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60 Union Street, #1N, Newark NJ 07105

Planner Report #1

Date: September 30, 2019

To: South Orange Zoning Board

From: Greer Patras, AICP, PP, Board Planner

Applicant: BH Landmark, LLC
24 W. Railroad Ave, Suite 410
Tenafly, NJ, 07670

Subject: **Application #1037**
309 South Orange Avenue (Block 1009, Lot 32)
Use Variance Application

This report is meant to provide the Board with guidance in its review of Application #1037, submitted by BH Landmark, LLC.

The property is currently vacant. When last occupied, a dentist's office used the first floor and a residential apartment used the second and third floors. The Applicant proposes to convert the property into a two-family residential use, with a second residential unit replacing the office, which requires a "d(1)" use variance approval and potentially "c" bulk variances.

The following items were reviewed:

- A. **Cover Letter**, written by Sean McGowan, Esq, Bertone Piccini, LLP, and dated September 19, 2019.
- B. **Response Letter**, written and signed by Arthur Kuyan, PE, Stonefield Engineering and Design, and dated September 4, 2019.
- C. **Existing Conditions Plan and Proposed Site Plan**, prepared by Stonefield Engineering and Design, consisting of 2 sheets, dated September 4, 2019.
- D. **Photograph of Site with Summary of Proposed Exterior Changes**, unsigned and undated.
- E. **Copy of Notice of Public Hearing**, published in Newark Star-Ledger on September 21, 2019, and mailed to owners of all properties within a 200-foot radius.
- F. **Proposed Floor Plan**, prepared by Alan Feld, AIA, and dated May 4, 2019.

I. EXISTING CONDITIONS

- A. **Site:** The subject property is a 0.130-acre (5,687 SF) lot, located at 309 South Orange Avenue, within the Residence A-60 Single-Family zone.

The site contains a three-story structure, which is now vacant but was last occupied by a dentist's office on the ground floor, with an apartment on the two floors above.

The rear of the lot is entirely paved and used for parking. A driveway occupies the eastern side of the lot, with an access easement for the owner of Lot 31. A map is provided below for reference.



- B. **Neighborhood Context:** The property is located at 309 South Orange Avenue. The properties on South Orange Avenue near the site are used for residential, commercial, and mixed-use purposes. While single-family residences account for some of the properties along South Orange Avenue, others are two-to-four family residences, mixed use structures with ground floor retail, and large apartment complexes like Halsey Gardens and Seton Court.

The property is within the Montrose Park Historic District, but is listed as a non-contributing property. As a non-contributing property, the structure is determined to have been so substantially altered as to have lost its historic integrity.

- C. **Prior Applications and Site History:** When last occupied, the property was used by a dentist's office on the first floor and an apartment on the second and third floors. The history of variance applications are as follows:
1. **1967:** Proposal to convert the one-family home into office used solely by doctors. The application was denied.
 2. **1968:** Proposal to convert the first floor into an office use by a detective agency and the second and third floors into a two-family residential use. The application was denied.
 3. **1970:** Proposal to convert the first floor into a medical office with the second and third floors for a one-family residence. The application was approved

II. PROPOSAL

- A. **Proposed Site Improvements:** The Applicant wishes to convert the first floor office into a new 2-bedroom residential unit, therefore creating a two-family dwelling. The commercial office use will be abandoned.

The 3-bedroom apartment on the second/third floors will be expanded by approximately 200 SF on the third floor to accommodate a new bathroom and larger bedrooms and closets.

The separate entrances to the individual units would remain the same.

The Applicant proposes minor improvements such as repairs to the façade, replacement of porch, windows, etc, and to repave and stripe the driveway and rear parking lot.

- B. **Bulk Table:** Compliance with the bulk requirements of the RA-60 Residential zone are as follows:

