

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Michael Lesbirel and Douglas Brown
1229 Florence Avenue
Block 74, Lot 4
Decided on November 26, 2024
Memorialized on December 16, 2024
Application for (c) and (d) Variances
Minor Subdivision

WHEREAS, Michael Lesbirel and Douglas Brown (the "Applicants") has made an application to the Borough of Union Beach Planning Board for (d)(1) variance and numerous bulk (c) variances, as well as minor subdivision approval for property located at 1229 Florence Avenue, also known as Block 74, Lot 4 as shown on the tax map of the Borough, located in the R-8 Zone; and

WHEREAS, the Applicants were represented by Jeffrey Gale, Esq.; and

WHEREAS, a public hearing was conducted on this application on November 26, 2024 after the Board (configured as a board of adjustment for this particular application) determined it had jurisdiction and the Applicants have standing and that notice had been effectuated.

NOW THEREFORE, the Board makes the following findings of fact based upon evidence presented at the aforesaid public hearing, at which a record was made. Councilman Andreuzzi, Ms. Devino and Ms. Sweeney were recused from the hearing.

By way of background, the existing lot does not conform to the existing zoning standards as a four (4) unit multifamily residential building is not listed as a permitted use within the R-8 zone. Therefore, a "d(1)" variance is required for the non-conforming multifamily building use. The subject property as per Ordinance Section §13-5.9, any lot utilized for single-family or two-family dwelling purposes shall not contain more than one principal building. The existing lot contains two principal buildings, the four (4) unit multi-family

building discussed above, and a single-family residential unit. The Applicants is applying to subdivide the property to conform with this requirement.

Bulk and Area Requirements

The following summary is from the report of T&M Associates:

Variance Relief Required

- (1) Ordinance section 13-10.4 does not list the four (4) unit multifamily residential building as a permitted use. A "dl" variance is required because the use is not permitted in the zone district.
- (2) Ordinance Section 13-10.4.f.1. requires a minimum lot area of 7,500 SF, whereas the proposed lot area for proposed lot 4.02 is 5,000 SF. Therefore, a "c" variance is required.
- (3) Ordinance Section 13-10.4.f.2. requires a minimum lot width of 75 feet, whereas the proposed lot width for proposed lot 4.02 is 50 Ft. Therefore, a "c" variance is required.
- (4) Ordinance Section 13-10.4.f.3. requires a minimum lot frontage of 75 feet, whereas the proposed lot frontage for proposed lot 4.02 is 50 Ft. Therefore, a "c" variance is required.
- (5) Ordinance Section 13-10.4.15 requires a minimum front yard setback line of 20 ft., whereas the existing front yard setback for proposed lot 4.01 is 10.4 Ft. Therefore, a "c" variance is required for the preexisting condition.
- (6) Ordinance Section 13-10.4.f.6 requires a minimum rear yard setback line of 30 ft., whereas the minimum rear yard setback for proposed lot 4.01 is 29.3 Ft. Therefore, a "c" variance is required.

Off Street Parking Requirements.

The minimum number of off-street parking pursuant to Ordinance Section 13-5.3 and the New Jersey Residential Site Improvement Standards (RSIS) are outlined in the table below.

Section 13-5.3 of Borough Ordinance stipulates that residential development standards for parking are superseded by the Residential Site Improvement Standards (RSIS) law by N.J.S.A. 5:21-4.14. Required Parking for proposed Lot 4.01: 7 spaces are proposed where 8 spaces are required, as indicated in the above table. Therefore, a "c" variance is required.

Jeffrey Gale, attorney for the Applicants spoke. He stated that this application was supposed to be heard last month; however, there were not enough eligible members and the application was carried with no new notice required. Mr. Gale continued by stating that according to the zoning official this property was denied for a similar subdivision and that according to the records Mr. Gale himself was the attorney at that time. He explained that the prior application and denial resolution was for a single and multifamily house with 2 commercial units on the same lot. There is a letter from the borough engineer at the time that stated that this property was in 2 different zones – R-8 and B-1 and that was how the offices started on the first floor and residents on the second floor. Mr. Gale said the entire property is now in the R-8 Zone and all the uses today are or will be residential. Now instead of 3 apartments and 2 offices there are 4 apartments.

Mr. Gale stated the 1989 denial made certain findings of fact that are not relevant to this application. Part of the 1989 denial was based on the issue that the Applicants did not want to bear the cost to construct curbing along the perimeter of the property; these Applicants are willing to do so. The 1989 denial also states that the Applicants did not prove that the mixed use would be beneficial and conducive to the surrounding neighborhood. That refers to the offices which no longer exist. Further, the Applicants did not provide measurements of habitable space. Mr. Gale said that it was provided with this application. Lastly, the previous application was deemed in conflict with the master plan; Mr. Gale assumed this because of the mixed use. Where applicable, these items will be included in the conditions of approval.

Matthew Flynn, Professional Planner, John McDonough Associates, 101 Gibraltar Drive, Suite 1A, Morris Plains, NJ, Andrew Denbigh, Board Engineer and Aaron Kardon, Board

Planner were sworn in and qualified. Mr. Flynn stated that this application is different from the previous application and recited 6 key points as follows:

1. 1989 corner building - 3 apartments, 2 offices; now all residential
2. 1989 Split Zone R-8/B-1; now R-8 only.
3. 1989 looked to demolish portion of the garage; now that garage is gone.
4. 1989 looked to demolish and rebuild existing single family home; now that is already done after Hurricane Sandy.
5. 1989 needed side setback for accessory structures; now that structure is gone.
6. 1989 denial point about adding curbing; now will be adding.

Mr. Flynn stated that the property is Block 74 Lot 4 conforming lot which the Applicants wish to subdivide into (1) conforming corner lot and (1) 50x100 interior lot. Mr. Flynn introduced the following Exhibits:

- A1 Application
- A2 4 page handout by Mr. Flynn (photos)
- A3 Color lot drawing

Mr. Flynn explained that there are many 50' wide lots in the vicinity. There are also multiple non-residential uses in the area: firehouse, church, adult school, motorcycle shop and tavern. Mr. Flynn feels this is a good transitional use of the property, as such that, suitability of the site is met in his opinion. Mr. Flynn explained the positive benefits as per the goals set out in the Municipal Land Use Law, N.J.S.A. 40:55D-2: 'A': Promotion of the general welfare. Separating the 2 existing residential structures enabling these structures to be identified by separate lot lines and improves site identification. 'G' Variety of uses in appropriate locations —Site suitability— not breaking up an existing single family pattern. 'I':

Desirable Visual Environment — We are talking about a lot that is almost double the size of the required lot. 'M': Efficient use of land — The Applicants require 'C' variance relief which is minor in nature. He stated that it speaks to the fact that it fits. It does not cram buildings too close together.

Mr. Gale stated that the multi-family use has been there for 25 years and has worked. Negative criteria: No substantial detrimental to the public or the zone. This application is substantially compliant project from a bulk variance view. Building coverage is not compliant on interior lot but is compliant on corner lot. Property will not appear to be overdeveloped. Setbacks: The Applicants are compliant on certain side setbacks.

Minimum Front Yard Setback 10.4' & 21.7' where 20' is required - building is pre-existing.

Minimum Rear Yard Setback 29.3' where 30' required - less than 1 foot off the requirement.

Maximum Building Coverage 29.9% where 25% is permitted - building is existing lot 4.02 (interior property) - 'C' variances required: Minimum lot area of 5,000 SF where 7,500 SF is required. Minimum lot width of 50 feet where 75 feet is required. Minimum lot frontage of 50 feet where 75 feet is required.

Mr. Kardon asked Mr. Flynn to clarify how this benefits the goals of the master plan. Mr. Flynn stated that we have to look at how this is going to look/feel. The multi-family is a good buffer between the residential area and the commercial area. Mr. Gale added that the Borough has been giving COs for the property for many years. This doesn't establish that the master plan establishes that the plan he asserted that has been adjusted to permit the continuation of these multiple family units.

Mr. Kardon stated the master plan "Encourage the maintenance and preservation of residential properties, and the enhancement of residential properties with the latest inflood protection mechanisms and other techniques to promote resiliency". The interior dwelling was rebuilt after Sandy and the multi-family has remained. Mr. Kardon stated that the aerials show the shed at the back of the property. Mr. Gale stated that it will be removed and they have no objection for the removal to be a condition of approval.

Mr. Wells stated that the Borough ordinance prohibits two principal properties on one lot. This will bring the property more in conformance with the minor subdivision. Also, lot size has been set to decrease density. In this case it is pre-existing. Mr. Wells asked if anyone in the audience would like to speak or ask questions of the witness: no response came from the public.

Patrick Lesbirel, Architect, 59 Lincoln Park, Newark, NJ was sworn in and qualified. Mr. Lesbirel prepared the architectural plans. The interior dwelling was destroyed during Sandy and the new building, a single family dwelling, was constructed with permits (907 Bay Ave). There are no tenants at present because the Applicants needed to come before the Board. Conforming unit. 3 bedrooms.

Corner dwelling: multi-family. Ground floor is on Florence Ave with 2 units. One is 2 bedroom/1 bath. The other unit is a 1 bedroom/1 bath. Apartment 3 (bi-level): 1 bedroom/1 bath. Second floor: 2 bedroom/1 bath. The state inspects these units because more than 3 unit building. There are no violations. The structure is concrete masonry. It is not ADA compliant (grandfathered in).

As for parking, proposed Block 4.01: Bay Avenue there is an existing paved area with 4 parking spaces and (3) existing parking spaces on Florence. Proposed Block 4.02: The

single family dwelling has (1) garage space & (1) driveway space. Mr. Denbigh asked if they are proposing site/building improvements. Mr. Lesbirel stated that are not doing anything except the removal of the shed.

Mr. Wells asked if anyone from the public wanted to speak or ask questions. Mr. Harry Hoff, 342 Front Street, Union Beach. *Beers vs Wayne Township* states that proposed subdivision lot lines already theoretically exist as there are no changes regarding in the physical buildings. He stated we are looking at it as something that is existing even though there is one ownership.

Mr. McNamara clarified this application is to approve the variances (both c & d), minor subdivision and amended approvals regarding the bulk and use variance relief from the prior application so that everything is brought into compliance.

NOW THEREFORE, the Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicants are seeking a (d)(1) use variance and bulk variance relief, as described above, as well as minor subdivision in order to subdivide the property into two lots. The property is in the R-8 Zone.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from strict bulk and other non-use related issues when the Applicants satisfy certain specific proofs which are enunciated in the Statute. Specifically, the Applicants may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. Applicants may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicants 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. Undue hardship refers solely to particular physical conditions of the property and does not refer to personal hardship, financial or otherwise. Commercial Realty v. First Atlantic, 122 N.J. 526 (1991); Smith v. Fair Haven Zoning Bd., 335 N.J. Super 111, 122 (App. Div. 2000).

Additionally, under the (c)(2) criteria, the Applicants have 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. Those categories specifically enumerated above constitute the affirmative proofs necessary to obtain "bulk" or (c) variance relief. Finally, Applicants must also show 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 Applicants have satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicants to establish these criteria.

Under the Municipal Land Use Law, when considering a typical (d) variance, a land use cannot grant relief unless sufficient special reasons are shown, there is no substantial detriment to the public good and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance. The burden of proof is on the Applicants to establish that these criteria have been met. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the Applicants and all objectors, and reach a

decision which is based upon findings of fact and conclusions of law, and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute a special reason. Courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria under which the Board can grant a (d)(1) variance. In addition, special reasons have been found where a variance would serve any other purposes of zoning set forth in N.J.S.A. 40:55D-2. However, in the final analysis, a (d) variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interest of the Applicants, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the (d) variance will not create an undue burden on the zone or the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicants can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the impact of the proposal on the public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect would be substantial. Furthermore, in most (d) variance cases, the Applicants must satisfy an enhanced quality of proof and support by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicants to establish the above criteria.

Based upon the application package, testimony, and expert testimony presented before the Board, the Board finds that the Applicants have met the minimum requirement under the

Municipal Land Use Law, Case Law and Borough Ordinances sought to grant the relief by way of way of granting a (d)(1) use variance, bulk variance relief as noted herein and minor subdivision approval. The Board finds that in this particular instance, based upon the evidence before and the unique circumstances involved with this application, the evidence before the Board indicates that granting the (d)(1) variance relief will not create an undue burden on the use and enjoyment of surrounding properties. See Price v. Himeji, LLC, 214 N.J. 263, 296-97 (2013). The property has been shown to accommodate the use in question. The evidence before the Board indicates in the past that the property in question had been a mixed use office/residences. As the whether the use is particularly suited to the property in question, given the period of time it had been occupied as a mixed use and the availability of off-street parking, the Applicants have also satisfied this criteria. Based upon the evidence presented by the Applicants, it indicates that there will not be a substantial adverse impact upon surrounding properties. The evidence before the Board indicates that in this particular case there is no such impact historically and should not be an impact going forward, as was also noted in the testimony. The Board finds that the proofs offered by the Applicants are sufficient, in this particular circumstance, to grant the relief sought by the Applicants. The bulk variance relief being sought by the Applicants is consistent with the nature of the application. There is no evidence before the Board indicating that the Applicants are seeking to exacerbate any of the bulk variance relief related to the ongoing use of this particular property.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Michael Lesbirel and Douglas Brown for (d)(1) and bulk variance relief as described above for property located at 915 Union Avenue is approved as follows:

1. (d)(1) use variance as described herein is approved pursuant to N.J.S.A. 40:55D-70(d)(1);

2. Bulk variance relief as described herein, is approved pursuant to N.J.S.A. 40:55D-70(c)(1) and (2); and

3. Minor subdivision is approved pursuant to N.J.S.A. 40:55D-47.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Union Beach that the application approved herein is subject to the following terms and conditions.

1. Certificate that taxes are paid to date of approval. All escrow accounts are to be kept current.

2. Prior to the issuance of any construction permit, the Applicants shall file with the Board and with the Borough construction official or his designee an affidavit verifying the Applicants are in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply copy of any approvals received.

3. The Applicants shall see to the payment of all fees, costs and escrows due or to become due; any and all monies are to be paid within 20 days of said request by the Secretary to the Planning Board. All escrow accounts must remain current and all property taxes are to be kept paid.

4. The Applicants shall prepare and submit to the Board for the Borough Engineer's review and approval legal metes and bounds descriptions of any roadway dedications, utility easements and or any drainage easement grants that are necessitated by this approval.

5. Monmouth County Soil Conservation District approval and Monmouth County Planning Board Approval (if required).

6. The Applicants shall take appropriate dust control, noise control and vermin control measures during any construction work done on the site, including the removal of the shed, as consented to by the Applicants.

7. At least one week before any construction, a pre-construction meeting shall be held including municipal representatives, the Applicants, its engineers and contractors. The meeting shall be held only after the engineer's opinion of probable cost has been submitted to the municipality for computation of engineering and inspection fees, the form of which is to be approved by the Borough Engineer.

8. The Applicants shall comply with all directives of the Borough Fire, Health and Construction Officials, or their designees.

9. The Applicants shall satisfy the conditions set forth in the report issued by T&M Associates, all of which are incorporated herein by reference.

10. The Applicants must post performance guarantees and inspection fees with the Borough prior to the beginning of any onsite construction activities, as deemed necessary by the Board Engineer.

11. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Union Beach, County of Monmouth, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies the within resolution was adopted by this Board on November 26, 2024, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 16, 2024.


Laurette Wade, Secretary, Planning Board

FOR: *Wells, Hallam, Murray, Dwyer*

AGAINST:

ABSTAIN: *Coffey, Devino, Sweeney*

Board Member(s) Eligible to Vote:

☐ Wells ☐ Devino ☐ Coffey ☐ Hallam ☐ Hoadley ☐ Sweeney
☐ Murray ☐ Conners ☐ Dwyer ☐ Roche ☐ Andreuzzi