

RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF SOUTH ORANGE VILLAGE

Decided: April 4, 2017
Memorialized: May 2, 2017

**APPROVAL OF APPLICATION
A & D DELI & LIQUORS, INC.
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH "C" VARIANCE RELIEF
400 & 410 VALLEY STREET and 51 ARNOLD TERRACE
BLOCK 2210, LOTS 1, 24 & 25
ZBA APPLICATION #1028**

WHEREAS, A & D DELI & LIQUORS, INC., ("Applicant") having made application for "c" variance relief for parking setback, parking at entrance and load in front yard to the Township of South Orange Village Zoning Board (Application #1028) regarding property located at 400 & 410 Valley Street and 51 Arnold Terrace, South Orange, NJ (the Premises"), and known as Lots 1, 24 and 25, Block 2210 on the tax map of the Township of South Orange Village (the "Village"); and

WHEREAS the Board having accepted jurisdiction based upon proof of publication and notices provided in accordance with the Municipal Land Use Law; and

WHEREAS, a public hearing having been conducted at a meeting held on April 4, 2017 and the Applicant having appeared by its attorney John DeNoia, Esq., and the Board having heard testimony of the Applicant and its witnesses Sanjay Chawla, James DeBarbieri, RA, and Michael Lanzafama, PE, PP, and considered the exhibits and expert reports submitted by Applicant and, considered the comments and review memos from planner Topology dated February 3, 2017, March 2, 2017, and March 31, 2017, and by Board Consulting Engineer Bowman Consulting dated February 28, 2017, and March 31, 2017, and considered the comments of all members of the public desiring to be heard and deliberated on the merits of the application;

NOW, BE IT RESOLVED AS FOLLOWS:

EVIDENCE SUBMITTED

In summary, the following evidence was submitted in connection with the application and considered by the Board:

1. The Board received the application form and the documents submitted therewith, including the following:

- (i) South Orange Planning and Zoning Board Application form received on January 27, 2017;
- (ii) Variance & Site Plan drawings prepared by Casey & Keller dated 1/13/2017 consisting of 5 sheets;
- (iii) Architectural Drawings prepared by James E. DeBarbieri Architect dated Jan. 25, 2017 (Sheet A-1);
- (iv) Certification of paid real estate taxes;
- (v) Affidavit of Ownership;
- (vi) Checklist;
- (vii) Site Plan Application submitted to the Essex County Planning Board consisting of 1 sheet;
- (viii) Estimate of Quantities prepared by Casey & Keller (1 sheet);
- (ix) Storm Water Management Plan prepared by Casey & Keller dated January 27, 2017.

The Board also received:

- (i) Variance & Site Plan prepared by Casey & Keller consisting of 5 sheets last revised Feb. 10, 2017;
- (ii) Variance & Site Plan prepared by Casey & Keller consisting of 5 sheets last revised March 21, 2017;
- (iii) Architectural Drawings prepared by James E. DeBarbieri Architect (Sheet A-1) last revised March 24, 2017.

The Board accepted into evidence the following exhibits:

- A-1 Colorized Floor Plan and Front Elevation prepared by James E. DeBarbieri, RA with sign details last revised March 24, 2017;
- A-2 Color photographs of the existing;
- A-3 Color Satellite Photo depicting Block 2210, Lots 1, 24 and 25 dated April 5, 2016;
- A-4 Color Photo Board #1 consisting of 4 photographs of the property dated November, 2016;
- A-5 Color photographs;
- A-6 Color photographs;
- A-7 Color photographs
- A-8 Color photographs of stockade fence at rear;
- A-9 Color photographs of stockade fence at rear;
- A-10 Color photographs of stockade fence at rear
- A-11 Copy of a portion of Sheet 4

2. John DeNoia, Esq., introduced himself as attorney for the Applicant.
3. Sanjay Chawla who was sworn and testified that he is a principal of the Applicant and plans to move his liquor store across Roland Street to the subject property. He stated the hours of operation would be from 10 a.m. to 10 p.m. Monday through Saturday and 11 a.m. to 9 p.m. on Sunday. Deliveries would be similar to his existing store on Tuesday, Thursday and Friday between 10 a.m. and 1 p.m. Applicant was applying to Essex County for permission for a loading zone in front of the site on Valley Street in order to avoid the difficult maneuvers for the 22' and 24' trucks which would unload onsite. Smaller trucks would drive on to the site and unload in the rear. He noted that presently his unloading occurs on Roland Street.
4. Applicant called James DeBarbieri, RA who was sworn and qualified as an expert in architecture. He explained that the existing one-story building would remain. The left side of the building, which sits at a slightly higher elevation than the right, would be used for storage and offices, while the right side would be used for display and the checkout counter. The security bars would be removed from the windows. One garage bay doors used for the existing auto body repair shop would be replaced with a glass door, while the other two garage doors would be removed and replaced with glass block. The building would be repainted and new awnings installed. Applicant proposes to remove the existing pylon sign and replace it with a same size sign internally illuminated. The words "Buy Rite" would be painted onto the front façade.