Residential A-60	Required	Existing	Proposed
Minimum Lot Area	6,000 SF	5,687 SF (E)	5,687 SF (V)
Minimum Width	110'	51.75' (E)	51.75' (V)
Maximum Coverage	40%	81.4% (E)	81.4% (V)¹
Minimum Front Setback	25'	10.7' (E)	10.7' (V)
Min. Side Setback - East	4.33'	11'	11'
Min. Side Setback - West	4.33'	2.8' (E)	2.8' (V)²
Minimum Rear Setback	21.9' ²	42.3'	42.3'
Maximum Height - Feet	35'	<35' ³	<35' ³
Maximum Height - Stories	2.5 stories	3 stories (E)	3 stories (V)
Maximum 3rd Floor Area	50% 2nd floor	61% (E)⁴	>75.18% (V)⁴
Minimum Parking Spaces	2 per unit ⁵	4 spaces	4 spaces ⁵
Min. Parking Setback - East	5'	<2' (E)	<2' (V)
Min. Parking Setback - West	5'	0' (E)	0' (V)
Min. Parking Setback - Rear	5'	0' (E)	0' (V)
Min. Parking Area - Side	50%	>50% (E)⁶	>50% (V)⁶
Min. Parking Area - Rear	25%	>25% (E)⁶	>25% (V)⁶
Max. Driveway Width	10'	11' (E)	11' (V)

(E) Existing Non-conforming (V) Variance Required

¹ Existing conditions appear different from the plans. Calculations should be clarified.

² Rear yard setback is 16' or but not less than 20% of the average lot depth.

³ The bulk chart states that the height is less than 35', but actual height should be provided.

⁴ These are estimated from the "Area Calculations" provided on the Architecture plans but actual existing and proposed floor area should be confirmed.

⁵ Parking is required at a rate of 2 spaces for every dwelling unit, plus 1 for each roomer, boarder or other individual residing within the unit. Compliance must be confirmed.

⁶ The entire rear yard is occupied by paved parking, so these calculations should be clarified.

III. USE VARIANCE DISCUSSION

- A. **Required "d" Variance:** The Applicant requires the following "d(1)" variance pursuant to N.J.S.A. 40:55(d)-70(d)(1). The proposed two-family residential use is not permitted in the Residential A-60 zoning district which permits only single-family uses.

B. **"D" Variance Proof Standard**

The standard for "d(1)" variances under N.J.S.A. 40:55(d)-70(d)(1) includes:

1. For a d(1) use variance, the Applicant must prove and the Board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use. Testimony should be provided regarding the unique attributes of the site that makes it "particularly suitable" for the proposed use, and how locating the proposed use on this

particular site in this zone specifically promotes the purposes of planning.

The Applicant must prove and the Board must also find that the proposed use will not cause a substantial detriment to the public good. Any perceived detriments must be shown to be mitigated to the greatest extent possible.

The Applicant should provide testimony regarding whether the use will substantially impair the intent and purpose of the Master Plan or Zoning Ordinance. Such findings must satisfactorily reconcile the grant of a use variance with the Township's continued omission of the use from the zone.

IV. BULK VARIANCE DISCUSSION

A. **Existing Conditions Requiring "c" Variances:** The site contains the following existing non-conforming bulk conditions that are not proposed to change:

1. For not providing the minimum lot area, where 6,000 SF is required, but the existing lot area is 5,687 SF. (§185-165)
2. For not providing the minimum lot width, where 110' is required, but the existing lot width is 51.75'. (§185-165)
3. For not providing the minimum side yard setback, where 4.33' is required, but the existing west side setback is 2.8'. (§185-165)

However, these conditions technically require variance relief, as they are now proposed for a new, non-conforming use.

B. **New Conditions Requiring "c" Variances:** The Applicant requires the following new "c" bulk variances for the proposed 2-family residential use:

1. For exceeding the maximum lot coverage, where no more than 40% is required, the lot coverage is 81.4%. (§185-165)
2. For exceeding the maximum stories, where no more than 2 and one-half stories are permitted, and the third floor is proposed to be expanded. (§185-165)
3. For exceeding the maximum floor area for a half story, where a floor area of no more than 50% of the floor below is required, and the third floor area is proposed to be expanded to approximately 75.18% of the second floor. (§185-165)
4. For not providing the minimum parking area side yard setback, where 5 feet is required, but less than 2' exists to the west, and no changes are proposed. (§185-113)
5. For not providing the minimum parking area side yard setback, where 5 feet is required, but 0' exists to the east, and no changes are proposed. (§185-113) We note that the plans do not show parking stalls on this side, however the area is paved for parking and is currently used as a parking space, potentially by the adjacent property tenant.
6. For not providing the minimum parking area setback, where a minimum setback of 5 feet is required, but 0' exists to the rear and no changes are proposed. (§185-113)
7. For exceeding the maximum residential driveway width, where no more than 10 feet is required, the driveway width is 11 feet. (§185-175.C)

