

**Resolution  
Township of South Orange Village  
Planning Board  
In the Matter of Bianca's, LLC  
Application #263  
Decided on May 24, 2018  
Memorialized on June 4, 2018  
Bulk Variances and Preliminary and Final Site Plan Approval**

**WHEREAS**, Bianca's, LLC (hereinafter the "Applicant") has made an application for preliminary and final site plan approval and variances to construct a four-unit, three-story apartment building at 11 Church St., also known as Block 1901 lot 16, in the CS-R 32 district; and

**WHEREAS**, a public hearing was conducted on May 7, 2018, resulting in a finding of completeness of the application, followed by a public hearing on the application held on May 24, 2018; and

**WHEREAS**, the Applicant was represented by Jay Bohn, Esq.; and

**WHEREAS**, the Applicant provided testimony by Emilio Cruz, representative of the Applicant, and

**WHEREAS**, the Applicant presented and introduced the following exhibits, in addition to the documents presented to the Board in the form of the application package:

1. A-1 Rendering of previously approved project dated May 24, 1998; and
2. A-2 Rendering of proposed structure; and
3. A-3 Photograph of nearby structure with similar materials;

**WHEREAS**, the Board reviewed and considered the application and documents submitted therewith; and

**WHEREAS** the Board also considered the input of its professionals at the hearings and in written reports, including the reports of Philip Abramson, professional planner, and Chris Kok, professional planner, of Topology, the Board's planning consultants dated May 4, 2018 and May 17, 2018.

**NOW THEREFORE**, the Board makes the following findings of fact, based upon the evidence presented at its public hearings, at which a record was made.

1. The Applicant previously obtained approval for similar projects on this property under application number 224, approved January 7, 2013, memorialized on February

4, 2013; and under application number 246 approved March 7, 2016, memorialized May 2, 2016.

2. The Applicant seeks new preliminary and final site plan approval with variances to make alterations to the previously approved project. The proposed variances are as follows:
  - a. A height variance because the Applicant proposes a building with a height of 38.1 feet consisting of three stories, whereas the Ordinance provides for a maximum height of 35 feet and 2.5 stories;
  - b. A side yard setback variance because the Ordinance provides for a minimum side yard setback variance on one side of five feet(interior side) whereas a setback of two feet is proposed;
  - c. A side yard setback variance because the Ordinance requires a minimum of ten feet for both side yards combined, whereas a total of seven feet is proposed.
  - d. A variance from the Ordinance requirement for a minimum five feet wide landscaped buffer (ten feet wide) along the rear property line due to residential zoning of adjacent properties, containing a mix of deciduous and evergreen trees, whereas the Applicant proposes a buffer area two feet wide along the sides of the property and limited plantings along the property borders.
  - e. An impervious coverage variance for up to 72.5% where a maximum of 70% is permitted.
3. The Applicant proposes to build a three-story building with four apartment units, two on each floor, with ground-level parking. The Applicant proposes eight parking spaces including one ADA-compliant space. One emergency generator unit will be constructed to the north side of the proposed building, two feet from the property line. Five air-conditioning condensers will be installed in the right (north) side yard setback.
4. Two prior applications with similar proposal were approved by the Board. The current application changes the project from the prior approvals in the following manner:
  - a. Two structural columns are being moved two feet closer to the side yard line to provide easier turning movements in the garage, while the principle mass of the building remains with a 5 foot setback.
  - b. The rear yard is increasing by two feet from 47'7" to 49'7"
  - c. A rooftop terrace is being added for each unit, with storage spaces within the center portion of the roof area, enclosed within the structure.

- d. Because of the rooftop terraces, the principal roof is set back from the principal façade. The roof utilizes a front facing gable while the slope in the stairwell utilizes a hip roof. Dormers have been eliminated.
  - e. The front façade will include brick for the first two stories and the brick projects up onto the stair tower. Hardieplank lap siding is used for the rest of the façade.
  - f. The five-foot setback previously approved has been maintained on the Church street side. On the South side, the previously approved five-foot setback is being reduced to two feet to accommodate the change in the support columns in order to provide for better turning movements in the garage
5. The Applicant agreed to replace a retaining wall along the West side of the property with a curb to avoid a parked car door hitting the wall when the doors open at parking space 8.
  6. The Applicant agreed to ensure that the storm water drains and sanitary sewer lateral are directed in a downstream manner when they enter Church Street; and the Applicant agreed to revise its drainage plan in a manner satisfactory to the Board engineer. The Applicant also agreed that a licensed engineer will sign the grading and drainage plan.
  7. The ground floor space will not be able to operate as a separate apartment because the bathroom is in the hallway and is not in the closed-off space on the ground floor. Other storage areas under the new roof lines are not likely to become habitable space because, although the two spaces under the roof lines in the rear of the building are accessible from the rest of the unit, they only have an average ceiling of six feet.
  8. All the light fixtures on the South side will be full cut off fixtures to avoid light spillage onto the neighboring property. The Applicant's lighting plan demonstrates compliance with the lighting criteria. Lighting in the front of the building will be made more symmetrical in terms of the height of the light fixtures by putting a light fixture above the garage door, not on the sides of the garage door.
  9. The Applicant agreed to use a wall sign that will comply with the requirements of the Ordinance, and not a ground sign, which is not permitted under the Ordinance for this type of project.
  10. The Applicant agreed to provide additional landscaping in the buffer area and to use only non-invasive species.
  11. The Applicant agreed that a proposed electric line and gas line through the adjacent property was an error on the plans and that the plans would be revised to remove it. The Applicant also agreed to comply with the condition of prior approvals that the emergency generator would be tested only between 9 AM and 5 PM on Monday through Friday.

