

December 6, 2023

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

**Re: Jonathan and Catherine Goldin
7 Atlantic Way
Block 29, Lot 7
Use Variance
Our File: SBPB 23-08**

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 November 7, 2023.
- Borough of Sea Bright Application for a Zoning Permit dated October 17, 2023.
- Photos of current conditions, undated.
- Survey of Property consisting of one (1) sheet, prepared by David J. Von Steenburg, PLS of Morgan Engineering & Surveying, dated February 21, 2023.
- Architectural Plans consisting of three (3) sheets, prepared by Anthony M. Condouris Architect, Inc., dated September 28, 2023.

1. Site Analysis and Project Description

The subject property consists of Block 29, Lot 7, a 0.0560-acre (2,437 sq. ft.) site located west of Ocean Ave with frontage on Atlantic Way in the R-2 Residential Zone District. The property is currently developed with a 2-story single family dwelling with an open porch and a second floor

deck along Atlantic Way, a deck on the first floor and a second floor balcony to the rear, and associated fencing along the perimeter of the site. Residential uses surround the site. The subject property is located within the FEMA Special Flood Hazard Area with a BFE of AE 8', requiring a design flood elevation of 11' per the Borough's ordinance.

The applicant is seeking use variance relief approval to construct an addition of a third floor (1/2 story) to the existing residential dwelling, and the partial enclosure of the existing open garage area to be used for storage.

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.

3. Bulk Requirements

A. The bulk requirements of the R-2 Residential Zone District as they relate to the subject application are as follows:

	Required	Proposed
Minimum Lot Area	4,000 sq. ft.	2,437 sq. ft. ⁺
Min. Lot Width	50 ft.	32.5 ft. ⁺
Minimum Lot Depth	60 ft.	75 ft.
Min. Front Yard Setback	25 ft.	17.66 ft.*
Min. Side Yard Setback	7/15 ft.	3.74/7.55 ft.*
Min. Rear Yard Setback	15 ft.	2 ft. ⁺
Maximum Lot Coverage	70%	69.67%
Maximum Building Coverage	50%	55.39% ⁺
Max. Building Height	2 ½ stories/ 35 ft.	3 stories*/ 38 ft.*
Min. Ground Floor Area	880 sq. ft.	2,450 sq. ft.

+existing non-conformity *variance required

- B. The minimum required lot area in the R-2 Zone is 4,000 sq. ft., whereas a lot area of 2,437 sq. ft. is existing. **This is an existing non-conformity.**
- C. The minimum required lot width in the R-2 Zone is 50 ft., whereas a lot width of 32.5 ft. is existing. **This is an existing non-conformity.**
- D. The minimum required front yard setback in the R-2 Zone is 25 ft., whereas the existing and proposed front yard setback is 17.66 ft. **This is an existing non-conformity, which is exacerbated by the proposed addition, requiring a variance.**

- E. The minimum required side yard setback in the R-2 Zone is 7 ft. for one side and 15 ft. for both sides, whereas 3.74 ft., 3.81 ft. and 7.55 ft. are existing and proposed. **This is an existing non-conformity, which is exacerbated by the proposed addition, requiring a variance.**
- F. The minimum required rear yard setback in the R-2 Zone is 15 ft., whereas the existing and proposed rear yard setback is 2 ft. **This is an existing non-conformity.**
- G. The maximum permitted building coverage in the R-2 Zone District is 50%, whereas 55.39% is existing. **This is an existing non-conformity.**
- H. The maximum permitted number of stories in the R-2 zone is 2.5 stories, whereas the applicant is proposing a three (3) story building. **A variance is required.** The applicant has indicated that the proposed structure is 2.5 stories. However, the Borough defines a half story as “that portion of a building under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the floor.” **The proposed third floor does not appear to meet this definition, and therefore qualifies as a third story, requiring a variance.**
- I. The applicant indicates the proposed height of the dwelling is 38 feet. As per §130-39A(6)(b), when renovations are made to an existing structure that has been raised a minimum of three feet above the base flood elevation, and the height limit has not been previously revised, then the height limit of the structure shall be revised to allow three additional feet in height to be added to the maximum allowable height for that particular structure. In no case shall the maximum allowable height exceed three feet above the base maximum allowable height as set forth in the Schedule of Lot and Building Requirements. **For undersized lots, in no case shall the maximum allowable height exceed three feet above the maximum allowable height as calculated in the chapter.**

As per §130-39.A.5, for those structures proposed to be erected on undersized lots, the maximum permitted building height for new buildings shall be reduced proportionately from the allowable height limit of 35 feet on lots that are less than the permitted lot width within the zone. The proportional height reduction for structures that are permitted to be built on undersized lots shall be directly linked to the percentage that the undersized lot deviates from the required lot size within the zone. The above-stated formula shall apply to all undersized lots; provided, however, that the maximum permitted height for undersized lots shall not be less than 30 feet. **The lot width of the subject property is 65% of that which is required, requiring a maximum height reduction from 35 ft. to 24.7 ft. However, the minimum permitted height is 30 ft., so 30 ft. is required. If the structure is elevated at least 3 ft. above the BFE, the maximum permitted height is 33 ft. The applicant is proposing a maximum height of 38 ft. which is greater than 10% of the maximum permitted height, requiring a d(6) variance.**

- J. **The proposed structure consists of four (4) bedrooms and a sunroom, which counts as a bedroom for the purposes of parking calculations. Under RSIS, a five**

(5) bedroom home would require three (3) parking spaces. The submitted application does not indicate parking anywhere on the property. Testimony should be provided as to the existing and proposed number of parking spaces and how parking will be handled on site.

4. Required Proofs for Variance Relief

A. ***D(6) Height Variance.*** The application requires a d(6) use variance to permit a height of a principal structure which exceeds by 10 ft. or 10% the maximum height permitted in the district for a principal structure.

- 1) To meet the positive criteria for a d(6) variance, the applicant should prove the particular suitability of the site in accommodating the use, despite the increase in height by over 10% of what is permitted in the zone district.
- 2) The negative criteria should focus on the impact of the deviation. The applicant must present evidence that the negative impacts of non-compliance with the permitted height can be mitigated to the extent that the use will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

B. *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 should revise the architectural plans to include all relevant elevations.
- C. The applicant should provide testimony as any proposed improvements to the existing portion of the structure and if any additional site improvements are proposed.
- D. The applicant should revise the plans to indicate the height of the first floor. The applicant should ensure that all construction is in compliance with the Borough's Flood Damage Prevention Ordinance, including meeting the minimum design flood elevation. If the first floor elevation is not at or above 13 ft., testimony should be provided as to whether or not the proposed improvements constitute a substantial improvement under the Flood Damage Prevention Ordinance.
- E. The Zoning Table on the Architectural Plans and the Schedule of Lot and Building Requirements in the submitted application should be revised to be consistent.
- F. The survey should be revised to include the location of all FEMA Special Flood Hazard Areas.

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:ier

cc: David J. Hoder, P.E., Board Engineer
Anthony M. Condouris, Applicant's Architect
Rick Brodsky, Esq., Applicant's Attorney