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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1899-21**

**LAKEWOOD REALTY
ASSOCIATES, LLC,**

Plaintiff-Appellant,

v.

**TOWNSHIP OF LAKEWOOD
PLANNING BOARD and
RD LAKEWOOD, LLC,**

Defendants-Respondents.

Argued September 18, 2023 – Decided October 5, 2023

Before Judges Sabatino, Mawla and Chase.

On appeal from the Superior Court of New Jersey,
Law Division, Ocean County, Docket No. L-2888-20.

Meryl A. G. Gonchar argued the cause for appellant Lakewood Realty Associates, LLC (Sills Cummis & Gross, PC, attorneys; Meryl A. G. Gonchar, of counsel and on the briefs; Mark E. Duckstein, on the briefs).

Adam Pfeffer argued the cause for respondent RD Lakewood, LLC (Levin Shea Pfeffer & Goldman, P.A., attorneys; Adam Pfeffer, on the brief).

Kelsey McGuckin Anthony argued the cause for respondent Lakewood Township Planning Board (Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, attorneys; Kelsey McGuckin Anthony, on the brief).

PER CURIAM

This land use case returns after further proceedings that followed our February 5, 2019 opinion nullifying a municipal planning board's approval of a developer's hotel project because of material omissions from the required public notice. In the aftermath of our decision, the project was revised and presented anew to the planning board. The planning board approved the developer's application on certain conditions. Plaintiff, an objector to the project, contested that second approval in an action in lieu of prerogative writs in the Law Division. The trial court rejected the challenge, and this appeal ensued.

For the reasons that follow, we reverse once again. In particular, we hold that the developer's public notice of its second land use application was materially defective because it failed to disclose that the hotel would contain a banquet facility with the capacity to accommodate up to 833 people. Consequently, we reverse the trial court and vacate the board's approval of the second land use application.

I.

Defendant RD Lakewood, LLC ("RD Lakewood" or "the developer") seeks to construct a Courtyard by Marriott hotel on Lots 2.02 and 2.03 on Block 961.01 in the Township of Lakewood. The property is located within a zone in Lakewood where a hotel is a permitted use.

In 2014, RD Lakewood filed an application with the Lakewood Planning Board for the proposed construction of a hotel and a bank on Lot 2.02 with a stormwater basin on Lot 2.03. The 2014 application requested site plan approval for the project and numerous variances. RD Lakewood published a public notice for the 2014 application, as required by Section 12 of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 to -163. The MLUL requires that an applicant give public notice of an application for development at least ten days before the public hearing on that application. N.J.S.A. 40:55D-12. Further, the MLUL requires that the notice include "the date, time and place of the hearing;" "the nature of the matters to be considered"; "an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers"; and "the location and times at which any maps or documents for which approval is sought are available" N.J.S.A. 40:55D-11.

The public notice posted by RD Lakewood in 2014 described the project as "a hotel as well as a ba[]nk which are both permitted uses within [the] zone." The notice did not inform the public, however, that the plan included a restaurant and a banquet facility with a liquor license enabling alcohol to be served on the premises.

Plaintiff Lakewood Realty Associates, LLC ("LRA")¹ is a property owner in Lakewood that objected to the application. LRA appeared at the Planning Board hearings in 2014 and opposed the application. Notwithstanding those objections, the Planning Board unanimously approved the requested site plan and variances, with conditions.

In its ensuing first lawsuit, LRA argued, among other things, that the public notice was deficient because it had omitted the developer's plans to include a restaurant and banquet facility at the hotel and to obtain a liquor license. The trial court rejected that argument, as well as other arguments raised by LRA. LRA appealed.

On the first appeal, we reversed, holding that the public notice's failure to mention the restaurant, banquet facility, and anticipated liquor license rendered it materially deficient, thereby depriving the Planning Board of jurisdiction.

¹ We learned at oral argument that LRA is also a developer of commercial properties, including hotels.

Lakewood Realty Assocs. v. Lakewood Twp. Plan. Bd. ("LRA I"), No. A-3750-16 (App. Div. Jan. 14, 2019) (slip op. at 3). We reasoned that the omissions violated the notice principles we espoused in Pond Run Watershed Association v. Township of Hamilton Zoning Board of Adjustment, 397 N.J. Super. 335 (App. Div. 2008), and Perlmart of Lacey, Inc., v. Lacey Township Planning Board, 295 N.J. Super. 234 (App. Div. 1996).

