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March 19, 2024

Ms. Candace Mitchell
Planning Board Secretary
Borough of Sea Bright
Unified Planning Board
1199 Ocean Avenue
Sea Bright, NJ 07760

**Re: 14 South Way
14 South Way
Block 30, Lot 63
Use Variance
Our File: SBPB 24-05**

Dear Board Members:

Our office received and reviewed materials that were submitted in support of an application for use variance approval for the above referenced project. The following documents were reviewed:

- Borough of Sea Bright Planning/ Zoning Board Application dated January 23, 2024.
- Borough of Sea Bright Application for a Zoning Permit dated October 14, 2023.
- Application Item #15 – Reasons for Variance Request.
- Survey of Property consisting of one (1) sheet, prepared by Richard G. Titus, PLS of Titus Surveying & Engineering, PC, dated April 21, 2006.
- Architectural Plans consisting of four (4) sheets, prepared by TF Cusanelli & Filletti Architects, PC, dated January 3, 2024.

1. Site Analysis and Project Description

The subject property consists of Block 30, Lot 63, a 0.2525-acre parcel located on the south side of South Way, adjacent to the Shrewsbury River in the R-2 Residential Zone District. The property is currently developed with a 3-story single family dwelling, one story dwelling unit, driveway,

pool, and shed. Residential uses are located to the north, south, and east of the site and the Shrewsbury River is located to the west. The subject property is located within the FEMA Special Flood Hazard Area with a BFE of AE 11', requiring a design flood elevation of 14' per the Borough's ordinance.

The applicant is seeking use variance relief approval to a second-floor addition to the existing single story dwelling unit. The proposed first floor will consist of a living/dining area, kitchen, and powder room. The second floor will consist of one (1) bedroom, bathroom, laundry room, and walk in closet. The applicant has indicated that the dwelling unit is already subject to restrictions against rental and is exclusively designated for household members of the principal dwelling. The applicant should provide any prior approvals and resolutions or deeds restrictions indicating the same.

2. Consistency with the Zone Plan

The property is located in the R-2 Residential Zone District. Principal permitted uses in the R-2 Zone include single-family dwelling units, churches, and public parks. Conditional uses include real estate insurance offices, public buildings, professional office uses, public and private schools, and helistops.

As per §130-38D(1)(f), no accessory building in any zone shall be habitable, therefore the existing single-story dwelling constitutes a second principal structure. As per §130-29A, no lot shall have erected upon it more than one principal structure, whereas the two (2) dwelling units constitute two principal structures. As indicated in the previous section, the applicant should provide information on any prior approvals. If the existing non-conforming secondary principal dwelling was lawfully created, a d(2) variance is required for the expansion of a pre-existing, non-conforming use. If the applicant cannot provide evidence that the two dwellings were lawfully created, a d(1) variance is required to allow for a use which is not permitted in the zone district.

3. Bulk Requirements

- A. The minimum required side yard setback in the R-2 Zone for a principal structure is 7 ft. for one side, whereas 5 ft. is existing and proposed for the second principal structure. **This is an existing non-conformity, which is exacerbated by the proposed addition, requiring a variance.**
- B. The minimum required rear yard setback in the R-2 Zone for a principal structure is 15 ft., whereas the existing and proposed rear yard setback is 2.6 ft for the second principal structure. **This is an existing non-conformity which is exacerbated by the proposed addition, requiring a variance.**
- C. **The applicant should provide testimony as to the existing and proposed total number of bedrooms on site and the number of parking spaces provided to determine if any additional variances are required.**

- D. As per §130-35A(2), a nonconforming structure shall not be altered unless such alteration would tend to reduce the degree of nonconformance. No nonconforming structure shall be extended horizontally or vertically, unless such extension does not increase the existing nonconformity and such extension fully complies with all current bulk requirements for that zone, whereas the proposed addition of the existing secondary dwelling does not meet this requirement, requiring a variance.**

4. Required Proofs for Variance Relief

A. *D(1) Use Variance*

This application requires a use variance pursuant to N.J.S.A. 40:55D-70.d(1). Testimony is required to demonstrate that the application satisfies the positive and negative criteria of the Municipal Land Use Law for the granting of the use variance relief. To obtain a d(1) use variance, the Applicant must show that the proposal meets four separate criteria:

