

RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF SOUTH ORANGE VILLAGE

Decided: March 5, 2019

Memorialized: April 2, 2019

**BIANCA’S, LLC
APPLICATION FOR D & C VARIANCE RELIEF
215 LINDSLEY AVENUE
BLOCK 2111 LOT 18
APPLICATION NO. ZB-1034**

WHEREAS, Bianca’s, LLC (“Applicant”) having an address at 4 Wetmore Avenue, Maplewood, New Jersey 07040 having made application for “d” and “c” variance relief for premises located at 215 Lindsley Avenue, South Orange, New Jersey, also known as Block 2111, Lot 18 on the Tax Map of the Township of South Orange Village (“premises”); and

WHEREAS, the Board having conducted a public hearing on this application on March 5, 2019; and

WHEREAS, the Applicant having appeared by Paul Pawlowski, Esq., and by witnesses and the Board having received review letter from Topology dated February 1, 2019 and March 1, 2019, and Bowman Consulting dated February 18, 2019, and having granted an opportunity for public comment and heard and deliberated on the merits of the application;

NOW, BE IT RESOLVED AS FOLLOWS:

EVIDENCE SUBMITTED

In summary, the following evidence was received and/or introduced in connection with this application:

1. The Board received the application form and the documents submitted therewith, including the following:
 - (i) South Orange Planning and Zoning Board Application;
 - (ii) Attachment 1 Variance Requests;
 - (iii) Affidavit as to Ownership of Property;
 - (iv) Certificate of Ownership;
 - (v) Ownership Disclosure Affidavit;
 - (vi) Certificate of Paid Taxes;
 - (vii) 200 ft list;

- (viii) Tax Map with subject premises indicated thereon;
- (ix) Will Serve letter from Verizon dated December 12, 2018;
- (x) Will Serve letter from joint meeting of Essex and Union Counties dated December 10, 2018;
- (xi) Will Serve letter from South Orange Village Water Utility;
- (xii) Evidence of Paid Real Estate Taxes;
- (xiii) Will Serve letter from PSE&G;
- (xiv) Certification from the Hudson/Essex/Passaic Soil Conservation District dated November 30, 2018;
- (xv) Color Photograph of the subject premises;
- (xvi) Topographic Survey and Minor Subdivision Plan prepared by Braginsky Surveying LLC dated September 28, 2018;
- (xvii) Lot Grading Plan and Soil Erosion Control Notes prepared by Matarazzo Engineering dated November 7, 2018;
- (xviii) Architectural Drawings prepared by Raymond Gregory dated November 13, 2018, revised January 10, 2019 (Sheets A-1, A-2, A-3 and A-4),

Subsequent to the submission of the application additional submissions were received namely:

- (i) Approval letter from the Essex County Planning Board dated February 14, 2019;
 - (ii) Boundary Survey and Topographic Survey and Minor Subdivision Plan prepared by Braginsky Surveying LLC, last revised February 22, 2019;
 - (iii) Architectural Drawings prepared by Raymond Gregory Architects last revised February 8, 2019 (Sheets A-1, A-2);
 - (iv) Site Plan Drawings prepared by Matarazzo Engineering LLC dated November 7, 2018;
 - (v) Architectural Drawings prepared by Raymond Gregory Architects dated November 13, 2018 (Sheets A-1 and A-2)
 - (vi) Construction Permit Notice from the Township of South Orange Village dated December 4, 2018
 - (vii) Permit Update from the Township of South Orange Village dated December 17, 2018
2. Paul Pawlowski, Esq., introduced the application on behalf of the Applicant. Mr. Pawlowski stated that the application involved two issues: 1) how the property would be owned; and 2) rear yard deck.
 3. Applicant called Nicholas Graviano, PP, AICP who sworn and qualified as an expert in planning. Mr. Graviano acknowledged that the premises are currently under construction with a side-by-side two-family residential dwelling. Applicant seeks to subdivide the lot along the mutual party wall to create two (2) separate smaller lots. He stated that Applicant intends to sell the two (2) units and would

prefer to sell them as fee simple lots rather through a condominium regime. Mr. Graviano stated that fee simple was more attractive to buyers because it offers a more affordable long-term form of ownership. He stated that by creating a condominium the homeowner's association fees would eventually cause ownership to be more expensive.

