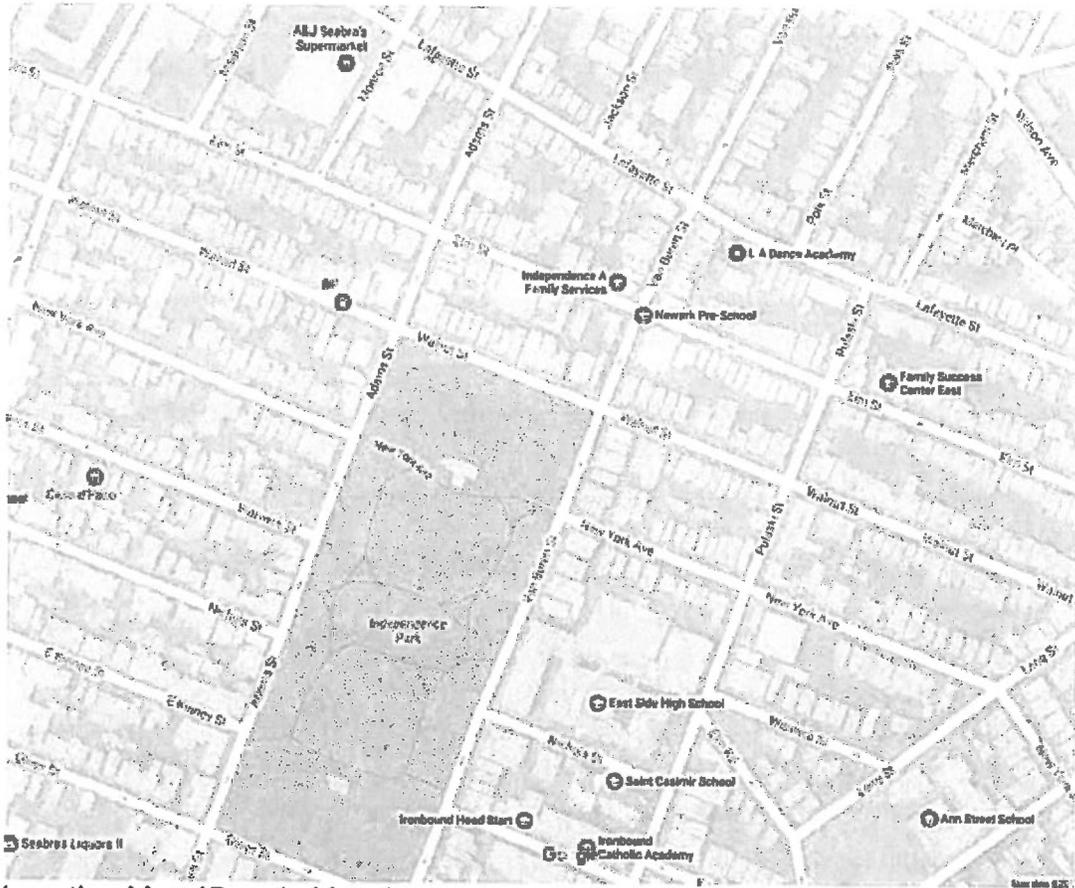
NEIGHBORHOOD/AREA:

Ward: East

Zone: MX-1 Mixed Use Residential / Commercial

Property Description: The subject property is an irregularly shaped property at the northwest corner of Elm Street and Van Buren Street. The site is developed with a three-story brick building that occupies nearly the entire site. This building had been used as an office building and is currently vacant.

Neighborhood Description: The property is located in North Ironbound Neighborhood about two blocks south of Ferry Street and one block north of Independence Park. The adjacent properties are a mix of residential and commercial uses. The block of Van Buren Street on which this building is located is predominantly residential buildings between two and four stories. There are a mix of commercial uses, several garages, and some vacant lots in the immediate vicinity. Overall, the location is characteristic of the North Ironbound Neighborhood and has a mostly residential character.



Location Map (Google Maps)



Aerial Photo of property (Bing Maps)

PROJECT SUMMARY: The applicant is seeking site plan approval to change the use of the existing building from an office building to a shelter for homeless veterans. A total of forty (40) beds are proposed along with reception and intake space, offices, and a conference room. The exterior of the building will be rehabilitated and the interior of the building will be reconfigured to accommodate the proposed use.

Site Layout/Circulation

The existing building is built to the property lines at the Elm Street and Van Buren Street frontages. The front portion of the north side of the building is built to the lot line and then the building angles in and is set back two (2') feet from the lot line of the adjacent properties. The Elm Street, west side, of the building is set back just over two (2') feet from the adjacent property. The proposed conditions will not change the building footprint.

