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KNPB-R3040

October 29, 2024

Via Email

MacKenzie Bittle, Planning Board Secretary
Borough of Keansburg
29 Church Street
Keansburg, NJ 07734

**Re: Proposed Dwellings Raises & Additions with Bulk Variance Requests
Michael Felixson, Manager of Hava Realty, LLC
82-84 Raritan Avenue
Block 54, Lot 15
Single Family Residential (R-5) Zone
First Engineering Review**

Dear Ms. Bittle:

As requested, we have reviewed the following plans and documents submitted in support of this application:

1. Plan entitled, "Proposed Raise & Addition, 82-84 Raritan Avenue, Keansburg, Lot: 15, Block: 54," prepared by Catherine Franco, AIA, consisting of three (3) sheets, dated February 10, 2024, unrevised.
2. Keansburg Planning Board of Adjustment Site Plan Application Packet dated August 12, 2024.
3. Certification of Taxes dated July 15, 2024.
4. Borough of Keansburg Zoning Officer Denial Letter dated February 28, 2024.

A. Project Description

The subject property is an interior lot located within the Single Family Residential (R-5) Zoning District with road frontage along Raritan Avenue to the west. Currently, the property contains two (2) one-story wood frame dwellings with associated patios, sheds and an above-ground pool in the rear yard and a combination concrete/stone driveway extending from Raritan Avenue. The property is located in the "AE" Flood Zone, with a flood elevation of 11 feet.

The applicant is seeking approval to raise one of the dwellings and add a second-story level while the other dwelling is proposed to be rebuilt with a second-story addition. Each dwelling will consist of three (3) bedrooms with associated rear deck with stairs and sheds. Other improvements include new concrete walkways within the front yard and concrete driveways extending from Raritan Avenue to accommodate the proposed dwellings. Single-family dwelling is a permitted in the Single Family Residential (R-5) Zoning District; however, in accordance with Section 22-5.2d, no more than one principal building and its accessory buildings shall hereafter be erected on any one lot, and therefore use variance relief is required for the two (2) principal dwellings on one lot. In addition, we also note that the proposed improvements do not meet the bulk requirements of the Single Family Residential (R-5) Zoning District. We note however, this is an existing non-conformity and that a use variance may be required.



B. Bulk Variance Required

In accordance with Section 22-5.5 of the Ordinance, the existing and proposed bulk deficiencies of the Single Family Residential (R-5) Zoning District are noted as follows:

	DESCRIPTION	REQUIRED	EXISTING	PROPOSED
1	Minimum Lot Area	5,000 SF	5,000 SF	No Change
2	Minimum Lot Frontage	50'	50'	No Change
3	Minimum Front Yard Setback - <i>Principal Bldg.</i>	25'	9.40 ^(E)	9.40'^(V)
5	Minimum Side Yard Setback - <i>Principal One Side</i>	7.5'	1.20'/3.60' ^(E)	1.20'/3.60'^(V)
	- <i>Principal Total</i>	15'	4.80'	4.80'^(V)
	- <i>Accessory Shed</i>	5'	1.80'	1.80'^(V)
6	Minimum Rear Yard Setback - <i>Principal Bldg.</i>	25'	45.0' ^(E)	45.0'^(V)
	- <i>Deck[^]</i>	7.5'	1.20'/3.60' ^(E)	1.20'/3.60'^(V)
	- <i>Accessory Shed</i>	5'	1.80' ^(E)	1.80'^(V)
7	Min. Gross Residential Ground Floor Area	600 SF	NP	726 SF
8	Maximum Lot Coverage – <i>Principal Bldg.</i>	25%	33.0% ^(E)	No Change^(V)
9	Maximum Lot Coverage – <i>All</i>	50%	47.0% ^(E)	47.20%
10	Maximum Building Height - <i>Principal Story</i>	2 ½ - Story	1 - Story	3 – Story^(V)
	- <i>Principal Height</i>	35'	+/- 16'	30' – 10"
11	Minimum Improved Off-Street Parking*	4 Spaces	NP	4

(E) – Existing Nonconformity

(V) – Variance

(NP) – Not Provided

[^] – A porch, deck, patio, or similar structure designed to adjoin or as part of the principal building

shall in all cases conform to the yard requirements for the principal building except where the structure has no roof and is constructed not more than one foot above grade, it shall adhere to the yard requirements for an accessory structure.

