RESOLUTION OF THE PLANNING BOARD

TOWNSHIP OF SOUTH ORANGE VILLAGE

Decided: May 2, 2016
Memorialized: June 6, 2016

DENIAL OF APPLICATION
BY KEYSTONE PROPERTIES, LLC
FOR SITE PLAN APPROVAL WITH "C" VARIANCE RELIEF
FOR PREMISES AT 184 VALLEY STREET
BLOCK 2003, LOT 1
PB APPLICATION #248

WHEREAS, Keystone Properties, LLC ("Applicant") having made application for Preliminary and Final Site Plan approval with "c" variance relief to the Township of South Orange Village Planning Board (Application #248) regarding property located at 184 Valley Street, South Orange, NJ (the Premises"), and known as Lot 1, Block 2003 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 meetings held on May 2, 2016 and the Applicant having appeared by its attorney Philip Neuer, Esq., and the Board having heard testimony of the Applicant and its witnesses Andrew Davlouros, Anthony Marrucci, PE, PP, Niv Ven-Adi, AIA, and Peter Steck, PP and considered the exhibits and expert reports submitted by Applicant, and considered the comments and review memos from Board Planner Topology dated January 22, 2016, and considered the comments of all members of the public desiring to be heard and have deliberated on the merits of the application; and

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 and the documents submitted therewith, including the following:

   (i) Planning Board and Zoning Board Application Form;
   (ii) Rider to the Application Form with Supplemental Information (2 pages);
   (iii) Copy of Resolution by the South Orange Planning Board memorialized on September 2, 2015;

(iv) Certificate of Paid Taxes;
(v) Certificate of Ownership;
(vi) 200 Foot List;
(vii) Checklist;
(viii) Site Plan Drawings prepared by Marrucci Engineering Associates LLC dated November 23, 2015 (8 sheets);
(ix) Architectural Plans prepared by Atelier 036 + Hilay Architecture LLC dated November 23, 2015 (Sheet 001.00, A010.00, A201.00);
(x) 3-D views prepared by Atelier 036 + Hilay Architecture LLC (1 sheet);
(xi) Solar Shade Analysis prepared by Atelier 036 + Hilay Architecture LLC (1 sheet);

2. The Board accepted into evidence the following exhibits:

Ex. A-1 Mounted Set of Site Plan Drawings prepared by Marrucci Engineering Associates LLC dated November 23, 2015
Ex. A-2 Architectural Drawings prepared by Atelier 036 + Hilay Architecture LLC
Ex. A-3 3-D views prepared by Atelier 036 + Hilay Architecture LLC
Ex. A-4 Solar Shade Analysis prepared by Atelier 036 + Hilay Architecture LLC
Ex. A-5 Planning Report by Peter Steck, PP (Pages P-1 through P-5)

3. Philip Neuer, Esq. appeared on behalf of the Applicant and presented that the Applicant had gone through their notes from the prior application which had been denied by the Board by Resolution dated September 2, 2015. Mr. Neuer indicated Applicant had reduced the size of the project by 25 percent and that the number of proposed residential apartment units had decreased from 4 to 3. He noted the front yard setback had been increased to 13 ft and the project had also been moved further away from the northern property line.

4. Andrew Davlouros was sworn and testified that he is a managing member of Keystone Properties, LLC. He testified that he is a developer who has tried to listen to the Board's concerns and incorporate them into the new proposed design. He stated that he is a contract vendee for the site and intended to build and own the property if it is approved. Mr. Davlouros testified that he had tried to reach the adjoining residential neighbor to the north to speak with him about the application, had telephoned him and visited his house, but was unable to actually speak with him until the date of the hearing.

Responding to questions from the public, Mr. Davlouros stated that he had previously developed projects in Maplewood, Millburn, Orange, West Orange and Verona. When asked why he was seeking to develop this particular site, he noted that it could be vehicle to bring artist-type space to allow artists who are leaving the Village to remain in Town.