C. **Conditions requiring further information:** The Applicant should clarify the following conditions and whether the variances are required pertaining to §185-175E:

1. Not more than 25% of the area of the required minimum rear yard shall be utilized for off-street parking. The Applicant reported that 26.7% of rear yard is occupied by parking, however nearly the entire rear yard is occupied by paved parking, so these calculations should be clarified. The area shown as "parking requirement calculation area" encompasses only two spaces of the entire area and does not comply with setbacks. Calculations should be confirmed.
 2. Not more than 50% of the area of a side yard, exclusive of the driveway, shall be utilized for off-street parking. The side yard per the ordinance is 4.33' wide, but the parking is setback less than 2' from the property line on the west side and 0' on the east side, for the entirety of the rear yard. Calculations should be confirmed.
- D. **"C" Variance Proof Standard:** The Applicant must prove and the Board must find that the necessary criteria for "c(1)" and/or "c(2)" variances, identified by the Municipal Land Use Law at section 40:55D-70, have been satisfied.

For a c(1) variance, the Applicant must prove hardship:

- 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 situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act (40:55D-62 et seq.) would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such a property, grant, upon an application or an appeal relating to such a property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship

AND that such relief from the zoning ordinance will not be substantially detrimental to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

2. For a c(2) variance, the Applicant must prove:
 - a. that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirement and
 - b. that the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance (negative criteria).

V. PLANNING COMMENTS

1. The Applicant should provide testimony regarding all existing site conditions and all proposed improvements. Testimony should be provided regarding any potential impacts to the site, adjacent properties, surrounding area, or intent of Zoning and Master Plan related to the proposed non-conforming use.
2. The Applicant should discuss the number of proposed tenants, as it relates to bedroom counts and parking requirements. The first floor apartment shows two bedrooms and two bathrooms. The second/third floor apartment shows three bedrooms and two bathrooms.

Plus, there is a room on the second floor with a door, window, and closet that is not labeled. This should be clarified.

3. Parking is required at a rate of 2 spaces for every dwelling unit, plus 1 for each roomer, boarder or other individual residing within the unit. Appropriate parking for 5 to 6 bedrooms should be discussed. Based on family and/or renters/boarders, variance relief for the proposed 4 spaces may be required. This should be discussed.
4. The rear façade has an entrance that provides access to the basement from the parking lot. The Applicant should testify regarding the use and operation of the basement, as no floor plans were provided, and confirm that this area will not be used for an additional bedroom or a third dwelling unit. There should be a note on the site plan that states that the basement should not be converted into a dwelling unit.
5. Testimony should be provided regarding all proposed interior and exterior building improvements. The "Exterior Changes" list identifies the following:
 - Siding and chimney will be repaired,
 - Doors, windows, and front porch will be replaced, and
 - Original entrance on side of building along driveway will be removed

Applicant should provide an overview of colors, materials, and consistency with residential character.

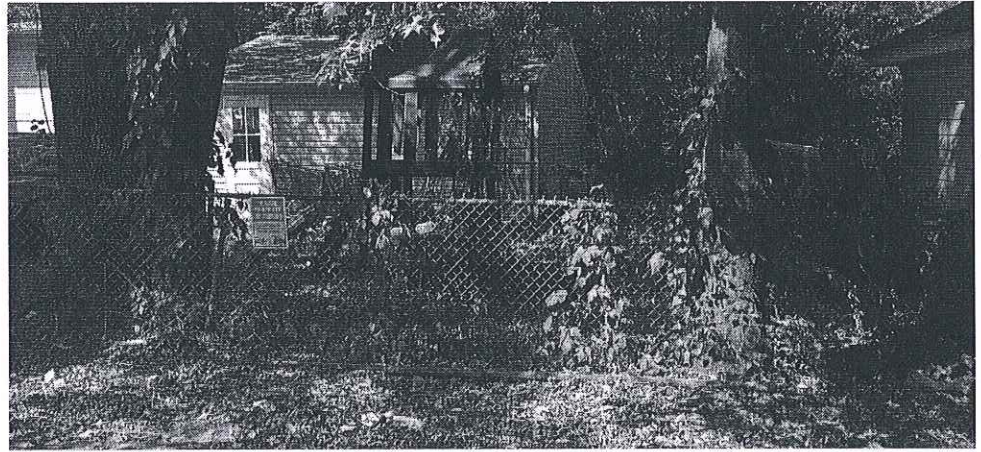
Additionally, the deck in the rear of the property is in a state of disrepair. The Applicant should testify whether it presents a safety risk to the occupants of the property, as well as its negative visual impact to neighboring properties.

