

LEON S. AVAKIAN, INC. *Consulting Engineers*

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August 26, 2020

Kristie Dickert, Administrative Officer
Zoning Board of Adjustment
Neptune Township
P.O. Box 1125
Neptune, NJ 07754-1125

Re: James Alburtus (ZB#20/10)
1312 7th Avenue
Block 416, Lot 6
Use Variance
Our File: NTBA 20-10

Dear Board Members:

Our office received and reviewed materials that were submitted in support of an application for use variance approval for the above referenced project. The following documents were reviewed:

- Neptune Township Application for Use and/or Bulk Variances dated March 10, 2020.
- Neptune Township Zoning Permit Denial dated January 21, 2020.
- Outbound Location Survey, consisting of one (1) sheet, prepared by Anthony Maltese, PE, PLS, PSM, PP< CME, of American Layout & Land Surveying, dated January 23, 2018.
- Architectural Plans, consisting of eight (8) sheets, prepared by Thomas Palmisano, of Akertecdt Design, dated January 6, 2020.
- Email correspondence from James Alburtus to Ms. Kristie Dickert, Administrative Officer, dated July 6, 2020.

1. Site Analysis and Project Description

The subject property, Block 416, Lot 6, consists of 7,500 sq. ft. located on the south side of Seventh Avenue in the R-4 Residential Zone District. The site is currently developed with two (2) existing single-family homes, which were recently remodeled without obtaining appropriate zoning or building approvals. A bedroom was added to the second floor in the rear of the front unit. The property is surrounded by other residential uses.

2. Consistency with the Zone Plan

The subject property is located in the R-4 Medium Density Residential Zone District. The purpose of the R-4 Zone District is to provide for single-family residential development at a density not to exceed 8.7 dwelling units per acre. Permitted uses in the R-4 Zone District include Community shelters, detached single family residences, parks, places of worship, recreational facilities, and private or public elementary, middle or high schools. Multi-Family uses, and multiple principal structures on a single property are not permitted uses in the R-4 Zone District. The addition of the extra bedroom to the front unit constitutes the expansion of a pre-existing, non-conforming use. As such, this application will require a **d(2) use variance** to permit the expansion of the multi-family use.

3. Ordinance Requirements

- A. The applicant will **require a variance** for a side yard setback of 2.46 ft. to the front house, whereas 5 ft. is required.
- B. The applicant will **require a variance** for a side yard setback of 3 ft, 9 inches for the rear dwelling, whereas 5 feet is required.
- C. The applicant will **require a variance** for a rear yard setback of 1 ft., 16 inches for the rear dwelling, whereas 30 feet is required.
- D. The applicant should provide the rear and side yard setbacks for the existing woodshed. **These are existing non-conformities.**

4. Required Proofs for Variance Relief

A. *D(1) Use Variance*

A d(2) use variance for the expansion of a non-conforming use is required. To obtain a d(2) use variance, the Applicant must show that the proposal meets three separate criteria.

- 1) Special Reasons. Proving the positive criteria for d(2) variances is set at a lower bar than for a new non-conforming use. Proof should still be proffered that demonstrates the furtherance of a goal of zoning.
- 2) Intent of the Zone Plan (negative criterion #1). The Applicant must prove that the proposed expansion does not substantially impair the intent of the zoning ordinance or master plan.

- 3) Detriment to the Public Good (negative criterion #2). The Applicant must prove that the expansion of the proposed use would not have a substantial detriment on nearby properties.

B. *C Variances*

A number of “c” variances are required. There are two types of c variances with different required proofs.

- 1) Boards may grant a c(1) variance upon proof that a particular property faces hardship due to the shape, topography, or extraordinary and exceptional situation uniquely affecting the specific property.
- 2) Boards may grant a c(2) variance based upon findings that the purposes of zoning enumerated in the MLUL are advanced by the deviation from the ordinance, with the benefits of departing from the standards in the ordinance substantially outweighing any detriment to the public good. The Supreme Court’s ruling in Kaufmann v. Planning Board for Warren Township provides additional guidance on c(2) variances, stating that “the grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of the c(2) case, then, will be...the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”
- 3) C variances must also show consistency with the negative criteria as well.

5. **Additional Comments**

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. The applicant shall provide testimony regarding any other proposed improvements to the site.
- C. The applicant shall provide testimony as to how the site conforms with RSIS standards.

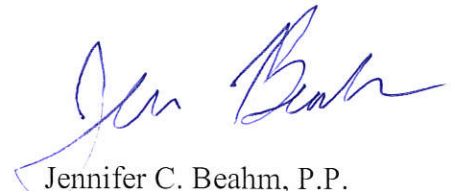
Please be advised that additional comments may follow upon completion of testimony and/or submission of further revisions by the Applicant. Should you have any questions regarding this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer C. Beahm, P.P.
Board Planner

MS:clb
cc: Leanne Hoffmann, P.E., Director of Engineering & Planning
Monica Kowalski, Esq., Board Attorney
Jennifer Beahm, P.P., Board Planner
James Alburtus, Applicant (alburtus@yahoo.com)
NTBA/20/20-10