*Section 22-9.3 of the Ordinance requires a total of four (4) Off-Street Parking Spaces for the two (2) 3-bedroom single family dwellings. Section 22-9.3. a.5 states “A one-car garage and driveway combination shall count as 2 off-street parking spaces, provided the driveway measures a minimum of thirty (30’) feet in length between the face of the garage door and the sidewalk or thirty-five (35’) to the curblin. Two-car garage and driveway combination shall count as 4.0 off-street parking spaces, provided the minimum width of the driveway is twenty (20’) feet and its minimum length is as specified above for a one-car garage.”

C. Dimensional “c” Variance Considerations

Upon hearing testimony and input from the public (if any), the Board should evaluate the positive and negative criteria set forth below to determine whether the Applicant has met its burden of proof for a “c(1)” or “c(2)” variance for the bulk conditions and pre-existing non-conformities listed above, as well as variances per the below Sections of the Ordinance regarding construction of non-compliant structures, as listed below:

- a. Section 22-5-2.c of the Ordinance states that no building or structure shall hereafter be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land or building or portion of a building or structure to be used, designed, or arranged to be used for any purpose unless in conformity with all of the regulations herein



specified for the district in which it is located. **The applicant proposes to add a second story to the single-family dwellings which does not meet the bulk regulations of the R-5 Zoning District.**

- b. Section 22-5.5.e of the Ordinance states that standards and regulations shall be in accordance with the schedule referred to in Section 22-5. **The dwellings on the property do not meet the schedule referred to in Section 22-5.**
- c. Section 22-7.3.c of the Ordinance states that no nonconforming use may be expanded. **The addition of a second story to the single-family dwellings is an expansion of a nonconforming use on the property.**

1. Positive Criteria for “c(1)” Hardship Variance

The finding of a “c(1)” hardship would address the following:

- a. *by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or*
- b. *by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or*
- c. *by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, or the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.*

It should be noted that the finding of the hardship must be for the specific property in question (i.e., it must be unique to the area). Note also that a hardship variance cannot be granted by a self-created hardship or personal hardship of the applicant.

2. Positive Criteria for “c(2)” flexible variance

The finding of a “c(2)” flexible variance to permit relief from zoning regulations where an alternative proposal results in improved planning would address the following:

- a. *The purposes of the MLUL would be advanced by the deviation, and*
- b. *The benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.*

The finding of the benefits must be for the specific property in question—it must be unique to the area. The zoning benefits resulting from permitting the deviation(s) must be for the community and not merely for the private purposes of the owner. It has been held that the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Notwithstanding the above, the Board should consider only those purposes of zoning that are actually implicated by the variance relief sought.

3. The Municipal Land Use Law (NJSA 40:55D-70) requires the applicant to satisfy *both* components of the negative criteria:

- a. *The proposal will not create a “substantial detriment to the public good”;* and
- b. *The proposal will not create a “substantial detriment to the zone plan and zoning ordinance.”*



In order for the Board to approve any "d" variances, the applicant must satisfy the following:

Positive Criteria

There are two prongs to the positive criteria that the applicant must satisfy, as follows:

That the site is particularly suited to the use. The applicant must prove that the site is particularly suited to the use.

There are special reasons that allow a departure from the zoning regulations in this particular case. The applicant must prove that special reasons support the grant of the variance. The only acceptable special reasons for the grant of a "d" variance would be proof that the variance promotes the purpose of zoning, or proof of undue hardship. The purposes of zoning are established by the Municipal Land Use Law (N.J.S.A. 40:SSD-2) and the applicant must demonstrate that the variance promotes one or more of those purposes to establish special reasons. Alternatively, the applicant may offer as a special reason proof that that refusal to grant the variance would result in undue hardship. Proof of undue hardship for a "d" variance requires that the applicant prove that the property cannot be reasonably adapted to conform to the zone requirements.

