

June 14, 2023

Zoning Board of Adjustment
Neptune Township
P.O. Box 1125
Neptune, NJ 07754-1125

Re: Elizabeth Magistro (ZB#23/05)
408 Morrissey Road
Block 5002, Lot 6
Use & Bulk Variance
Our File: NTBA 23-04

Dear Board Members:

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

1. Documents Reviewed:

- Architectural Plans consisting of two (2) sheets, prepared by Anthony J. Ercolino, AIA of Passman Ercolino Architects, P.C., dated July 15, 2022.
- Survey of Property consisting of one (1) sheet, prepared by Charles Surmonte, PE, PLS, dated September 13, 2019.
- Neptune Township Application for Use and/or Bulk Variances and Completeness Checklist, dated January 27, 2023.
- Neptune Zoning Denial dated July 20, 2022.
- Property Deed dated September 27, 2019.
- Community Impact Statement prepared by Elizabeth M. Magistro, dated March 8, 2023.

2. Site Analysis and Project Description

The subject property consists of a 6,250 sq. ft. site located along Morrissey Road in the R-3 Moderate Density Single-Family Residential Zoning District. The site is currently developed with a 2-story dwelling along the front and a 1-story dwelling along the rear property line, a wood deck to the rear of the 2-story dwelling, an asphalt driveway and walkway along the front, and fencing along the side and rear property lines. Residential uses surround the site.

The Applicant is seeking use and bulk variance approval to construct a second floor on the rear dwelling, increasing the size of the pre-existing non-conforming second dwelling in the rear unit by 367 sq. ft. The additional second story includes one (1) bedroom, a closet, bathroom, washer and dryer, and a linen cupboard. The Applicant is also proposing to construct a 129 sq. ft. covered porch and concrete walkway along the front of the existing 2-story dwelling.

3. **Consistency with the Zone Plan**

The subject property is located in the R-3 Moderate Density Residential Zoning District. The purpose of the R-3 Zoning District is to provide for single-family residential development at a density not to exceed 5.8 dwelling units per acre. Permitted uses in the zone include cemeteries, community centers, community shelters, detached single family residences, parks, places of worship, recreational facilities, and public or private elementary, middle or high school. Based on tax records for the subject property, the structures were built in 1930 and 1951, pre-dating the existing zoning requirements. **Multifamily developments are not permitted uses in the R-3 Zoning District and the proposed additions to both structures represent an expansion of the pre-existing non-conforming use, requiring a d(2) use variance.**

4. **Bulk Requirements**

- A. The minimum required lot area is 7,500 sq. ft., whereas the existing lot area is 6,250 sq. ft. **This is an existing non-conformity.**
- B. The minimum required lot width is 75 feet, whereas the existing lot width is 62.5 feet. **This is an existing non-conformity.**
- C. The minimum required lot frontage is 75 feet, whereas the existing lot frontage is 62.5 feet. **This is an existing non-conformity.**
- D. The minimum required side yard setback is 10 feet, whereas the existing side yard setback of the 2-story dwelling is 8.13 feet. **This is an existing non-conformity.**
- E. The minimum required side yard setback is 10 feet, whereas the existing side yard setback of the one-story dwelling is 2.8 feet. **The proposed second floor will have a setback of 2.8 ft., requiring a variance.**
- F. The minimum required rear yard setback is 30 feet, whereas the existing rear yard setback of the one-story dwelling is 3.6 feet. **The proposed second floor will have a rear yard setback of 3.6 ft., requiring a variance. It should be noted that the entirety of the existing one-story dwelling is located within the rear yard setback.**

5. Required Proofs for Variance Relief

A. **A d(2) use variance for the expansion of the pre-existing 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.

6. Additional Comments

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. The Applicant should indicate if any additional improvements are proposed at this time.

- C. Testimony should be provided as to the condition of the existing fencing, and if any additional fencing is proposed.
- D. **The Applicant should provide testimony as to the history of the multi-family use on the property.**
- E. The number of bedrooms of the existing 2-story dwelling should be provided.
- F. The parking requirement should be addressed. There is one (1) parking space on this lot.
- G. The architectural compatibility of the two (2) dwellings should be addressed.
- H. Aerial and street view of the property are attached for your use.

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:icr:mfl

cc: Monica Kowalski, Esq., Board Attorney
Gregory W. Vella, Esq., Applicant's Attorney
Anthony J. Ercolino, AIA, Applicant's Architect
NT/BA/23-04A





408 Morrissy Rd

 Neptune City, New Jersey

 Google Street View

 Dec 2022

[See more dates](#)

Expand side panel



 Power Washing

 Professional Cleaning





2022 Aerial



2020 Aerial