Applying those notice principles, we concluded in our February 2019 opinion that "[t]he defective notice failed to 'inform the public of the nature of the application in a common sense manner' that would alert an ordinary layperson to consider obtaining further information from the plans on file and possibly appear at the hearing to object." We rejected the other arguments raised by the LRA. We therefore reversed the trial court, "without prejudice to further proceedings before the Board with proper notice."

Following our decision, RD Lakewood removed the bank from its original plan. In December 2019, RD Lakewood submitted the amended application for a hotel to the Planning Board. The application sought final site plan approval, bulk variance approvals, and design waivers for a five-story, 138-room hotel with 193 parking spaces. The hotel would have a footprint of approximately 20,285 square feet and would include meeting rooms, a food preparation

area/kitchen, a lounge, a bar area, a dining area, a pool, an exercise room, and banquet facilities.

Like its original design, the proposed hotel would be constructed on Lot 2.02, with extra parking on Lot 2.03. A regional drainage basin located on Lot 2.03, owned by a third party, is subject to an easement granted to the benefit of Lot 2.02.

The second application also sought bulk variances, requested under N.J.S.A. 40:55D-70(c), which may be summarized as follows:

1. A zero (0) foot setback between Lot 2.02 and Lot 2.03 where the Ordinance required a minimum of (20) feet side yard setback;
2. A five (5) foot rear setback between Lot 2.02 and the commercial property to the north, or rear of the property, where the Ordinance required a minimum rear setback of twenty (20) feet; and
3. An eighty-five (85) square foot hotel sign where the Ordinance allowed a maximum sign area of seventy-five (75) square feet.

RD Lakewood further requested the following waivers from site plan requirements, pursuant to N.J.S.A. 40:55D-51(b):

1. an exception to the installation of curbing along the Pine Street frontage on Lot 2.03;
2. an exception to permit a forty-three (43) foot-wide driveway where the Ordinance allows a maximum width of thirty (30) feet; and

3. an exception to the vegetation buffer at the rear property line.

Public notice of RD Lakewood's application was provided on August 2, 2020. In accordance with the MLUL, the notice was provided by publication and also by mail to property owners within 200 feet of the subject property.

The notice described the application as one for "amended preliminary and final site plan approval" and listed several intended uses of the proposed hotel. However, pertinent to LRA's argument, the notice did not include any reference to a "banquet facility." The notice disclosed the following:

The proposed hotel will have 138 rooms along with the following amenities: (1) Meeting rooms (2) Food prep area/kitchen (3) Lounge (4) Bar area (5) Dining area (6) Pool & (7) Exercise Room. The hotel will seek a liquor license so that alcohol may be served on the premises.

The Planning Board held virtual public hearings on RD Lakewood's application on two evenings in August 2020 and September 2020. In support of its application, the requested variances, and waivers, RD Lakewood relied upon the testimony of a professional engineer and traffic expert. The expert testified that the proposed hotel project would advance the goals of the Township's master plan and the Township's smart growth plan. He also asserted that the hotel amenities were consistent with the Lakewood ordinance's definition of a hotel, which had been amended in 2019 to include banquet facilities and

convention facilities. RD Lakewood represented to the Planning Board that the reception facilities of the hotel, and the hotel generally, could be utilized for conventions or business meetings, but that they would not be used for weddings or similar events.

As to RD Lakewood's requested variances for additional parking spaces, larger sign size, and access drive, the developer's expert testified that they would create a safer lot-circulation pattern with little added impact to the surrounding properties. The Planning Board's own planner agreed.

As to the requested waivers for curbing along the frontage of Lot 2.03, driveway width waiver, and buffer requirement waiver, RD Lakewood's expert testified that those components would benefit the community by increasing the function of the hotel driveway and access points.

The Planning Board found these requested design waivers reasonable. It approved them pursuant to Lakewood Ordinance §18-03, which allows such action where the Planning Board deems it reasonable to prevent adverse visual impact.