The main entrance to the building is provided on the Van Buren Street frontage. A secondary entrance is located toward the rear of the building on the Elm Street frontage.

Floor Plans and Elevations

The floor plans show a partial basement that will serve as a storage room. The ground floor will have the main entrance from Van Buren Street, a security, reception, and intake area, several offices, a conference room, a kitchen, a dining room, bathrooms, and two bedrooms with a total of four beds. The second and third floors will have the same layout with a sitting room, a laundry room, bathrooms, and three bedrooms with a total of eighteen beds. The roof will have four garden plots, an area covered by an awning, and the HVAC condensing units.

The elevations show additional windows and an ornamental element added to the existing façade. The roof will have an ornamental fence around the awning area, and a new stair tower that will match the existing brick exterior. The height of the building to the top of this stair tower will be approximately 46' 3".

We note that the window placement on the floor plans and building elevations is not entirely consistent.

Landscaping Plan

Three (3) shade trees (Pin Oaks) are proposed along the Elm Street property frontage. Four garden beds, each planted with a Dwarf Alberta Spruce, are shown on the roof top deck area.

Lighting Plan

Light fixtures are shown on the building elevations. Details and photometric plotting have been provided on the plans to indicate that the entrances to the building will be appropriately illuminated.

Signage

No signage has been indicated on the plans. If a sign is proposed, a separate application will be required.

Operations

The proposed facility will be in operation 24 hours a day with 40 beds for homeless veterans. According to the application materials, there will be approximately 6 employees.

ZONING/VARIANCES:

The applicant is seeking site plan approval for a change of use. The proposed use is conditionally permitted in the MX-1 Zone.

Conditional Use Standards (40:6-2-27)

1. Location. A homeless shelter shall be located on a collector or arterial street. *Per the City functional classification standards, Van Buren Street is a collector street from South Street to Raymond Boulevard.*
2. Bulk / Building Requirements. Each homeless shelter shall provide a lobby or indoor waiting area for the indoor queuing of its clients sufficient to meet its needs. *A waiting / reception area is provided with a security room and intake room.*
3. A homeless shelter must comply with the Essex County Homeless Plan. *There is no formal Essex County Homeless Plan. Essex County prepares an annual Consolidated Plan for the expenditure of CDBG funds that has homelessness prevention services as a component. The services proposed here are generally consistent with the Consolidated Plan, although there is no specific reference to this project.*
4. Condition of Approval. The applicant shall agree as a condition of approval to:
 - a. Obtain a license pursuant to NJAC 5:15, Title 5 Community Affairs, Chapter 15 Emergency Shelters for the Homeless. A copy of all licenses shall be placed on file with the Newark Office of Uniform Construction Code (UCC) prior to the issuance of a certificate of occupancy.
 - b. Comply with all of the relevant regulations pursuant to NJAC 5:15, Title 5 Community Affairs, Chapter 15 Emergency Shelters for the Homeless

The applicant will be required to comply with these conditions as part of any resolution of approval.

All bulk conditions for the site are existing and are not proposed to change.

Low-Rise Multi-Family Bulk Standards (40:5-3)			
	Required	Proposed	Variance?
Minimum Lot Size	10,000 square feet	3,101	Yes (existing)
Minimum Lot Width	100	26.09'	Yes (existing)

Maximum Building Height	4 stories / 48 feet	3 stories / 46.3 feet	No
Front Yard Setback	0 feet	0 feet	No
Minimum Side Yard Setback	0 feet or 5 feet	2.2 feet / 2 feet	Yes (existing)
Minimum Rear Yard Setback	30 feet	n/a	n/a
Maximum Lot Coverage by Buildings	66%	+/- 88%	Yes (existing)
Transparency	Primary Front- 50%	17%	Yes
	Street Facing Side – 35%	14%	Yes
	Non-Street Facing – 20% (or code)	13% / 12%	Yes
Parking (40:7-2) Landscaping and Lighting (40:16) Standards			
Minimum Parking Requirement	Use not listed, per 40:7-2-6.2 similar use should be used. <i>Assisted Living / Nursing Home: 1 / 8 Beds: staffed facilities where residents are unlikely to have cars = 5 Spaces</i>	0	Yes
Shade Trees (40:16-2-2.3)	1 Tree / 35' of Frontage Van Buren = 1 Tree Elm = 3 Trees	3 (Van Buren)	Yes
Lighting at Entrance and Exit (40:16-6-2.2.iii)	Minimum 1.0 foot-candle / Maximum 5.0 foot-candles	1.0+	No

REQUIRED VARIANCES:

1. Existing Conditions:
 - a. Insufficient Lot Area
 - b. Insufficient Lot Width
 - c. Non-conforming Side Yard Setback
 - d. Excessive Lot Coverage

These variance conditions all exist as a result of the lot size, shape, and building footprint, which are not changing as a result of this application.