Responding to Board questions Mr. DeBarbieri agreed that the front façade would be re-scored once the current awnings were removed.

5. Applicant then called Michael Lanzafama, PE, PP who was sworn and qualified as an expert in both engineering and planning. Mr. Lanzafama discussed the property's location, current conditions and the surrounding properties. He noted that the lot consists of 23,234 sf with 252' of frontage on Valley, 94' on Roland and 45' on Arnold Terrace. Applicant proposes to eliminate the extensive curb cut on Valley and replace it with on-street parking spaces. Applicant also proposes to eliminate the driveway and curb cut onto Arnold. He noted lot coverage is presently above 90% and would be reduced. The existing 566 sf Quonset hut in the rear of the building would be used for storage. No designated on site loading area is proposed. A new front walkway would be installed as well as walkways to the parking areas on the north and south sides of the site. Trash would be placed in an 8' x 8' x 6' high enclosure behind the building and accessed from Roland. He introduced photos of an existing stockade fence which exists along the property line at

the rear of the site adjacent to the rear yards of the houses on Arnold Terrace. Five parking spaces adjacent to the fence would be for employee parking.

6. Mr. Lanzafama then turned to planning testimony. He noted the site is split zoned and is partially in the B-2 zone and partially in the RB zone. He noted Applicant required variances for parking (21 required, 18 proposed), parking setback from nearest building and property line (5' required, 0' proposed), signage (propose keeping pylon sign, none allowed), lot coverage (75% proposed, 91.4% existing, 81.15% proposed), front yard parking (not allowed, proposed), loading zone (1 required, none proposed) and a d(1) variance for a retail store use in an RB zone. Regarding parking he noted that while only 18 are provided on site that by eliminating the extensive curb cut on Valley it will add on street parking directly in front of the store, and that the existing structure is not being enlarged simply reutilized, and that to create more parking Applicant would need to demolish existing structure. Regarding the parking setback and front yard parking he noted that these are existing conditions for the site. Lot coverage, while over, will be reduced. A loading area cannot be designated because large trucks would be unable to maneuver on the site. He argued that the existing pylon sign should be allowed to be reutilized for the Applicant since it provides better visibility for vehicular traffic to locate the store because the building is set back from the street. As for the "d(1)" variance for using that portion of the site which is zoned RB for a commercial use he noted that it had been used this way in the past by the prior auto body user, and that it would be a hardship since the RB section of the site could not be used for its intended residential use. He further opined that the variances would not substantially impair the intent and purpose of the zone and ordinance, or be a substantial detriment to the public good.
7. During Board questions of Mr. Lanzafama noted that Applicant would at the Board's request revise the plans to keep the curb cut onto Arnold Terrace and make the driveway in that area one way exiting onto Arnold Terrace. It was further noted that the two parking spaces closest to the intersection of Roland and Valley would be "banked" and not built and would instead be landscaped at this time.
8. Katherine Crenshaw from the Design Review Board spoke to their review memo dated March 6, 2017 during public comment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The premises are located in the B-2 and RB Zones. Retail stores are permitted in the B-2 zone but not in the RB zone.

10. The property is located on the corner of Valley Street and Arnold Terrace. Applicant seeks to convert the existing building from its former use as an auto body shop to a retail liquor store. Applicant plans to move his existing business which is located across the street to this new location. The premise offers the advantage of a larger building and a larger lot for his store.
11. The proposal requires variance relief as follows:

Variance	Permitted/Required	Existing	Proposed
Parking Setback	5 Ft		0 Ft
Prohibited Sign	Pylon Sign (Prohibited)		Updated signage on existing pylon sign
Maximum Lot Coverage	75%	91.14%	81.15%
Front Yard Parking in B-2 District	No parking within required front yard setback		12 parking spaces within front yard setback
Parking Stall Dimensions	8.5 ft wide by 18 ft long		4 spaces 10 ft wide by 16 ft wide
Off-Street Parking	21 parking spaces		18 parking spaces (including 1 ADA accessible space)
Off-Street Loading Spaces	1 loading space		0 loading spaces
Permitted Use in RB District	1 and 2 family dwellings	Auto Repair Facility	Liquor Store