4. Mr. Graviano noted that the Ordinance allows the structure under construction to be built. However, the Ordinance defines connected units as townhouses which are not permitted in the zone. Applicant therefore is seeking a d(1) use variance. Mr. Graviano noted that the Applicant believes the site is particularly well suited for the use as evidenced by the fact that the Ordinance allows the structure. He opined that the variance would not cause substantial detriment to the public good because the same building may currently be built provided it remains on a single lot.
5. Mr. Graviano stated the variance would promote three (3) purposes of zoning, namely: 1) Municipal Land Use §2(a) promoting general welfare by providing the more affordable housing unit; 2) §2(g) by providing sufficient space in appropriate locations for a variety of residential uses; and 3) §2(i) by promoting a desirable visual environment with the newly constructed residences.
6. Mr. Graviano went on to state that the variance would promote goals of the 2011 South Orange Master Plan Re-examination Report including protecting residential neighborhoods without undue disruption to their character.
7. With respect to the bulk variances requested for the application, Mr. Graviano noted that by subdividing the property the following variances would be needed:

Requirements	Required	Existing	Proposed Lot 18.01	Proposed Lot 18.02
Use	Detached 1 or 2-family	Vacant	Townhome (V)	Townhome(V)
Minimum Lot Area	6,000 SF	6,000 SF	3,000 SF (V)	3,000 SF (V)
Minimum Lot Width	40'	60'	30' (V)	30'(V)
Minimum Side Yard Setback	4'	N/A	0'(V)/6'	0'(V)/6'
Maximum Lot Coverage	40%	N/A	44.8%(V)	44.8%(V)

8. Mr. Graviano stated that the bulk variances could be justified for the same reasons as the d(1) variance in that they would promote purposes of zoning identified Municipal Land Use Laws §§2(a), (g) and (i).

9. In response to the Board's question regarding the difference between constructing a building as it is currently configured or dividing the lot and creating two fee simple units Mr. Graviano stated that owners prefer to have control over their own property including the surrounding outside area without any strings attached. That way they are allowed to landscape, decorate and use their lot in any way they wish as opposed as to having restrictions imposed by the homeowner's association. When asked to quantify the amount of difference in costs for ownership in fee simple versus townhouse ownership, Mr. Graviano stated that he did not know the exact amount. When asked whether the proposed subdivision would be a benefit to the zone, he stated that the zone permits two-unit structures already. When asked whether the lot is unique, he answered no.
10. Applicant called Emilio Cruz principle of Bianco's LLC. Mr. Cruz responded to a question by the Board about what had triggered his decision to make this application, he stated that during construction it became known that rear yard setback relief would be needed in order to add rear decks and he therefore decided to make the accompanying application for d(1) use variance at the same time.
11. When a question arose regarding the purchase price, Mr. Graviano was recalled and then stated that the initial sales price for fee simple units maybe higher but eventually over time the condominium fees will increase which will make condominium ownership more expensive in the long run.
12. Mr. Cruz then spoke to the issue of drainage caused by the lot coverage variance and stated that he had already installed drywells on both lots. Discussions were had with the Applicant about what would drain into the drywell and he stated that it would include sheet runoff from the driveway, roof leaders and the sump pump. Mr. Cruz then stated that the proposed drainage system had been reviewed and approved by South Orange Village.
13. During public comment Mr. Abdul Makhvooom the owner of 226 Waverly Place directly behind the subject premises indicated that he was in support of the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The premises are located in the R-B District where two-family duplex residences are permitted, but townhomes are not.
15. Pursuant to the South Orange Village Code a townhouse is defined as a "a one-family dwelling in a row of at least two (2) such units in which each unit has a direct means of access to the outside and is attached to no more than two (2) other units". Applicant seeks relief in connection with subdividing the lot in order to create two (2) separate side-by-side attached residential units which may be

owned in fee simple rather than as part of a condominium homeowners association on a single lot.