LRA appeared at the 2020 hearings and opposed RD Lakewood's second application. LRA presented the testimony of a competing expert, a licensed professional planner. That expert asserted that the requested variances would negatively impact surrounding properties due to increased impervious coverage,

enhanced noise, enhanced odor, and additional headlight glare. LRA also presented the testimony of a traffic engineering expert, who opined that the proposed development provided inadequate access and would result in excessive stacking of vehicles on Township roads during peak times.

At the conclusion of the September 8, 2020 public hearing, the Planning Board voted to approve RD Lakewood's application, with conditions. One of those conditions, which was specified in the associated resolution, was that the hotel would not have "a wedding hall." On October 13, 2020, the Planning Board adopted the resolution memorializing its conditional approval.

The Planning Board specifically found that RD Lakewood had provided proper notice pursuant to the MLUL and that the applicant had demonstrated sufficient credible evidence to grant the requested variances and design waivers. As to the LRA's concerns about the setback variances, the Planning Board granted them because they would provide for additional parking, ease traffic flow and circulation, and outweigh any potential detriment to surrounding property owners. The Planning Board further decided the sign variance was appropriate, deeming it would provide visitors with ease of identification and constituted a de minimis enlargement of the size of the sign.

On the whole, the Planning Board concluded the grant of the variances would advance the purposes of the MLUL and that the benefits of such deviations would substantially outweigh any detriments.

In November 2020, LRA filed its present complaint challenging the Planning Board's decision and RD Lakewood's second application. The complaint alleged: (a) that public notice of the application was deficient for failure to disclose the hotel's planned banquet facility and for misidentifying itself as an "amended" application and (b) that the Board incorrectly granted the defendant's application and variances for several reasons.²

After hearing the arguments of counsel, the trial court rejected LRA's objections and upheld the Planning Board's decision in all respects. With respect to LRA's argument of deficient notice, the judge reasoned that "[t]he failure to specifically notice the banquet use, where it is a permitted use under the

² Those reasons were: (1) that RD Lakewood was required to seek and obtain a variance for the placement of the parking lot within the side yard setback of adjoining Lot 2.03; (2) that RD Lakewood was required to seek and obtain a (d)(1) variance for the proposed parking lot access drive which used Lot 2.03 because it constitutes a second principal use which is not a permitted use; (3) that the Planning Board's resolution was not supported by sufficient evidence and therefore was arbitrary, capricious, and unreasonable; and (4) that the Planning Board's resolution was defective because it fails to demonstrate that the Planning Board properly considered the evidence, and failed to set forth adequate findings of fact and conclusions of law to support the Planning Board's otherwise conclusory approvals.

Township's definition of hotel, does not render this [n]otice to be legally deficient and thereby strip the Board of its jurisdiction to consider the [a]pplication . . . The court finds that the notification was sufficient to place the public on notice as [] intended."

As to the LRA's second notice-related complaint alleging that the descriptive term, "amended", within the notice was misleading, the trial court likewise found no deficiency. The court noted that:

The [Planning] Board itself considered this to be an amended [a]pplication for the hotel project, and the transcript is replete with references to the prior approval . . . The use of the terminology did not have the effect of confusing the public as to this [a]pplication. It was for a hotel, and as defined by Lakewood Township Ordinance. The court finds the [n]otice did not cause any confusion to the public as to the nature of this [a]pplication.

The trial court also rejected LRA's objections to the approved variances and waivers, for reasons we need not elaborate upon here.

LRA now appeals, arguing the trial court erred: (1) in rejecting its contentions of defective notice and (2) in upholding the granted waivers and variances.

II.

We begin our legal analysis of the notice issue by reiterating principles we underscored in our first opinion in 2019. Section 12 of the MLUL, N.J.S.A.

40:55D-12, requires that applicants for specific land use approvals, including "applications for development," provide public notice of hearings on such applications, including "site plan review as may be specified by ordinance." In this Township, such public notice is required for site plan review. Section 11 of the MLUL, N.J.S.A. 40:55D-11, mandates that such public notices convey, among other things, "the nature of the matters to be considered."

As we stated in our first opinion, "appropriate public notice serves an important 'gatekeeping' function in land use matters." LRA I at 18. "It is not sufficient for an applicant to circulate and publish an uninformative and vague notice and expect local residents to go down to municipal offices to inspect the plans in order to ascertain the critical features of the proposal." Ibid.