12. The Board finds that the requested variance relief can be granted pursuant to MLUL §70.
13. The “d(1)” variance can be granted on the grounds of hardship. The Board takes notice that by Resolution of the South Orange Planning Board adopted on March 22, 1977 a 50’ x 50’ portion of the rear of 63 Arnold Terrace was subdivided and added onto 410 Valley Street subject to approval of a variance by the Zoning Board. On April 21, 1977 the South Orange Zoning Board approved the subdivision and granted a variance to allow the 50’ x 50’ parcel to be used in connection with the auto body use on 410 Valley Street. The 50’x50’ portion of the subject site which is zoned RB could not be used for residential purposes since it would not qualify as a stand-alone building site and having a residential use there would be incompatible with the retail use along the Valley frontage. This Board has already permitted an auto body use on the 50’x50’ piece and changing that use from auto body to retail is not

significantly different and will not cause substantial detriment to the neighborhood especially since the prior conditions would remain, including but not limited to, only five cars may be parked there and not overnight, no ingress/egress to Arnold Terrace is allowed, and a barrier must separate the 50'x50' parcel from the back yard of 63 Arnold Terrace. The Board notes that there is presently a stockade fence separating the two properties which will remain, and the Applicant is proposing that the 50x50' piece be used for five daytime employee parking spaces.

14. The loading zone variance can be granted on c(1) grounds since the site and the buildings thereon cannot accommodate large delivery trucks. The other "c" variances can be granted on c(2) grounds since they result in a more appropriate alternative design than allowed by ordinance, and their benefits in rejuvenating and reutilizing this large commercial property along Valley Street outweigh any detriments. The parking setback, parking stall size and front yard parking restrictions can be appropriately relaxed here since they occupy existing impervious surface and will provide for a both parking and adequate circulation. The number of parking spaces can be reduced because off street parking will be created along Valley Street. The Board notes that the Applicant's existing store on Valley Street across the street has zero off street parking, and in that respect it is an improved condition for this use. Likewise impervious coverage will be reduced. The pylon sign, however, is not allowed under the ordinance and the Board finds insufficient cause to allow it to continue in this case, the detriments outweighing the benefits.
15. For all these reasons the Board finds that the application can be granted as set forth below.

THE DECISION

WHEREAS, the Board, having reviewed the application for preliminary and final site plan approval with "d(1)" and "c" variance relief, and having considered the impact of the proposed application on the Village and its residents and the surrounding property owners, and having considered whether the proposal complies with and furthers 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 grant the application;

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of the Township of South Orange Village that the application for preliminary and final site plan approval with "d(1)" and "c" variance relief 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 public 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. All of the conditions imposed in the Zoning Board Resolution dated April 21, 1977, copy attached, remain in effect. The conditions which apply to the Applicant herein are: no overnight parking in the five parking spaces in the portion of the site zone for RB, the fence between the five employee parking spaces and 63 Arnold Terrace shall remain in place, and no ingress or egress directly to 63 Arnold Terrace by way of the 50'x50' portion of the subject premises zoned RB.

6. The façade of the building will be refinished with the same brickface and scoring pattern after the removal of the existing awning structures.

7. The parking spaces on the southerly side of the property shall be angled spaces, shall be full-sized, and have a one way drive with an exit onto Arnold Terrace.

8. The lot coverage variance shall be for a maximum of 82%. The two proposed onsite parking spaces closest to the corner of Valley Street and Roland Street shall be indicated on the plans as "banked" at this time, and not paved, and shall be landscaped subject to the review and approval of the Board Planner. The "banked" spaces shall be converted to actual spaces at the request of either the Applicant or the Board Engineer.


9. The pylon sign may not be used and shall be removed.

10. Applicant to undertake environmental remediation as required by appropriate law.

11. The Board recommends that Applicant apply to the County of Essex to use Valley Street in front of the site for unloading deliveries.

12. On site lighting shall be dimmed at night.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 2nd day of May, 2017.


Ojetta Davis, Secretary

Vote on the Action Taken by the Board:

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

Vote on the Memorializing Resolution

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