

July 19, 2023

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

**Re: 16 Via Ripa Properties, LLC  
16 Via Ripa Way  
Block 31, Lot 6  
Use Variance  
Our File: SBPB 23-01**

Dear Board Members:

Our office received and reviewed additional materials that were submitted in support of an application for use variance approval for the above referenced project. We have provided ***new comments in bold and italicized text*** and ~~struck-out~~ comments that are no longer relevant. The following documents were reviewed:

- Borough of Sea Bright Planning/ Zoning Board Application dated December 21, 2022.
- Borough of Sea Bright Application for a Zoning Permit dated October 19, 2022.
- Photos of current conditions dated December 2, 2022.
- Plan of Survey consisting of one (1) sheet, prepared by Russell S. Kauffman, PLS of ELS Surveying, LLC, dated August 27, 2021.
- Architectural Plans, consisting of ~~four (4)~~ ***three (3)*** sheets, prepared by Anthony M. Condouris of AMC Architect, dated ~~October 17, 2022~~ ***June 1, 2023***.

## **1. Site Analysis and Project Description**

The subject property consists of Block 31, Lot 6, a 4,200 sq. ft. lot located west of Ocean Ave with frontage on Via Ripa Way and South Way in the R-2 Residential Zone District. The property is

currently developed with a two-family, two-story frame dwelling and associated concrete driveway, an open porch along Via Ripa Way, and a porch along South Way. Residential uses surround the site. 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 approval to ~~demolish~~ **raise** the existing **2 story**, two-family dwelling and construct a ~~new 2 ½ story, two-family dwelling~~ **a 2<sup>nd</sup> floor addition and set of stairs for access to the 1<sup>st</sup> floor along the southern façade near South Way, a set of stairs for access to the 1<sup>st</sup> and 2<sup>nd</sup> floor and a covered balcony along the eastern façade, and a covered porch and second floor deck along the northern façade near Via Ripa.** The applicant is **also** proposing a total of six (6) bedrooms, three (3) **full** bathrooms, and ~~two (2) half bathrooms~~, as well as two (2) living areas **great rooms**, a laundry room, a covered porch and second floor deck, an elevator, a balcony on the 2<sup>nd</sup>- and 3<sup>rd</sup>-floor, a flat roof deck on the 3<sup>rd</sup>-floor, and two (2) garages **and one (1) garage** on the ground floor. The applicant is also proposing ~~two (2) driveways, one one (1) driveway~~ **one one (1) driveway** along South Way. ~~and one along Via Ripa Way.~~ The unit with driveway access on Via Ripa will consist of three (3) stories, over enclosed garage space, and will include four (4) **The 1<sup>st</sup> floor will include three (3)** bedrooms, an elevator, living area **a great room** and kitchen area, ~~one half bathroom and two full bathrooms~~, and outdoor deck space. ~~including a flat roof third story deck.~~ The unit facing South Way will consist of two (2) stories over enclosed garage space, **The 2<sup>nd</sup> floor will include three (3) bedrooms**, a living area **great room** and kitchen, ~~pantry, two (2) bedrooms, a half bathroom and a one (1) full bathroom~~, and outdoor deck space. ~~A laundry room appears to be shared between the two (2) units.~~

## **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. **Multifamily dwelling units are not a permitted use within the R-2 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 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.	4,200 sq. ft.
Min. Lot Width	50 ft.	60 ft.
Minimum Lot Depth	60 ft.	70 ft.
Min. Front Yard Setback (Via Ripa Way)	25 ft.	<del>9 ft.</del> <b>9.6 ft.*</b>
Min. Front Yard Setback (South Way)	25 ft.	<del>5 ft.</del> <b>9.8 ft.*</b>
Min. Side Yard Setback	7/15 ft.	<del>8/18 ft.</del> <b>2.8/22.3 ft.*</b>
Min. Rear Yard Setback	N/A	N/A
Maximum Lot Coverage	70%	<del>67%</del> <b>61.07%</b>
Maximum Building Coverage	50%	<del>56%*</del> <b>36.09%</b>
Max. Building Height	2 ½ stories/ 35 ft.	<del>3 stories*/</del> 38 ft. <b>2 stories/ 30.4 ft.</b>
Min. Ground Floor Area	880 sq. ft.	<del>1,530</del> <b>1,116</b> sq. ft.

\*variance required

- B. The minimum required front yard setback in the R-2 Zone is 25 ft., whereas the front yard setback proposed along Via Ripa Way is ~~9~~ **9.6 ft.** **A variance is needed.**
- C. The minimum required front yard setback in the R-2 Zone is 25 ft., whereas the front yard setback proposed along South Way is ~~5~~ **9.8 ft.** **A variance is needed.**
- D. The minimum permitted side yard setback in the R-2 Zone is 7 ft. for one side, whereas the existing and proposed side yard setback is 2.8 ft. While this is an existing condition, the proposed expansion of the second floor necessitates a variance.*
- ~~E. The maximum permitted building coverage in the R-2 Zone District is 50%, whereas 56% is proposed. A variance is needed.~~
- ~~F. 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. **A two (2) story building is now proposed.**~~
- G. The applicant indicates the proposed height of the new two-family dwelling is 38 feet. As per §130-39A(6), when a structure is built or raised to a minimum of three feet above the base flood elevation, 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 38 ft. in height. The maximum permitted height in the R-2 zone is 35 ft. whereas the applicant is proposing 38 ft. However, the base flood elevation and design flood elevation are not depicted on the architectural plans. The applicant should include these in the plans and ensure compliance with the requirements of Sea Bright’s Flood Damage Prevention

~~Ordinance. If the proposed structure is raised three ft. above the BFE, a height of 38 ft. is permitted, if the proposed structure is less than three feet above the BFE, a variance would be required. ***The proposed height is now less than 35 feet. However, the height indicated in the Zoning Table differs from the height depicted on the architectural plans. The applicant should clarify the proposed height and include the base flood elevation and design flood elevation on the plans to ensure that the proposed renovations are consistent with the Borough's Flood Damage Prevention Ordinance.***~~

#### 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 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 up to the highest point of the roof.

- C. The applicant should provide testimony as to whether any lighting, landscaping, or additional site improvements are proposed.
- D. ~~Testimony should be provided as to the proposed laundry area. It appears to be located within the Via Ripa facing unit but accessed through a door from the South Way unit. Will both units have access to the laundry room? Will this access allow the two (2) units to function as one large unit, or will they always be utilized as two (2) separate dwelling units.~~
- E. ***The applicant should provide testimony regarding the new floor layout proposed and confirm what areas and uses are associated with each unit.***
- F. 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. The applicant should also ensure the proposed development is built to V-Zone standards due to its location past the LiMWA (Limit of Moderate Wave Action).
- G. 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:icr  
cc: David J. Hoder, P.E., Board Engineer  
Anthony M. Condouris, Applicant's Architect  
Rick Brodsky, Esq., Applicant's Attorney