

PLANNING BOARD
CITY OF SOUTH AMBOY

RESOLUTION PB- 3 -15
RESOLUTION TO DENY USE, SET-BACK, HEIGHT, IMPERVIOUS COVERAGE,
PARKING AND DENSITY BULK VARIANCES RELATED TO CONSTRUCTION
LOCATED ON BLOCK 116, LOT 19, LANDS OF THE CITY OF SOUTH AMBOY

WHEREAS, application has been made by Metuchen Community Services Corporation, (“Applicant”) to the Planning Board of the City of South Amboy (“Board”) for amended site plan with use, set-back, height, impervious coverage, off-street parking and density variance approval related to the construction of a proposed building on property located at 268 Main Street, South Amboy, (Block 116, Lot 19) (the “Property”); and

WHEREAS, Applicant is the contract purchaser of the Property; and

WHEREAS, the Property is located in the RA Zone; and

WHEREAS, Applicant seeks to demolish the existing structure and construct a three story new building with seven two bedroom residential units which will include certain use, height, parking, set-back, impervious coverage and density variances (the “Application”); and

WHEREAS, the Application seeks a use variance to allow a multi-family building and a variance for building height greater than ten percent of the maximum height permitted in the zone; and

WHEREAS, the Application seeks a variances for Front yard setback, where a minimum of 25 feet is permitted and 21.19 feet is proposed; and

WHEREAS, the Application seeks a variance for Rear yard setback, where a minimum of 25 feet is permitted and 22.71 feet is proposed; and

WHEREAS, the Application seeks a variance for the number of stories where a maximum of where 2.5 is permitted and 3 proposed; and

WHEREAS, the Application seeks a variance for impervious coverage where a maximum of 60% is permitted and 69.6% is proposed; and

WHEREAS, the Application seeks a variance for off-street parking, where 14 spaces is required and 11 are proposed; and

WHEREAS the Application seeks a variance for units per acre where a maximum of 8.8/acre is permitted and 19.2/acre is proposed; and

WHEREAS, the Application seeks a variance from the maximum units per building where 1 is permitted and 7 are proposed; and

WHEREAS, the Applicant was represented by Kevin Morse, Esq.; and

WHEREAS, the Planning Board held public hearings on December 16, 2014, and January 28, 2015, and has carefully considered the Application as well as the testimony and Exhibits presented by the Applicant; and

WHEREAS, the Applicant presented the testimony of Joan Lorah, Stephen L. Schoch, and Louis Zuegner, P.E.; and

WHEREAS, members of the public, including Martin Lampart, Stan Szeszko and Kathy O'Grady testified during the hearings; and

The Application consisted of the following:

1. Signed and sealed outbound, location, topographic survey, entitled, "Boundary & Topographic Survey of Block 116, Lot 19, 268 Main Street", prepared by Paul Schlossbach, PLS, dated 11/6/14;
2. Signed and sealed Site Plan entitled, "Amended Preliminary/Final Major Site Plan Block 116, Lot 19, Main Street", prepared by MidAtlantic Engineering Partners, LLC, dated 11/20/14 and consisting of ten sheets;
3. Signed and sealed Stormwater Management Statement, prepared by MidAtlantic Engineering Partners, LLC, dated 12/1/14;
4. Signed and sealed architectural floor plan/elevation view, entitled, "Main Street", prepared by Steven L. Schoch, Kitchen & Associates, dated 11/21/14 and consisting of two sheets.

WHEREAS, during the hearing held on December 16, 2014, the following Exhibits were introduced and considered by the Board:

A-1 Site Plan

A-2 Four photographs; and

WHEREAS, during the hearing held on January 28, 2015, the following Exhibits were introduced and considered by the Board:

A-3 Photographs

A-4 Photographs

A-5 Colored rendering of architectural plan

A-6 Amended architectural plan

8. Mr. Zuegner testified that the site plans were prepared under his supervision. He further testified regarding the current condition of the existing building on the Property and the proposed building. He testified that there would be eleven parking spaces.
9. Mr. Zuegner offered an opinion that he did not see any negative impact on the adjacent properties. He further testified about vehicular access to the site, lighting, the proposed retaining walls and trash containers and removal.
10. During the December 16, 2015 hearing the Applicant presented the testimony of Stephen Schoch, a licensed architect, who was accepted as an expert in the field of architecture.
11. Mr. Schoch testified about the interior and exterior lay out of the proposed building. He testified that the smallest unit would be approximately 950 sq./ft. and the largest approximately 1,150 sq./ft. He further testified about the proposed fire suppression system. This testimony conflicts with the Zoning Chart contained on the first sheet of the Site Plan which indicates that the RA Zone has a minimum Floor Area Per Unit of 1,000 square feet and that the proposal would comply with the zoning regulations. The Applicant did not amend its Application to seek a variance from the Minimum Floor Area Per Unit, nor were proofs submitted which would justify the grant of such a variance.
12. Ms. Lorah testified about the proposed tenants and leases and rental history at other buildings managed by the Applicant.
13. Martin Lampart, a member of the public, testified that there are parking problems in the area.
14. Stan Szeszko, a member of the public, testified that there are parking problems in the area.
15. During the January 28, 2015 hearing, Ms. Lorah testified about her experience with parking requirements for units similar to what is proposed for the Property. She testified that typically the demand is less than one car per unit.
16. During the January 28, 2015 hearing, Mr. Schoch testified about changes to the plans in response to comments from the Board at the previous meeting. He testified about changes to the proposed façade, roofline and shutters on the building. Mr. Schoch testified that there were revisions to the proposed