5. Anthony Marucci, PE was sworn and recognized as an expert in engineering. Mr. Marucci described each of the 8 sheets in the Site Plan Drawings which he had submitted to the Board. He noted that the property is located in the B-2 Zone and that the lot in question is located on the northeast corner of Valley and Fourth Street and has an unusual shape. He described the lot as being 27'6' wide at the front along Valley Street and 144' deep. The Applicant had previously submitted a site plan application which was denied. A new proposed plan had moved the building back further away from Valley Street and there would be 2 parking spaces underneath the building and 3 more parking spaces behind the building at the rear of the lot. He testified that the lot slopes downward towards Valley Street and that the Applicant would provide a storm water system which would capture runoff by funneling it into the system on 4th Street thereby offering better control. Mr. Marucci noted that the proposed parking plan would be for cars to park perpendicular to 4th Street with ingress and egress along 4th Street only. He stated that traffic would be minimal and less than current traffic resulting from the lot being used as a parking area for a business across the street. Mr. Marucci stated that in his opinion the proposal would have minimal traffic impact and that sight distances along 4th Street had been measured at 215' which is the same as existing and sufficient.

   In responding to questions by the Board's Planner about pedestrian safety on 4th Street in the proposed 50' wide curb cut Mr. Marucci stated it is a difficult site but in his opinion the parking, ingress and egress would work and be safe.

   Responding to questions by the public, Mr. Marucci admitted that the curb cut was being widened from 20' to 53' and that if the Board so desired the Applicant could install mirrors to provide drivers exiting the site with a better view of pedestrian traffic.

6. Applicant called Niv Ven-Adi, RA, who was sworn and qualified as an expert in design. Applicant acknowledged that Mr. Ven-Adi is a licensed New York architect who had worked on New Jersey projects before, but is not licensed in New Jersey. Applicant proposed to provide testimony from a New Jersey Architect to confirm Mr. Ven-Adi's drawings in this matter. Mr. Ven-Adi stated that he had designed the current proposal in response to comments from the Board on the prior proposal. The building is now setback from Valley Street 22' and there is public space with a bench in front of the building. The residential entrance would be off of 4th Street. Referring to Exhibit A-3 he noted that the building would have two distinct volumes, one lower and one higher with the higher section being towards the rear. The exterior would be covered with low maintenance cement fiber panels, stucco with glass and aluminum fixed windows and a roof membrane having a white reflective energy efficient roofing system. He described the design as being "balanced" and intended to reactivate the corner of 4th and Valley. He noted that the building would be 18 x 93 ft.

7. The Board asked the Applicant whether they had looked at other layouts for parking to which Applicant replied that they had but due to the narrowness of the lot the proposed parking perpendicular to 4th Street was the most reasonable option. The Board Engineer asked whether the Applicant had considered an entrance from Valley Street to which he replied it would require a great deal of excavation. The Board inquired and was apprised by the Applicant that one handicapped space was necessary.

8. Responding to questions from the public, Mr. Ven-Adi testified that while Applicant was removing 3 trees, they were going to add 4 more and that according to their solar shade analysis there would be sun in the afternoon on the neighbor to the north's lot which would not be blocked by the proposed building.

9. William Hilay IV, RA was sworn and qualified as an expert in architecture. Mr. Hilay testified that he is licensed as a New Jersey architect, had reviewed the plans of Mr. Ven-Adi and confirmed that they complied with New Jersey architectural design standards.

10. Responding to Board questions, Mr. Hilay stated that the rear and front yard setbacks were being met, but that the 4th Street and left side yard setback were not.

11. Peter Steck was sworn and qualified as an expert in planning. He referred to his report which was marked as Exhibit A-5 consisting of a portion of the South Orange Zoning Map, a portion of the South Orange 1979 Master Plan, photographs and survey with notations on Page 1; aerial photograph with notations added and panoramic review of the subject property on Page 2; analysis of relief requested in proposed architecture on Page 3; color photographs of the site and nearby properties on Page 4; and a zoning table for the B-2 secondary business zone district on Page 5. Mr. Steck testified that the subject site is a corner lot and is quite narrow being 27'6" ft wide along Valley Street and 23'6" wide at the rear. He testified that the site is presently used as a parking lot for a neighboring auto repair business. He noted that Applicant had shrunk the building in this proposal as compared to the prior application. He testified that the area is comprised of commercial and residential uses and that it is approximately one block away from a multifamily mixed use building being constructed at the corner of 3rd and Valley Street where the density is 80 units per acre, whereas the instant proposal is at 40 units per acre. He testified the site is approximately one-quarter mile to the South Orange Train Station and that the local special improvement district has recently been expanded to include this site. He noted that Applicant was seeking variances for minimum front yard on 4th Street (15' required, 0' proposed), minimum side yard (10 ft required, 3 ft proposed) and maximum lot coverage (75 percent required, 91.5 percent existing, 89.2 percent proposed). He noted that lot coverage is being reduced by this application and that the subject lot cannot be expanded by the acquisition of adjoining property since all of the adjacent lots are already developed. He

