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August 10, 2023

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

**Re: Lindsay DeChiaro
27 Center Street
Block 10, Lot 14
Use & Bulk Variances
Planning Review
Our File: SBPB 23-03**

Dear Board Members:

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

- Borough of Sea Bright Planning/ Zoning Board Application dated July 26, 2023.
- Borough of Sea Bright Application for a Zoning Permit dated July 6, 2023.
- Borough of Sea Bright Variance Plan Checklist, undated.
- Description of Changes to Premises, undated.
- Architectural Plans, consisting of three (3) sheets, prepared by Anthony M. Condouris, Architect, dated June 12, 2023.'
- Six (6) exterior photographs, undated.
- Four (4) photographs of the uneven third level floor, undated.

1. Site Analysis and Project Description

The subject property consists of Block 10, Lot 14, a 2,252 sq. ft. sq located west of Ocean Ave on the north side of Center Street in the R-3 Downtown Residential Zone District. The property is currently developed with a two-family, two-story dwelling and associated concrete driveway, and an existing two-story deck on the rear of the structure. Access to both dwelling units is provided by a staircase located on the eastern side of the property. 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 bulk and use variance approval to expand the existing second floor to the east to make the living area footprint the same as that below. The proposed second floor will consist of a master bedroom with bathroom and walk-in closet, bedroom, bathroom, family room, kitchen, and fireplace. The applicant is also proposing to expand the third-floor attic into additional livable space for the second-floor unit, including a new bedroom, office, bath, laundry, and storage space, and to raise the ceiling height to accommodate a new floor. The existing first floor unit consisting of a kitchen, family room, foyer, bathroom, bedroom, and master bath and bedroom will remain unchanged.

2. Consistency with the Zone Plan

The property is located in the R-3 Downtown Residential Zone District. Principal permitted uses in the R-3 Zone include single-family dwelling units, churches, and public parks. **Two-family dwelling units are not a permitted use within the R-3 Zone. Testimony should be given regarding the history of the pre-existing non-conforming two-family use, including what the zoning was at the time of creation and if any previous approvals were granted to legalize the existing non-conforming structure.**

If the existing non-conforming structure 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-family use was 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 permitted front yard setback in the R-3 Zone is 5 to 12 feet to be consistent with homes on the same side of the street on the same block. The applicant shall provide setbacks from a surveyor shot from the street to arrive at an average. In no case would the setback be permitted to be less than five (5) feet. **The existing and proposed front yard setback is 3.8 ft., which is an existing non-conformity. However, testimony should be provided as to the average setback of the block.**

- B. The minimum permitted side yard setback in the R-3 Zone is 3 ft., whereas 1.4 ft. is existing and proposed. **This is an expansion of the existing non-conformity, requiring a variance.**
- C. The maximum number of stories permitted in the R-3 Zone is 2.5, whereas 2 is existing and three (3) is proposed. **A variance required.**
- D. The maximum permitted building height in the R-3 Zone is 38 feet, if the building is raised at least three (3) feet above the BFE. The DFE for the subject property is 11 ft., and the first floor of habitable space is at 13 ft., which is greater than the 3 ft. required. **However, the proposed building height is 39.2 ft., 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 indicates that due to the age of the home, the upper levels have experienced significant settling. However, the home appears to have been raised and improved since its construction in 1922. Testimony should be provided as to previous improvements to the structure.
- C. The architectural plans should be revised to include the existing conditions of the site for the Board's review.
- D. A survey of the property should be provided to confirm all existing and proposed bulk conditions of the site.
- E. The Site Plan and/or survey should be revised to include the FEMA Special Flood Hazard Area and Base Flood Elevation.
- F. The applicant should revise the architectural plans to include all relevant elevations, including that of the lowest floor and first floor, and to depict the building height to include the average distance between the eaves and ridge level.
- G. Testimony should be given regarding the existing and proposed two family use, including access to each unit and the use of the garage space.
- H. The applicant should provide testimony as to whether any lighting, landscaping, or additional site improvements are proposed.

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