roofline intended to lessen the appearance of the difference in height with nearby buildings. He testified that the Applicant seeks a variance to permit a building 44.7 (incorrectly stated as the actual proposed height was 45.51 feet) feet high and that nearby buildings are 42.3 feet, 39.7 feet and 42.4 feet.

17. During the January 28, 2015 hearing, Mr. Zuegner acknowledged receipt of Mr. Valetutto's letter dated January 19, 2015. Mr. Zuegner testified as to minor changes made to the plans since the previous hearing date. Mr. Zuegner testified regarding his opinion about the basis for the variance relief requested by the Applicant.
18. A variance pursuant to N.J.S.A. 40:55-70(d)(1) requires that the Applicant demonstrate special reasons for the grant of the variance and establish that the positive and negative criteria have been met.
19. In support of the requirement that the Applicant demonstrate special reasons and the positive criteria for the grant of the variance, Applicant presented the testimony of Mr. Zuegner.
20. Mr. Zuegner testified that the positive criteria and special reasons were met because the property would be "affordable housing" which has been recognized as an inherently beneficial use, which satisfies the criteria.
 - The Board rejects this testimony on the grounds that Mr. Zuegner had not compared the proposed affordability of the proposed units to determine if the units would qualify as "affordable" pursuant to the Council on Affordable Housing ("COAH") regulations. He was not aware of what deed restrictions would be in place or for how long the units would be deed restricted. The Board further rejects this testimony because Mr. Zuegner's opinion that the units would be "affordable housing" under the COAH regulations was a net opinion.
 - The Board further rejects this testimony to the extent that it was based upon the testimony of Ms. Lorah in that Ms. Lorah testified that she was not aware whether the proposed deed restrictions would be as restrictive as those required to qualify as COAH affordable housing units.
 - The Board further rejects the testimony of Mr. Zuegner in that he testified at pages 44-45 of the 1/28/15 Transcript "From my perspective, from a planning element, the affordable housing can qualify for your COAH and meets the same standards as COAH." However, when Mr. Zuegner was questioned about the basis for that opinion he stated, at page 60 of the 1/28/15 Transcript, "So I

haven't reviewed or I don't know anything about your COAH requirements or any elements you need or not need here, and I haven't come today to present those as COAH units. I haven't looked at that." When asked about what deed restrictions would be on the proposed units, Mr. Zuegner testified, at Page 62 of the Transcript of 1/28/15, "There is a certain length of time. There are restrictions on what levels of income. I don't have all those numbers."

21. The Board finds and concludes that the testimony provided by Mr. Zuegna in support of the opinion that the proposed use is an "inherently beneficial use" because it is "affordable housing" is a net opinion and is therefore rejected. Neither Mr. Zuegna nor other witnesses put forth by the Applicant provided information on which the Board could find or conclude that the proposed construction would qualify as "affordable housing" that would be an inherently beneficial use. The Board finds that use variance should be denied because the Applicant did not put forth sufficient information upon which to find that the proposed use was an inherently beneficial use.

Request for Density and Height Variances

22. Mr. Zuegner testified about his opinion of the proofs necessary as to the positive criteria for the density and height variances, pursuant to N.J.S.A. 40:55D-70(d)(5) and (6). Mr. Zuegna testified that the "Grubbs" case held that once there is testimony in support of a (d)(1) variance that the proofs necessary for associated density and height variances are relaxed, and the Board should give some "leeway" to allow the use to exist.

- The Board rejects this testimony because the case of Grubbs v. Slothower, 389 N.J.Super. 377 (App. Div. 2007) did not hold what Mr. Zuegna testified about. In particular, the Grubbs case did not involve a use or (d)(1) variance at all. It addressed instead what level of proof is necessary to satisfy height and density variances and held that the "special reasons necessary to establish a height variance must be tailored to the purpose for imposing height restrictions in the zoning ordinance."
- The Board rejects this testimony because Mr. Zuegner did not offer any opinion as to the purpose of the height restrictions in the RA zone. Rather he simply testified that "if you find the use acceptable, the number of units we have here, the height of the building, those are somewhat immaterial in consideration of the use."