16. Regarding the proofs for the positive criteria for a d(1) variance Applicant contends that this lot is particularly well suited because the structure which is currently being built is permitted as of right currently.
17. The Board notes that most of the positives which Applicant has identified will occur whether or not the subdivision is granted. The Board finds insufficient evidence to support the proposition that ownership of fee simple unit, which Applicant admits may have a higher initial purchase price, will in the long run be less expensive than ownership by way of homeowner's association. The Board finds that impairments to the zone plan and Ordinance are substantial and outweigh the unverified benefits of reduced costs and more affordable housing.
18. With regard to the lot coverage variance triggered by the construction of decks not originally contemplated. The Board finds that this variance can be granted under c(2) criteria. The benefits of the proposed decks outweigh the detriments and they are a better alternative to the Zone Plan. The testimony was that the drywells had been already been installed on both lots to off-set any additional stormwater run created by the excess in lot coverage.
19. The Board also notes that the Ordinance allows an increase in the amount of coverage if drywells are installed in the amount of 10% percent. §165-187(7) Therefore, because 40 percent is allowed up to 44 percent may be covered if drywells are in place. Therefore, the variance needed is merely .8% percent which the Board finds to be de minimis and having no substantial detriment to the public good, nor substantial impairment to the Zone Plan and Ordinance.

THE DECISION

WHEREAS, the Board, having reviewed the application for d(1) and c variance relief and having considered the impact of the proposed application on the Village's Master Plan, Zoning Ordinance and surrounding property owners, and having considered whether the proposal complies with the goals of the Master Plan and Zoning Ordinances of the Township of South Orange Village and the Municipal Land Use Law, hereby concludes that good cause has been shown to:

- (i) Deny the application for d(1) use variance;
- (ii) Grant the application for lot coverage variance.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of the Township of South Orange Village that the application for d(1) variance relief is denied in all respects; and

BE IT FURTHER RESOLVED, by the Zoning Board of the Township of South Orange Village that the application for lot coverage variance as set forth in the plans, reports, representations, testimony, stipulations and Exhibits offered by the Applicant is hereby granted with the following conditions:

1. The Applicant shall comply with all applicable Township, County and State laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local and state approvals and/or permits.


2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

3. The Applicant shall pay all outstanding taxes, application fees, technical review fees and inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within ten (10) days of notification.

4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the hearing, all exhibits introduced by the Applicant, and all terms and conditions of this Resolution.

5. All conditions and approvals will be noted on the plans.

IN WITNESS WHEREOF the Board has caused this Resolution to be executed by its Secretary on the 2nd day of April, 2019, who by her signature hereby certifies it is a true copy of the Board's decision.



Ojetti Davis, Secretary

Vote on the Use Variance

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene				X		
Cranko (1 st Alt.)			X			
Dahn (Chair)			X			
DiScala			X			
Levine		X	X			
Parlapiano (Vice Chair)	X		X			
Mason (2 nd Alt.)			X			
Shapiro						X

Vote on the Lot Coverage Variance

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene			X			
Cranko (1 st Alt.)		X	X			
Dahn (Chair)			X			
DiScala			X			
Levine	X		X			
Parlapiano (Vice Chair)			X			
Mason			X			
Shapiro						X

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene						
Cranko (1 st Alt.)		X	X			
Dahn (Chair)			X			
DiScala			X			
Levine			X			
Parlapiano (Vice Chair)	X		X			
Mason			X			
Shapiro						X