12. The Applicant agreed to revise the plans to provide for a curb line that resulted in 3 feet of setback from the South Property line. Because this modification will increase impervious coverage, the Board agreed to approve a variance for up to 72.5% of impervious coverage in order to avoid further movement of the curb line.
13. Eight parking spaces are provided whereas only seven are required.
14. The public was afforded an opportunity to comment and ask questions and questions were asked by Alyssa Aronson and by Glenn Schlanger and Ryan Dunlevy of 1725 Church St., the adjacent property.

**NOW, THEREFORE,** the Board makes the following conclusions of law, based upon the foregoing findings of fact. Based upon the application, plans, reports and testimony placed before the Board, the Board finds that the Applicant has met the requirements of the Municipal Land Use Law, case law and Village ordinances so as to grant the relief requested.

1. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the Statute.
2. Under the (c)(1) criteria, the applicant must demonstrate that by reason of exceptional dimensions or topographic conditions or other extraordinary and exceptional situation uniquely affecting the subject property, the strict application of the Ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the Applicant.
3. Under the (c)(2) criteria, the Applicant must demonstrate that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment.
4. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief.
5. Also, an applicant for these variances must show that the proposed relief sought will not cause a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The burden of proof is upon the applicant to establish that these criteria have been met.
6. This application requires the following variances:
  - a. A height variance because the Applicant proposes a building with a height of 38.1 feet consisting of three stories, whereas the Ordinance provides for a maximum height of 35 feet and 2.5 stories;

- b. side yard setback variance because the Ordinance provides for a minimum side yard setback variance on one side of five feet(interior side) whereas a setback of two feet is proposed;
  - c. A side yard setback variance because the Ordinance requires a minimum of ten feet for both side yards combined, whereas a total of seven feet is proposed.
  - d. A variance from the Ordinance requirement for a minimum five feet wide landscaped buffer (ten feet wide) along the rear property line due to residential zoning of adjacent properties, containing a mix of deciduous and evergreen trees, whereas the Applicant proposes a buffer area two feet wide along the sides of the property and limited plantings along the property borders.
  - e. An impervious coverage variance for up to 72.5% where a maximum of 70% is permitted
7. The Board found that the project was approved from the prior iterations, and this application included more quality building materials and otherwise was a favorable project for the area. The height variance was justified by the architectural improvements proposed, which improved the appearance of the structure. The side yard variances were justified by the need to improve turning movements in the garage. The Applicant agreed to landscaping conditions to mitigate the variance related to landscape buffering. The impervious coverage variance was necessary to provide the change in curb line, which benefited the adjacent property owners.
8. Therefore, based upon these findings of fact and conclusions of law, the Board finds that the application satisfies the statutory criteria for the variance requested.

**NOW THEREFORE** be it resolved by the Planning Board of the Township of South Orange Village that the application of Bianca's LLC for property located at 11 Church Street in the CS-R-32 District is determined as follows:


- 1. Height, side yard setback, landscaped buffer and impervious coverage variances are approved pursuant to N.J.S.A. 40:55D-70(c)2; and
- 2. Preliminary and final site plan approval is granted pursuant to N.J.S.A. 40:55D-46 and 50.

**AND IT IS FURTHER RESOLVED** that the above approval is subject to the following terms and conditions:

- 1. The light fixtures on the South side will be full cut-off fixtures.

2. The landscaping plan will be amended to provide additional plant material and eliminate use of invasive species.
3. The plans will be revised to delete the utility lines reflected on the plans that are currently shown extending across the adjacent lot.
4. Curbing will be substituted for retaining wall next to parking space number eight, with the grading modified accordingly.
5. The Applicant will ensure that the direction of the drainage and sanitary sewer are appropriate so that flow will proceed downstream.
6. On sheet C-100, curbing will be provided 3 feet from the southern lot line.
7. Lot coverage will be permitted to an amount not to exceed 72.5%.
8. The concrete apron for the driveway will be expanded to 14 feet wide
9. Cleanouts on the south side must be moved out of the curb line.
10. The doorways of the second and third floors on the West side will be replaced by windows.
11. A wall sign will be permitted but a ground sign will not be permitted
12. Eight parking spaces are provided where only seven are required. The zoning schedule will be revised to reflect that information.
13. The lighting fixture on the south of the garage door will be relocated to a point above the garage door; and the one on the north side will be eliminated.
14. An engineer's estimate is to be prepared to establish an escrow for engineering inspections during construction.
15. A pre-construction meeting is to be scheduled prior to the commencement of site construction
16. An outside agency approvals/permits are to be obtained prior to the start of construction with copies provided to the Village Engineer

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 4th day of June, 2018.

  
Ojetta Davis, Secretary

Vote on Action Taken by the Board:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
BUSCH-VOGEL			X			
COLTON-MAX (Ch.)	X		X			
HARRIS (1 <sup>ST</sup> Alt)			X			
LERMAN (V.Ch)			X			
LOEHNER			X			
MILLER		X	X			
ROSNER			X			
KRAIKER						X
FREEMAN			X			

Vote on Memorializing Board:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
BUSCH-VOGEL						X
COLTON-MAX (Ch.)			X			
HARRIS (1 <sup>ST</sup> Alt)						X
LERMAN (V.Ch)	X		X			
LOEHNER						X
MILLER			X			
ROSNER		X	X			
KRAIKER						X
FREEMAN			X			