- The Board rejects the testimony of Mr. Zuegner as a net opinion that did not address the proofs necessary to satisfy the positive criteria for height and density variances.
 - The Board further rejects the testimony of Mr. Zuegner as it conflicts with testimony of members of the public and observations from Board Members that the proposed height of the building will have a negative impact.
 - The Board further rejects the testimony of Mr. Zuegner to the extent that it notes the nearby buildings are almost as tall as the proposed building. If those observations were a legitimate basis then there could be a continuing escalation of building heights in the area as long as the height was close to other non-conforming buildings. The Board rejects this rationale as the testimony must be based on deviation from the standards in the land use ordinance.
23. The Board finds and concludes that the density and height variances should be denied because the Applicant has not put forth sufficient proofs as to the positive and negative criteria, and because the proposed height will have a substantial detrimental impact on the neighborhood and zone plan.

Request for Impervious Coverage Variance

24. The Application seeks a variance pursuant to N.J.S.A. 40:55-70(c) to permit impervious coverage of 69.6 percent where a maximum of 60 percent is permitted.
25. Mr. Zuegner testified that the basis for the relief was the following:

“So bulk variances or C variances essentially become subsumed or inclusive in the use variance, which again carries the higher standard of proof.” “And again, given the use and overall proposal, I believe the benefits of the bulk relief given the inherently beneficial use outweigh any of the detriments that you might consider from these minor deviations in setbacks or coverage.”

- The Board rejects this testimony as a net opinion. The Board further rejects the testimony in that it would completely disregard any bulk standards for an allegedly inherently beneficial use. The Board further rejects this testimony in that the Applicant did not provide evidence in support of the negative or positive criteria for the requested variance.

Request for Density Variance

26. Mr. Zuegner did not offer independent proofs that the current Application satisfies the positive and/or negative criteria for the requested density variance. Mr. Zuegner simply compared the Application to a prior approval for 8 units on the property, and seemed to infer that because this Application was for less units, that the criteria did not have to be addressed.

- The Board rejects this testimony because the prior approval did not include a height variance and did not include the very significant impervious coverage variance. Comparison to a prior approval of a single variance without reference to other differences between the prior approval and current Application is not valid.

27. The Board finds and concludes that the density variance should be denied because the Applicant has failed to provide evidence as to the positive or negative criteria.

Request for Parking Variance

28. The Application seeks a variance pursuant to N.J.S.A. 40:55-70(c) to permit 11 parking spaces where 14 spaces would be required.

29. In support of this variance, the Applicant presented testimony that in Mr. Lorah's experience, eleven spaces would be sufficient.

- The Board rejects this testimony because it conflicts with significant testimony from members of the public and observations and knowledge of the Board Members regarding parking difficulty in the area of the proposed development and that the proposed variance will negatively influence what is already a problem of parking shortage in the area.

30. The Board finds and concludes that the parking variance should be denied because the proposed use will have a substantial detrimental impact on the neighborhood and zone plan.

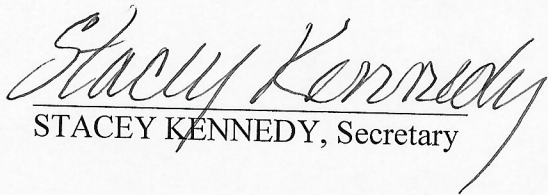
NOW, Therefore Be It Resolved by the Planning Board in the City of South Amboy in the County of Middlesex and State of New Jersey on this 25th day of February, 2015 the use,

height, density, set back, impervious coverage and parking variances are hereby DENIED and the Application of the Applicant is hereby DENIED.

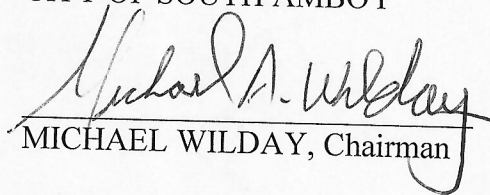
Be it Further Resolved that,

1. The Board Secretary shall publish a brief notice of determination in an official newspaper of the City and obtain an Affidavit of Publication by said newspaper.
2. This Resolution shall take effect as provided by law.

ATTEST:


STACEY KENNEDY, Secretary

PLANNING BOARD OF THE
CITY OF SOUTH AMBOY


MICHAEL WILDAY, Chairman

CERTIFICATION

Certified to be a true copy of a Resolution adopted by the Planning Board of the City of South Amboy on February 25, 2015 at a duly convened meeting.

DATE:

Stacey Kennedy, Secretary