2. Insufficient Façade Transparency (40:5-3) – A minimum of 50% transparency is required for the primary front façade, where approximately 28% is proposed, and a minimum of 35% is required for a secondary street

facing façade, where approximately 9% is proposed. The application is adding additional transparency to the front façade.

3. **Insufficient Parking (40:7-2)** – The application is not proposing any parking. There is not a parking requirement for homeless shelters listed in the City's ordinance. However, where a use is not listed, the requirement for a similar use shall be utilized. In staff's opinion, the most similar use is an assisted living facility or nursing home, which are staffed residential facility in which the residents are unlikely to have cars of their own. Therefore, the parking requirement is 1 space / 8 beds. 40 beds are proposed, so 5 spaces are deemed to be required.
4. **Insufficient Shade Trees (40:16-2-3)** – One shade tree is required per 35 feet of street frontage. One (1) tree is required along the Van Buren Street frontage, and three (3) are required along the Elm Street frontage. Three (3) are proposed along Elm Street, so the application is deficient by one (1) shade tree.

PLANNING COMMENTS:

1. The applicant requires a number of variances from the bulk standards of the City's Land Development Ordinance that are related to existing conditions of the building and the size and shape of the lot.
2. **Transparency** – The building is below the required transparency levels on all facades. The applicant shall discuss options for increasing the transparency of the building to enhance the streetscape. Several former windows have been bricked-over. Is it possible to re-open these windows? Calculations should be provided for all four building facades.
3. The floor plans and elevations are inconsistent with regard to the number of windows. This item was raised in the completeness review and a response letter dated September 15, 2017 indicates that the plans were corrected. There still appears to be some minor inconsistency between the window locations on the floor plans and elevations. The plans shall be revised to ensure consistency between the floor plans and the façade elevations.
4. **Parking** – As discussed above, the facility requires five (5) parking spaces. There is no room to accommodate parking on site. We note that the applicant has submitted a parking / traffic study. The applicant shall provide testimony regarding the staffing of the facility, indicate if employees are hired from the local community, and discuss the street parking conditions in the immediate neighborhood.
5. **Landscaping** – A total of four (4) shade trees are required, one (1) on Van Buren Street and three (3) on Elm Street. Three (3) trees are proposed on Elm Street and four (4) shrubs are proposed for the rooftop planting areas.

The applicant shall discuss the feasibility of planting an additional shade tree along Van Buren Street.

6. The applicant shall discuss the operation of the site. Forty beds are proposed. How many patrons are typically anticipated? Is there a seasonal fluctuation? What happens if patrons arrive at the facility and there are no beds available? What is the duration of a typical stay on site? Does the applicant operate other similar shelters that can provide benchmarks for how this facility will operate?
7. The applicant shall discuss the intake process and confirm the adequacy of the waiting / reception area. Four chairs are shown in an approximately 273 square foot area. The applicant shall confirm that this area will be able to accommodate the typical volume of clients and that there will not be lines outside the building.
8. The applicant shall discuss security at the shelter. Will security personnel be present at all times? Will there be security cameras on the outside of the building? This site is in a primarily residential neighborhood and within several blocks of East Side High School, a pre-school, and several other educational facilities. As in many places throughout the City, safety, security, and quality of life issues are an important concern in this location.
9. The applicant has indicated that the facility is for homeless veterans. Is the facility open to other homeless individuals that are not veterans? The applicant shall describe the screening process and discuss any other services that will be offered on site.
10. Gardens and an area covered by an awning are proposed on the roof. Will these areas be accessible to residents of the shelter? The applicant shall discuss the intended use of the rooftop.

SUGGESTED CONDITIONS OF APPROVAL:

The following are recommended conditions of approval. If approved the plans shall be amended to reflect these conditions:

1. The applicant shall comply with all conditions provided by the Department of Engineering.
2. The applicant shall agree as a condition of approval to:
 - a. Obtain a license pursuant to NJAC 5:15, Title 5 Community Affairs, Chapter 15 Emergency Shelters for the Homeless. A copy of all licenses shall be placed on file with the Newark Office of Uniform Construction Code (UCC) prior to the issuance of a certificate of occupancy.
 - b. Comply with all of the relevant regulations pursuant to NJAC 5:15, Title 5 Community Affairs, Chapter 15 Emergency Shelters for the Homeless

3. The applicant shall revise the plans to provide consistency between the window locations on the floor plans and the elevation plans, and provide transparency calculations for each façade.
4. The applicant shall revise the plans to provide one (1) along Van Buren Street. If the tree cannot be accommodated due to proximity to the intersection or presence of utilities, a contribution may be made in lieu of planting to the Shade Tree Planting and Preservation Fund.
5. The applicant shall provide security cameras on the exterior of the building and mandate that security personnel are present at the facility at all times.