1) Positive Criteria

- (a) *That the site is particularly suited to the use.* The Applicant must prove that the site is particularly suited for the proposed use. This requirement sets a high bar, requiring findings that the general welfare is served because the use is particularly fitted to the proposed location of the use. It requires the Applicant to show why the location of the site within the Township is particularly suited for the proposed use despite the underlying zoning, or the unique characteristics of the site that make it particularly appropriate for the proposed use rather than a permitted use.
- (b) *Special Reasons.* The Applicant must prove that special reasons exist for granting the use variance by demonstrating either that there is an unreasonable hardship in not granting the variance, or that the proposed project furthers one or more of the purposes of the Municipal Land Use Law.

2) Negative Criteria

- (a) *The variance will not substantially impair the intent and purpose of the zoning plan and ordinance.* The Applicant must prove that the proposal does not substantially impair the intent of the zoning ordinance or master plan. This criterion comes out of the basic principal that municipalities should make zoning decisions by ordinance rather than by variance, and that the grant of a variance should not represent a complete departure from the enacted policy of the governing body.
- (b) *The variance can be granted without a substantial detriment to the public good.* This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.

B. If it can be determined that the existing non-conforming structure was lawfully created, a d(2) use variance for the expansion of a non-conforming use would be required. To obtain a d(2) use variance, the Applicant must show that the proposal meets three separate criteria.

- 1) Special Reasons. Proving the positive criteria for d(2) variances is set at a lower bar than for a new non-conforming use. Proof should still be proffered that demonstrates the furtherance of a goal of zoning.
- 2) Intent of the Zone Plan (negative criterion #1). The Applicant must prove that the proposed expansion does not substantially impair the intent of the zoning ordinance or master plan.
- 3) Detriment to the Public Good (negative criterion #2). The Applicant must prove that the expansion of the proposed use would not have a substantial detriment on nearby properties.

C. *C Variances*

A number of “c” variances are required. There are two types of c variances with different required proofs.

- 1) Boards may grant a c(1) variance upon proof that a particular property faces hardship due to the shape, topography, or extraordinary and exceptional situation uniquely affecting the specific property.
- 2) Boards may grant a c(2) variance based upon findings that the purposes of zoning enumerated in the MLUL are advanced by the deviation from the ordinance, with the benefits of departing from the standards in the ordinance substantially outweighing any detriment to the public good. The Supreme Court’s ruling in Kaufmann v. Planning Board for Warren Township provides additional guidance on c(2) variances, stating that “the grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of the c(2) case, then, will be...the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”
- 3) C variances must also show consistency with the negative criteria as well.

5. Additional Comments

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. The applicant has indicated that “the primary goal of the proposed addition is to improve the living conditions within the accessory dwelling to accommodate older family members more comfortably.” Testimony should be provided as to any accommodations or design features proposed to make the unit more “livable” for older individuals.

- C. The applicant should provide a revised survey and site plan indicating all site improvements. Based on recent aerial imagery, there appears to be significant additional improvements, including a swimming pool, paved driveway, and accessory building. Testimony should be provided as to whether the appropriate permits were obtained for all improvements.
- D. **The applicant should confirm the numbers provided in the zoning calculations table of the plan set, in particular lot and building coverage, as the provided plan does not appear to illustrate the existing conditions of the site.**
- E. The applicant should submit a detailed, proposed estimate of construction costs to the Borough's Floodplain Administrator to determine if the proposed improvements constitute a substantial improvement. If the proposed improvements are a substantial improvement, the applicant shall comply with all relevant Flood Damage Prevention Ordinance requirements, including the first floor of habitable space to be constructed at a BFE of 14 ft.

Please be advised that additional comments may follow upon completion of testimony and/or submission of further revisions by the Applicant. Should you have any questions regarding this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, INC.



Jennifer C. Beahm, P.P.
Board Planner

JCB:clb

cc: David J. Hoder, P.E., Board Engineer
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