6. Testimony should be provided regarding all proposed site improvements, including driveway pavement, parking, landscaping, tree removal, and lighting, relative to compliance with the ordinance.
7. Particular attention should be given to the rear yard. The ordinance (§185-175) requires that parking for one- and two-family residences occupy no more than 25% of the rear yard. The entire rear yard is paved. The Applicant should provide testimony regarding opportunities to provide a more traditional residential rear yard, with patio or lawn area.

While full compliance with the ordinance may not be practical, reconfigurations of the parking area and removal of excess pavement could provide area for outdoor residential enjoyment and better compliance with the ordinance.

8. Parking lot designs are regulated in §185-113, and specific requirements for one- and two-family residential units are provided in §185-175. Of particular importance to this application are the following:
 - a. *All parking areas must have a minimum setback of 5 feet from any property line or building.* We recommend the Applicant comply with this and provide landscaping and fencing in this setback area.
 - b. *All parking areas must be enclosed by shrubbery.* The Applicant shows approximately 2' wide landscaping as existing and to remain on the plans, however this is not consistent with the actual conditions. A chain link fence, which is prohibited by ordinance, surrounds the rear of the property. Chain link fences do not provide adequate screening, and the rear parking area is visible from the adjacent residential

properties. We recommend that the existing chain link fence be replaced with visually solid fencing.



- c. *Parking areas shall be landscaped to minimize glare, noise, and other types of adverse impacts. At a minimum, we recommend evergreen landscaping along the residential property lines and visually solid fence along the commercial property lines.*
 - d. *All parking areas shall be suitably drained and graded to provide for the adequate drainage of surface water. The rear of the site is downward sloping and paved in its entirety. The Applicant should provide testimony for how they propose to provide for drainage and stormwater management. We recommend a combination of reduced impervious coverage in the rear, landscaping around rear and side perimeters, and the use of drywells, bio-retention swales, and/or raingardens to minimize on-site and off-site impacts.*
 - e. *Parking lots must be curbed, and parking stalls shall be clearly marked and delineated. The Applicant should provide testimony as to whether striping should be provided for the parking spaces. We also recommend that either wheel stops or timber rails be laid to prevent parking from encroaching into buffers.*
 - f. *Parking areas shall be maintained in good condition, be kept free of any hazards, and not fall into a state of disrepair. All pavement, landscaping, lighting, and other features shall be kept in a good and workable condition. The design should facilitate long term, low-maintenance success. Applicant should discuss maintenance. A trash enclosure with adequate screening should also be installed and shown on the plans.*
9. The documents submitted by the Applicant refer to an easement that gives tenants of the adjacent commercial property on Lot 31 access to the driveway and part of the rear parking area. The Applicant should submit a copy of the easement and discuss the relationship of the sites. It appears from site visits that tenants of this adjacent commercial building are parking on the subject lot.
- We recommend some consideration be given to the proper separation, buffering, and screening of these two uses.
10. The Applicant should discuss landscaping and improvements proposed for the front of the property. The plans show that existing vegetation will be protected however the locations of the actual plantings differ from the plans. We recommend landscaping typical with residential properties be planted to enhance the character along the frontage.

11. The Applicant should provide testimony regarding proposed lighting at the building entrances and at the rear parking area. No details were provided. We recommend all fixtures be mounted less than 10' high, be downward facing and full cut-off, bulbs be less than 3,500K, that lights be operated only on motion-sensors overnight, and that footcandles not spill onto adjacent residential properties. All fixtures should be shown on the plans to demonstrate compliance.
12. Air conditioning compressors were included in the Applicant's list of exterior changes. No compressors are shown on the site plan. The site plan should be corrected, and the location of the compressors clearly shown. The compressors should also be placed and/or screened, to minimize their impact to adjacent uses.
13. The height provided in the bulk chart states that the height is under 35 feet. The site plan should be corrected to show the actual height of the structure.
14. The site plan incorrectly states that the existing rear yard setback is non-conforming. This error should be corrected.

If you have any further questions regarding this application, please feel free to contact our office.
Sincerely,

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