Negative Criteria

There are two (2) prongs to the negative criteria that the applicant must satisfy, as follows:

That the variance can be granted without substantial detriment to the public good. This prong requires an evaluation of the impact of the variance 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.

That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance. The Board of Adjustment is precluded by the negative criteria from granting any "d" variance relief unless an applicant demonstrates that the variance will not substantially impair the intent and purpose of the zone plan. The process for zoning decisions is through the recommendations of the municipal master plan as implemented through zoning ordinances adopted by the governing body. This establishes the zones, standards, and requirements for the development of the municipality. The Board of Adjustment is precluded by the negative criteria from granting any "d" variance relief unless an applicant demonstrates that the variance will not substantially impair the intent and purpose of the zone plan. If the grant of a variance substantially alters the municipality's zone plan, the action is impermissible because it usurps the zoning power of the governing body and undermines the municipal planning process.

D. Technical Engineering Review

1. The property is located within the "AE" flood zone with a Base Flood Elevation (BFE) of 11 feet. The plan shall be revised to indicate the proposed finish floor elevation. We defer further review to the Flood Plain Administrator and Construction Official for any applicable building requirements accordingly.
2. The project site is located in the Coastal Area Facilities Review Act (CAFRA) Zone. The applicant shall comply with any applicable NJDEP requirements. We defer further review to NJDEP.



3. We defer to the Building Department for review of the architectural plans for ADA compliance.
4. The plan shall be revised to depict the locations of the associated AC units for the dwellings on the property. We recommend that they be placed at the rear of the dwelling.
5. The applicant shall provide testimony regarding the location of any proposed electric meters for the dwellings. JCPL requires the meter to be located at or above the BFE 11'.
6. A utility plan has not been provided for the two proposed dwellings. The applicant shall provide testimony regarding the utility connections or improvements necessitated by the subject application. All proposed utility improvements shall be shown on the plans including proper trench restoration.
7. Construction detail of the proposed concrete driveways in accordance with the standards of the Borough Ordinance shall be provided on the plan.
8. The plan should be revised to depict all existing and proposed grade elevations at all four corners of the dwellings and property lines to demonstrate that there will be no surface runoff impacts to adjoining properties.
9. The plan shall be revised to show the removal of the two (2) concrete driveway strips between the dwellings. This area shall be reestablished with with topsoil and seed and the existing curb along Raitan Avenue replaced with a full height curb.
10. The zoning table shall be revised to correct the required lot width to 50' for interior lot instead of the 75'.
11. Due to the undersized property and deficient side yard setbacks, the proposed dwellings will be constructed in close proximity with the houses on the adjoining lots. As such, a Residential Fire Sprinkler System 13D is recommended to be provided to reduce the speed of a fire from quickly spreading to the adjacent homes.
12. The proposed area of disturbance is less than 1 acre, does not result in a 0.25 acre increase in impervious coverage, nor result in a 0.25 acre increase in regulated impervious surface, therefore, the project is not considered a "major development" as defined by N.J.A.C. 7:8, and is not subject to the NJDEP Stormwater Management standards.
13. The applicant shall confirm that there will be no adverse drainage impacts to adjacent properties because of the proposed improvements.
14. The applicant should be aware that construction of habitable space below the base flood elevation could subject this space to inundation by floodwaters. This construction could also have an impact on the applicant's future flood insurance premiums. The applicant should clarify any/all uses of ground floor area.
15. If approved the applicant will be required to post all performance guarantees and inspection escrow as stipulated in the Development Regulations.



We reserve the opportunity to further review and comment on this application and all pertinent documentation, pursuant to testimony presented at the public hearing. If you have any questions or require additional information, please call.

Very truly yours,

T & M ASSOCIATES

ROBERT F. YURO, P.E., C.M.E.
BOROUGH OF KEANSBURG
PLANNING BOARD OF ADJUSTMENT ENGINEER

RFY:LZ

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