In Pond Run, we invalidated a land use board's approval of a commercial project, which included a 168-seat restaurant with a proposed liquor license, because the applicants notice vaguely described the project as a residential mixed-use facility with "retail/office units." 397 N.J. Super. at 346, 353-55. Similarly, in Perlmart, we nullified a developer's applications for site plan approvals, variances, and a conditional use permit, because the public notice stated only that the applications were "for the creation of commercial lots," and omitted the material fact that the lots were intended to be developed as a shopping center. 295 N.J. Super. at 237-241.

The public notice need not be "exhaustive." Shakoor Supermarkets, Inc. v. Old Bridge Twp. Plan. Bd., 420 N.J. Super. 193, 201 (App. Div. 2011). However, it must be sufficient to enable members of the public to make "an informed determination" about whether to attend and participate in the applicant's land use hearing. Perlmart, 295 N.J. Super. at 237.

Our first opinion in this case held that the elements of a restaurant and a banquet facility were sufficiently important to be required within RD Lakewood's public notice. Our determination in that regard remains unchanged.

RD Lakewood persuaded the Planning Board and the trial court that the banquet facility did not have to be mentioned in the notice because, in the interim between the 2014 hearing on the first application and the 2020 hearings on the second application, the Township's ordinance was revised in 2019 to redefine "hotel" to include "banquet facilities." Specifically, the current ordinance definition of "hotel" now reads:

A hotel is a place of lodging that provides temporary sleeping accommodations and supporting facilities that may include, but not be limited to, a lobby, full-service restaurant, cocktail lounges, meeting rooms, banquet facilities, and convention facilities. It typically provides a swimming pool or another recreational facility such as a fitness room.

[Ordinance at §19-200(B) (Emphasis added.)]

The trial court reasoned this definitional change no longer required RD Lakewood to obtain a use variance to enable the planned hotel to include a banquet facility. However, that change does not eliminate the applicant's statutory obligation -- in connection with the land use application as a whole -- to convey to the public the impactful activities that will be authorized on the site.

The testimony at the hearings elicited that the banquet facility, which would be located in the hotel's basement, could hold up to 833 guests. That number of allowable attendees would far exceed the number of diners a member of the public would reasonably expect to use a "restaurant" within a hotel with 138 guest rooms and 193 parking spaces.

Counsel at oral argument on the appeal suggested that the 833-guest figure was inaccurately calculated, and that far fewer banquet guests would be expected to use the facility. That assertion overlooks the point that a banquet facility is designed to draw substantial numbers of guests who would be traveling to and from the facility for banquet events and who would not necessarily be staying in a room at the hotel.

We recognize the Planning Board's resolution disallows the hotel to be used as a "wedding hall." But that does not prevent other very large gatherings from being held at the banquet facility, such as fund-raising dinners, political

events, galas, retirement dinners and anniversary parties, and so on. The banquet facility was a material aspect of the application that needed to be mentioned in the notice, regardless of the change in the ordinance's definition of a hotel.

It is also concerning that the notice enumerates seven other activities that are specifically permitted for a "hotel," but conspicuously omits mention of a banquet facility. At oral argument on appeal, counsel for RD Lakewood candidly acknowledged the omission was not inadvertent. RD Lakewood presents no justification for why the public specified the hotel would have meeting rooms, a food prep area/kitchen, lounge, bar area, dining area, pool, and exercise room, but did not mention a banquet facility. Surely a banquet facility would have a far greater potential impact on site parking and traffic than, say, an exercise room.

The exclusion of the banquet facility made the notice materially defective. Hence, consistent with the requirements of the MLUL and case law, we must reverse the trial court and vacate the approvals once again because of that jurisdictional deficiency.

For sake of completeness, we simply note the remaining arguments raised by LRA on appeal are unpersuasive. LRA's contention that the notice refers to the applicant's previous "approval" is unavailing, because that previous

disposition is factually true and not inherently misleading. In addition, LRA's assorted challenges to the setback and side yard variances, and to the other waivers, are unavailing, essentially for the reasons stated by the trial court.

Although we are mindful of the costs and delays attendant to further proceedings, we are constrained to reverse the trial court and vacate the Planning Board's 2020 determination. We do so without prejudice to the developer's right to pursue another future application publicized by a complete and proper public notice.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION