

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Harry Hoff
915 Union Avenue
Block 190, Lot 11
Decided on February 21, 2023
Memorialized on March 29, 2023
Application for (c) and (d) Variances
And Preliminary and Final Site Plan

WHEREAS, Harry Hoff, (the “Applicant”) has made an application to the Borough of Union Beach Planning Board for three (d) variances and numerous bulk (c) variances, as well as preliminary and final site plan approval for property located at 915 Union Avenue, also known as Block 190, Lot 11 as shown on the tax map of the Borough, located in the B-1 Neighborhood Commercial Zone; and

WHEREAS, the Applicant was represented by Paul Mirabelli, Esq.; and

WHEREAS, public hearings were conducted on this application on December 19, 2022, January 25, 2023 and February 21, 2023 after the Board (configured as a board of adjustment for this particular application) determined it had jurisdiction and 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. The application before the Board is seeking a (d)(1) use variance approval, since it is not a permitted use as configured in the B-1 zone. The Applicant needs (d)(5) density variances where the Ordinance requires a maximum of one dwelling unit per 6,000 square feet of lot area, and the Applicant proposes one unit per 4,156.8 square feet of lot areas. In addition to needing a (d)(8) use variance, the Applicant also requires a (d)(6) height variance where 20’ is the maximum and the proposed building is 30 feet. In addition the Applicant requires bulk variance relief as follows:

Schedule A: Area, Yard, Setback and Height Requirements - B-1 Zone			
DESCRIPTION	REQUIRED	EXISTING	PROPOSED
Minimum Lot Area	15,000 square feet	4,156.8 square feet*	4,156.8.* (V)
Minimum Lot Width	100 feet	40 feet*	40 feet* (V)
Minimum Lot Frontage	100 feet	40.20 feet*	40.20* (V)
Minimum Lot Depth	150 feet	101.96 feet*	101.96 feet*(V)
Minimum Front Yard Setback	20 feet	<i>NIA</i>	8.9 feet (V)
Minimum Rear Yard Setback	20 feet	<i>NIA</i>	64 feet
Minimum Side Yard Setback	5 feet	<i>NIA</i>	10 feet
Maximum Lot Coverage	50%	<i>NIA</i>	83.6% (V)
Maximum Building Height	20 feet	<i>NIA</i>	30 feet (V)
Maximum Floor Area Ratio (FAR)	0.8	<i>NIA</i>	0.43
Subsection 13-10.5.a.12: Additional Mixed-Use Requirements – B-1 Zone			
DESCRIPTION	REQUIRED	EXISTING	PROPOSED
Maximum Density	1 dwelling unit per 8,000 square feet of lot area	<i>NIA</i>	1 dwelling unit per 4,156.8 square feet of lot area (V)
Maximum No. of Bedrooms	2	<i>NIA</i>	3 (V)
1 Unit, 3BR Residential Dwelling*	2 spaces per unit*	<i>NIA</i>	2 spaces
Non-Residential Mixed-Use (proposed 420 square-foot office space)	3.5 spaces per 1,000 square feet of gross commercial floor area**; 420 square feet = 1.47 spaces, rounded to 2 spaces	<i>NIA</i>	1 space (V)
Total Off-Street Spaces	4	<i>NIA</i>	3 spaces (V)

* Existing non-conformity
(V) = Variance required.

*Pursuant to Section 5:21-4.14 of the New Jersey Residential Site Improvement Standards (RSIS). In accordance with Ordinance Section 13-10.5.a.12.e.2-, Parking/or Mixed-Use Buildings, "Parking/or residential uses shall comply with Residential Site Improvement Standards. "

**Pursuant to Ordinance Section 10-13.5.a.12.e.1 -Parking/or Mixed Use Buildings.

At the first hearing, the first witness on behalf of the applicant was Mr. Paul Leber, professional engineer and professional planner who was sworn in and accepted as an expert in

both of his fields. The Board's professionals were also sworn in. Mr. Leber prepared the engineering drawings for the application.

Hearings on this Application commenced at the hearing of December 13 2022. Councilmen Andreuzzi and Cavallo recused themselves since the Board was configured as a Zoning Board of Adjustment to hear (d) variance relief. Appearing on behalf of the Applicant was Mr. Paul Mirabelli, Esq. He entered a series of exhibits into the record in conjunction with the Board. A-1 was the application package, A-2 with the November 23, 2022 letter from T&M Associates, A-3 the November 28, 2022 letter from T&M Associates the A-4 December 19, 2022 letter from T&M Associates and a three page set of plans from East Point Engineering, revised as of December 7, 2022.

Mr. Leber stated that the prior use on the property had a commercial use in the front and three bedroom unit behind it. This proposal is also seeking permission for relief for the two driveways in and out which may require County Planning Board Approval. There is no need for a loading dock. Mr. Leber also addressed issues regarding the bulk variance relief that was needed by the Applicant. Mr. Leber stated that in his opinion the proposed building had no significant detriments or negative impact to adjacent properties from the proposed development. He did not believe, in his opinion, that the application would have an adverse impact upon public health, safety, and the general welfare. He noted that most of the relief being sought by the Applicant were tied to the size and shape of the lot which cannot be altered and no additional property is available. Mr. Leber stated that the Applicant would reexamine the footprint of the building to see if the parking configuration could be improved upon. Several members of the Board expressed concerns whether the three bedrooms was too dense for the property in question. Mr. Hoff did note that the Redevelopment Plan Zone further down Union Street did

allow for three stories and two bedrooms in a loft type design. Miss Davino asked how big the bedrooms would be. Mr. Hoff stated the master bedroom would be 14 by 9 1/2 feet, the other bedrooms would be roughly 10 by 8. Miss Lelie, professional planner, on behalf of the Board, noted that the Applicant had not yet provided testimony on the density (d) variance needed. There's also a question as to waste management and providing a proper location for an ADA parking space. Mr. Hoff stated the trash refuse and recycling would be located under the stairs. Questions then resumed over the location of the potential ADA parking space. There was some question as to whether it could be put out on the street and if so, it would require an ordinance to be adopted by the Borough and appropriate signage. Having the ADA space in the back up may be more practical but the question then remained regarding access to the commercial use on the ground floor. At this point there was a continuing discussion between several members of the Board as to the number of bedrooms and the number and location of parking spaces. At this point the Applicant agreed to adjourn the hearing and to work with the Applicant's planner and engineer and the Board's professionals to see if matters could be resolved to the mutual satisfaction of the Board and the Applicant. At this point it was announced that the application would be carried to the next meeting of the Board with no new notice being needed unless the Applicant triggered the need by redesigned triggering amendments to or creation of new variance relief.

The hearing on this application resumed at the January 25, 2023 meeting of the Board. Mr. Mirabelli for the Applicant provided a brief recap of the prior testimony and the issues still to be resolved. Caroline Reiter was sworn in as a professional planner; she is an employee of T&M Associates. The other witnesses and professionals were reminded they had been sworn in at the prior hearing on this application. Mr. Denbigh, P.E., stated that the last meeting of the

Board it had concerns with parking deficiencies. Unfortunately, they were not able to iron matters out prior to the hearing. Mr. Mirabelli stated that a site improvement plan sheet three of three with a revised date of January 11, 2023 was submitted to the Board. This was labeled Exhibit A-8. Mr. Mirabelli stated that the plan showed five parking spaces. Residents would park on the left side of the building and it would be an exit only on the right side. The buffer would be provided with six-foot-high pencil holly bushes in front of the entrance lot coverage would be at 87.7%. Mr. Hoff handed out site improvement plans labeled Exhibit A-9, Exhibit A-10 and Exhibit A-11 showing site improvement plans including a new turning radius. Mr. Leber testified that the new plan relocated the ADA parking space up to the back of the house. Mr. Leber believed that Exhibit A-9 was slightly better than using the layout contemplated in Exhibit A-10. Mr. Denbigh stated that there was a difference in the dimensions between these two sets of plans. Ms. Reiter stated that Exhibit A-10 had handwritten changes to the dimensions. Mr. Leber noted that these were not his marks on the document. Mr. Denbigh stated that the Applicant needed to provide four spaces that are 9 by 18 with 9 foot wide access which should be 18 feet. For the smaller buffer there might be some flexibility in the design. Mr. Denbigh stated the plan may be better than before but he would provide an updated review letter to give him the time to review this in greater detail. Several members of the Board expressed concerns with regard to the parking configuration. The floor was open to the public, and no members of the public wanted to speak regarding the application or ask any questions of the witnesses or the Board's professionals. Given that the Board did not have enough of a working quorum to vote given the nature of the variance relief., the Applicant agreed to adjourn the hearing at this point to the February meeting of the Board. It was noted for the record no new notice would be required

unless revised plans were submitted that triggered new or amended bulk or use variance relief which would trigger the need for new notice.

Hearings on the application resumed before the Board at its meeting of February 21, 2023. At the outset counsel for the Board confirmed that members who did not attend the prior hearing of the Board had reviewed the transcript and were in a position to be able to proceed not only to participate but also to cast a vote on the matter at the end of the hearing.

It was noted for the record that a new update and report had been issued from T&M Associates dated February 21, 2023 and was marked as Exhibit A-11.

Mr. Leber proceeded to review a series of revisions that have been made to the site plans. He noted that this included a 6-foot-high fence along the rear of the property and down both sides of the property out to the beginning of the parking area. Additional landscaping was added along with a drip system for irrigation and added the lighting plan to the set which includes candle light levels in the parking lot surface by the building he also noted the change in the amount of lot coverage compared to the prior drawings. The turning template was discussed at length to see if the parking configuration and traffic were feasible. In response to questions of the Board Mr. Leber noted that it might be required for a driver to k-turn or double k-turn in order to get around the parking area in the rear and exit the property. Mr. Leber testified that with regard to truck signage would have to be placed in the case could not go to the rear of the property. He noted that he had allowed for two cars for the residential dwelling and two cars for the commercial. He noted that when the commercial use would be closed those other two parking spaces could become available for use. Mr. Leber then proceeded to discuss the upgraded lighting plan. It would be designed in a way to prevent spillage of light edge lighting onto other properties. The witness stated that no lighting on the door would be required other than a single

light. The hours of operation would be dusk to dawn. Mr. Leber in response to questions from the Board, stated that the lights could be dimmed by 50% in the evenings so as to not interfere with the use and enjoyment of adjacent properties. Several members of the Board echoed the concerns of Mr. Hoadley regarding the amount of lighting and the impact on adjacent properties. Mr. Leber stated that the Applicant would be prepared to consider the use of bollard lighting fixtures which would help reduce any impact on adjacent properties.

At this point the meeting was again open to the public. There were no members of the public seeking to address the Board or ask any questions of the Applicant, or to speak for or against the Application at any of the hearings before the Board.

NOW THEREFORE, the Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicant is seeking a (d)(1) use variance, (d)(5) density variance and a (d)(6) height variance and numerous bulk variance relief, as described above, in order to build a new mixed use building at 915 Union Avenue in the B-1 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 Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicant 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 Applicant has 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, an Applicant 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 Applicant has 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 Applicant 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 Applicant 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 Applicant 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 Applicant, 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 Applicant 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 Applicant 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 Applicant to establish the above criteria. A (d)(5) density variance also requires proof that the site and the surrounding neighborhood can accommodate the increase in density.

With respect to the height variance, pursuant to N.J.S.A. 40:55D-70(d)(6), the Applicant's burden of proof is different than the burden imposed for a (d)(1) use variance. The Applicant still must establish special reasons for granting the relief, either by demonstrating an

undue hardship if the relief is not granted or by demonstrating that the increased height of the building does not offend the purpose of the height restriction. The Applicant also must satisfy the negative criteria; that is, that the relief can be granted without substantial detriment to the public good and without significant impairment of the intent and purpose of the zoning plan or Ordinance.

Based upon the application package, testimony, and expert testimony presented before the Board, the Board finds that the Applicant has 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, (d)(5) density variance and (d)(6) height variance, and bulk variance relief as noted herein. 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) (d)(5) and (d)(6) 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 can accommodate the use in question. The evidence before the Board indicates that the property in question has been a mixed-use residence, albeit with the commercial use having been interrupted, dating back in time. 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 Applicant has also satisfied this criteria. Based upon the evidence presented by the Applicant it indicates that there will not be a substantial impact upon the use and enjoyment of 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 of the Board Planner. The Board finds that the proofs offered by the Applicant are sufficient, in this particular circumstance, to

grant the relief sought by the Applicant. The height does not change the use of the property. The height of the existing building does not impact the rest of the adjacent properties. The bulk variance relief being sought by the Applicant is somewhat pre-existing in nature. There is no evidence before the Board indicating that the Applicant is 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 Harry Hoff for (d)(1), (d)(5), (d)(6) and bulk variance relief as described above for property located at 915 Union Avenue is approved as follows:

1. (d)(1) use variance, (d)(5) density variance and (d)(6) height variance as described herein is approved pursuant to N.J.S.A. 40:55D-70(d)(1), (d)(5) and (d)(6);
2. Bulk variance relief as described herein, is approved pursuant to N.J.S.A. 40:55D-70(c)(1) and (2).

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 Applicant shall file with the Board and with the Borough construction official or his designee an affidavit verifying the Applicant is 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 Applicant 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 Applicant 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 Applicant shall take appropriate dust control, noise control and vermin control measures during any construction work done on the site.

7. At least one week before any construction, a pre-construction meeting shall be held including municipal representatives, the Applicant, 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 Applicant shall comply with all directives of the Borough Fire, Health and Construction Officials, or their designees.

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

10. The Applicant must post performance guarantees and inspection fees with the Borough prior to the beginning of any onsite construction activities, and they must remain paid through issuance of a CO.

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 February 21, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on March 29, 2023.

Laurette Wade, Secretary, Planning Board

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

Sweeney Connors Wells

Coffey Hoadley Devino Hallam Murray