testified that the application requires 8 parking spaces, but 5 are being provided, 1 of which will be handicapped. He noted that pursuant to the residential site improvement standards that 1.8 spaces are required for one bedroom units and 2 spaces are required for a two bedroom units, but relief can be granted by reason of proximity to mass transit. He further noted that pursuant to South Orange Ordinance 92-203b the Board may grant relief from parking requirements if it finds that "parking requirements for individual uses in the B-1 and B-2 business districts may be reduced to the extent it can be demonstrated to the approving authority by the Applicant that parking requirements will be provided and public or private off-street parking facilities open for use by the general public." Mr. Steck testified that the current application is substantially different from the prior application in that it has a larger front yard, an increased left side yard setback and a smaller building footprint. He noted that the Master Plan has a policy to promote development in the Valley Street corridor and that the proposal before the Board would replace a current non-permitted use. He noted that all 4 houses located on Valley Street to the north of the property have preexisting non-conforming residential uses on the first floor. He further stated that the proposal offers a better orchestrated parking design and better regulated storm water drainage. He stated that the site presents hardships and practical difficulties given its unusual shape and size and that the proposal would move the site towards conformity. Given the site's parameters, he noted it would impossible to build a variance free application. He noted that if a single-family home was built on the site at a similar height, it would cast the same degree of shadow on the properties to the north. He noted also that the variance relief sought could be granted on c(2) grounds since the proposal would promote economic redevelopment in furtherance of the Master Plan and also presents a good design which would promote desirable visual environment.

12. Mr. Marucci was recalled to answer whether the sight lines from a car stopped at the end of 4th Street would be obstructed by the retaining wall on the front of the site, to which Mr. Marucci stated that he did not believe it would obstruct the sight, but he would step-down the wall to ensure that.

13. Mr. Davlouros was recalled and stated that he had looked at the proposed parking design with parking parallel to 4th Street but that it did not work because of the lot's narrow shape and it would result in only 3 spaces as opposed to the 5 spaces proposed.

14. During public comment neighboring residents spoke in opposition to the project and expressed concerns about pedestrian safety along 4th Street, increased traffic in the area, shade on buildings to the north, and loss of trees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. The current premises are located in the B-2 business zone where mixed use projects with retail on the first floor and apartments above are permitted.

16. Applicant seeks variance relief in connection with its proposal to construct a mixed use building on the lot having approximately 537 sq. ft. of ground floor retail space of three (3) apartments. The proposed structure would meet the front yard setback and the rear yard setback, but would intrude into the left side yard setback (10' required, 3' proposed) and the 4th Street front yard setback (15' required, 0' proposed). Lot coverage which is currently in excess of the amount allowed (75% allowed, 91.5% existing, 89.5% proposed) would be improved. Parking relief would be required (8 spaces required, 5 spaces proposed).

17. The lot has pre-existing non-confirming conditions for lot area (10,000 sq ft required, 3,678.9 sq ft existing) and lot width (100 ft required, 24.6 to 27 ft existing) which would remain unchanged by this application.

18. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c permits land use Boards the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the statute. Under Section 70c(1) the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under Section c(2), the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

    The items enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or "(c)" variance relief. In addition, an applicant must also prove the negative criteria, i.e. that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both the positive and negative criteria, that a Board, acting pursuant to the statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

19. Considering the positive and negative criteria together, what must be shown for the grant of a c(2) variance is that the application (1) relates to a specific piece of property; (2) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement; (3) that the variance can be granted without substantial detriment to the public good; (4) that

the benefits of the deviation would substantially outweigh any detriment and (5) that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Wilson v. Brick Twp. Zoning Bd., 405 N.J. Super. 189, 198 (App. Div. 2009)

20. By definition no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. Chesterbrooke Ltd. v. Planning Bd., 237 N.J. Super. 118, 127 (App. Div.), certif. den 118 N.J. 234 (1989); Cicchino v. Berkeley Heights Tp., 237 N.J. Super. 175, 181 (App. Div. 1989).