NOTE: THE ABOVE RECOMMENDATIONS/INFORMATION CONCERNING THIS PROJECT ARE BEING PROVIDED TO THE PLANNING BOARD MEMBERS BY STAFF TO ASSIST IN THE DECISION MAKING PROCESS. COMMISSIONERS ARE NOT IN ANY WAY BOUND BY THESE RECOMMENDATIONS, AS THEY ARE ONLY ADVISORY IN NATURE. THIS REPORT WAS PREPARED ON 1/18/18.



Google Street View – Van Buren Street, September, 2016.



Google Street View – Side façade from Elm Street, September, 2016.



Department of Water and Sewer Utilities

A City We Can All Believe In

Andrea Hall Adebowale
Director

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To: Pallavi Shinde, Senior Planner

From: Hanifa Z. Johnson, Principal Engineer, Department of Water and Sewer Utilities

Date: January 22, 2018

Re: **CPB17-40 179 Van Buren Street, Block 1978, Lot 27
Renovation & Conversion of Existing Office Building into a Homeless Veterans Shelter
City of Newark, Essex County, New Jersey
Compliance Review**

The Department of Water and Sewer Utilities has reviewed the following plans for the rehabilitation of an existing three (3) story office building into a homeless veterans shelter at **179 Van Buren Street, Block 1978, Lot 27**:

- Site plan containing ten (10) sheets entitled, "Conversion & Renovation of Existing Office Building to a Homeless Shelter for Veterans, 179 Van Buren Street – Newark, New Jersey 07105, Block 1978, Lot 27", prepared, signed and sealed by Roderick G. Watkins, Architect, of WSM Associates, dated August 15, 2017, received by Central Planning Board December 26, 2017.

The plan is deficient for the following reasons:

1. A utility plan with appropriate water and sewer construction details is required.
2. The Applicant needs to show the location, size and materials of all existing and proposed water and sewer utilities on a utility plan. A utility request letter is recommended in order to locate and label existing water main/sewer main and lateral connections within the project limits. The utility request "Will Serve Letter" fee is \$150.00.
3. The Department records show that an existing water service for this property was installed in 1904 and it is lead. Lead service lines are not permitted. The Applicant must replace damaged or antiquated existing utilities as per Department standards.

New service installation requires existing services to be terminated per Department guidelines. The contractor is responsible to coordinate with the Department of Water and Sewer Utilities to obtain

**CPB17-40 179 Van Buren Street – 271-277 Elm Street, Block , Lot
Rehabilitation of Existing Office Building into a Homeless Veterans Shelter
Compliance Review**

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permits and schedule the inspection of the discontinuance of water and sewer service. Existing sewer service should be capped at the curb and existing water service should be terminated at the main prior to the installation of any new utilities. Provide note on utility plan.

4. The Applicant must consult with the City's Fire Sub-Code Official to determine the proper fire protection required for the proposed improvements. If fire protection is *not* required, an official letter signed and sealed by the Applicant's professional(s) is required to be submitted to this office.

If it is determined that fire sprinkler protection is needed, a Hydraulic Flow Test (HFT) needs to be performed to ensure that the water service and pressure (PSI) provided for this project (Renovation & Conversion – Existing Office Building to Homeless Veterans Shelter) is sufficient for domestic water supply and fire protection per Department standards. If the HFT proves insufficient flow/pressure, approval/connections will not be permitted. Improvements to the system may be required. The HFT fee is \$750.00. The Applicant must provide results to this office to be filed with approved plans.

The Applicant must provide the City's Fire Sub-Code Official with a copy of the HFT results. The Applicant will provide this office with plans/shop drawings released by the Fire Sub-Code Official confirming that the flow rate, pressure, and size of the fire service is sufficient to provide fire protection for this project. Documentation will be filed with approved plans.

The Applicant may also need to provide a fire department connection (FDC). Location of the FDC will be coordinated with the Fire Department. FDCs must be within 100 feet of a hydrant and should be on the address side of the property.

5. All water and sanitary sewer structures/facilities must conform to the City of Newark Standard Details and the standard details must be shown on the plan. The Applicant's construction details shall include but not be limited to the following:

- Typical Water Service Installation;
- Domestic Water Service Meter Setting Diagram; and
- Fire Protection Water Service Meter Setting Diagram (If required); and
- Water Main Utility Crossing (If required)

The revised plan must address all of the above comments. The Department of Water and Sewer Utilities can schedule to meet with the project engineer/architect to discuss the above requirements.