21. On the other hand what must be shown for a c(1) variance is that there are particular physical conditions of the property which create "undue hardship." It is noted that undue hardship does not refer to personal hardship, financial or otherwise. Jock v. Zoning Board of Adjustment, 184 N.J. 562, 590 (2005). Rather, it refers to the limitations and/or conditions of the property. And as with all variances an applicant must also prove the negative criteria.

22. The Board finds that the Applicant failed to meet its burden of proof to qualify for variance relief under either c(1) or c(2) grounds.

23. The Board finds that although the lot is undersized and might be eligible for a c(1) variance that the proposed project overwhelms the site, with minimal setback from the residence to the north, and impervious coverage, notwithstanding a slight reduction, far in excess of what is allowed. The Board acknowledges that the subject lot is undersized and that there are no available adjacent parcels which might be acquired to make the lot conforming, however, such condition is not permission for unwarranted overbuilding, rather it requires that any development be appropriately sized. In this case Applicant has exceeded the allowable building envelope in order to maximize potential profits, and the size of the project is simply too large for the site. The Board recognizes that variance relief may be necessary in order to develop this lot but finds that the proposed development overreaches. The reduction in the number of residential units from a prior application which was denied was inadequate to sufficiently reduce the negative impacts upon the neighborhood. The size of the proposed loft style apartments added to the need for variance relief without sufficient regard for how the building would negatively impact the neighboring residential neighbors to the north and east. The fact that the bank building across the street on the southeast corner of 4th Street and Valley has minimal setbacks provided limited comparative information, and Applicant failed to provide sufficient neighborhood data or analysis to convince the Board that the minimal setbacks proposed would not be out of character with the neighborhood. Regarding parking, the Board takes administrative notice that residential projects with parking shortfalls typically end up with residents seeking permits for public parking nearby, and the public parking spaces included in the nearest lot within the building under construction

at the southwest corner of Third Street and Valley Street were already spoken for. Regarding circulation the Board finds that increasing the curb cut along 4th Street from 20' to 53' introduces a potentially unsafe condition for pedestrians along 4th Street because vehicles would be backing out of the site. Accordingly c(1) variance relief is not warranted.

24. For many of the same reasons c(2) variance relief cannot be justified. Apart from improving storm water drainage, eliminating an auto-related use on Valley Street and proposing a use which would, in Applicant's view, be more aesthetically pleasing, the benefits of the proposal are more private to the developer than to the public, and are far outweighed by the many detriments mentioned above. The proposal is not a better alternative to what is allowed under the ordinance because it fails to adequately address how the excess size and lot coverage will cause negative impacts. Reduced light and air, insufficient parking, minimal side yard setbacks, excess lot coverage, over-intensity of use, a 30' tall building in the setback on the northerly property line adjacent to a residence, and potentially unsafe vehicular egress from onsite parking spaces are conditions which would result if the project is built, and they outweigh any public benefits cited by the Applicant. Accordingly c(2) variance relief is not warranted.

25. In sum, the Applicant failed to prove the positive and negative criteria for relief under either c(1) or c(2) and the application must therefore be denied.

THE DECISION AND CONDITIONS

WHEREAS, the Board, having reviewed the application for site plan approval with "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, redevelopment plans and zoning ordinances of the Township of South Orange Village and the Municipal Land Use Law; and upon the imposition of specific conditions to be fulfilled, hereby, concludes that good cause has been shown to deny the application.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of South Orange Village that the application for preliminary and final site plan approval with "c" variances as set forth in the plans, reports, representations, testimony, stipulations and Exhibits offered by the Applicant is hereby denied in all respects.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 6th day of June, 2016.

Ojetti Davis, Secretary

Vote on Action Taken by the Board

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
ALLEN				X		
CHAMBERS						X
COLLUM		X		X		
COLTON-MAX (Ch.)	X		X			
HARRIS (1st Alt.)				X		
LERMAN			X			
LOEHNER				X		
MILLER (V. Ch.)				X		
ROSNER				X		
WILSON				X		

Vote on Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
ALLEN			X			
CHAMBERS						X
COLLUM		X	X			
COLTON-MAX (Ch.)						
HARRIS (1st Alt.)			X			
LERMAN						X
LOEHNER			X			
MILLER (V. Ch.)			X			
ROSNER			X			
WILSON	X		X			