

RESOLUTION
Borough of Union Beach
Planning Board
Deputy Ventures, LLC
Decided on December 20, 2021
Memorialized on January 26, 2022
Preliminary and Final Site Plan Approval with Bulk Variance Relief

WHEREAS, Deputy Ventures, LLC (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for Preliminary and Final Site Plan, with design waivers and bulk variance relief on property located at 300-306 Union Avenue, also known as Block 210, Lots 25 & 26 on the Tax Map of the Borough, in the R-8 Residential Zone; and

WHEREAS, a public hearing was conducted on December 20, 2021 in accordance with DCA/DLGS requirements for hybrid and in person meetings providing for public participation; and

WHEREAS, the Applicant was represented by Jeffrey Gale, Esq.; and

WHEREAS, the Application was deemed sufficiently complete and evidence of compliance with the notice requirements was presented establishing that the Board has jurisdiction over the Application; and

WHEREAS, the Board was functioning as a Planning Board to hear this application.

NOW THEREFORE, the Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made.

The application before the Board has undergone numerous revisions since the initial submission early in 2021. The application seeks Preliminary and Final Site Plan. There is the need for design waiver relief as described in the December 17, 2021 letter from T&M

Associates. By way of background, this application was filed as a result of Zoning Permit Application 3040 where the site was identified as one of several in the commercial corridor Redevelopment Plan adopted in November of 2016 by the Borough Council. As a result of a letter issued on January 21, 2021, by Dennis Dayback, zoning officer, it was determined that there were certain items in the design that would trigger the need for (d) use variances specifically a (d)(1) variance for density and a (d)(5) for excess building height. It was then determined that the Applicant would look to seek amendments to the Redevelopment Plan so as to allow the additional height and density being sought by the Applicant.

As a result of this discussion revised site plans were submitted and a review letter dated June 29, 2021 issued by T&M Associates. The application, having been submitted by Bayview Enterprises, LLC, was for the same property as under the prior application. Plans for the property consisting of site plans submitted by Landstrom, Dessner and Carr, dated May 10, 2021 and building elevation plans by Sonnenfeld & Trocchia, licensed architects, submitted four sheets dated May 10, 2021. The June 29, 2021 report noted that the Applicant would require design waivers and bulk variance relief. Based on a review of the plans that had to the Zoning Officer made a determination that the application be deemed incomplete, as noted on Page 2 of the June 29, 2021 report. The report noted a number of items on Pages 2-4 of the report. The report also noted that there was still the need to secure redevelopment plan amendments, otherwise there would be two (d) variances for excessive height and excessive density and is also noted on Page 5 of the report. Since (d) variance relief is not available in the Redevelopment Plan, since by statute only applications in the Redevelopment Plan area can be heard by a Planning Board and not a Zoning Board of Adjustment, the Applicant still needed to secure amendments to the

Redevelopment Plan from the Borough Council to be able to proceed with this proposed design.

The Redevelopment Plan amendments were adopted by the Borough Council in November of 2021. As a result, the application was then allowed to proceed. There were revised plans submitted, mainly civil engineering from Landstrom, Dessner and Carr, revised as of November 1, 2021 consisting of eight sheets and from the architecture firm Sonnenfeld & Trocchia, revised plans dated October 21, 2021 consisting of four sheets.

Hearings on the application started before the Board and its special scheduled meeting of December 20, 2021. The first witness on behalf of the Applicant was Mr. Jeffrey Carr, licensed professional engineer, whose plans had been presented to the Board; Mr. Carr was sworn in and qualified as an expert in his field. Mr. Dennis Dayback was also sworn in. Mr. Carr proceeded to describe the amendments to the Redevelopment Plan that were adopted November 2021 and the amended submission calling for the new development. The development involved construction of two new three-story buildings where the first floor would be rental and commercial space and the second and third floor occupied by two apartments. This is in the area know as the Neighborhood Commercial Zone.

Mr. Carr proceeded to go through the December 17, 2021 from T&M Associates. He first reviewed the completeness review items and noted that on several of them Mr. Dayback consented to granting a completeness waiver, with certain testimony being provided which was done so by Mr. Carr. Mr. Carr proceeded to describe the proposed buildings, the frontages, and entryways for each building. He noted there would be four parking spaces in the back which would be covered. He noted that the perimeter would be thoroughly landscaped to address concerns also set out on Section 5 of the Report, Pages 5 and 6. The witness noted that there

would be planters to offer more outdoor seating and a bike rack would be installed. As a planner the witness noted that the design waivers for bulk variance relief can be granted as part of the streets scape and plaza area. In terms of building height, he noted this would have no impact on the amended redevelopment plan and would be granted without the need for variance relief. Mr. Dayback requested that the lighting and landscaping area be provided with some type of irrigation system.

At this point the floor was open to the public, one resident asked about the availability of parking and whether parking spaces would be assigned.

The next witness on behalf of the Applicant was Mr. Andrew Troccia, licensed architect who was sworn in and qualified as an expert in his field. He proceeded to testify at length, referring to Exhibit A-2 which was the rendering of the building, providing detailed testimony as to the exterior treatment, the types of windows and the type of awnings that would be provided for retailers. He noted there would be 12-foot height on the retail level downstairs but upstairs the heights would be nine foot on the second floor and eight feet on the upper floors where the bedrooms were located. To go any further would require flattening the roof which was not considered aesthetically desirable or consistent with the Redevelopment Plan. He noted that vinyl siding would be selectively utilized and was already used in adjacent residential areas. He noted there would be a limited number of tenants, so that the retail space would not be overcrowded. He noted that it was the Applicants plan to have a ground floor café which needed an upgraded ventilation system. As part of this approval the Applicant has been advised that no ventilation system can run within the apartments on the second and third floor and it would have to be designed in an appropriate manner. The same is true for the kitchen which is located on the

lower level of the apartment units. In terms of the site triangle, it was acceptable to the Zoning Officer.

At this point there was extensive discussion from members of the Board on items of concern regarding limitation on the retail tenancies, being able to grant the space being permitted for each. There were significant concerns over the location of the trash enclosure and the amount of screening and landscaping and buffering that would be needed to shield it from adjacent residents. Discussion about using cans in place of dumpsters, in compliance with municipal ordinance, which is the most that the Board can ask an Applicant. The Applicant's counsel advised that the Borough advised the potential tenant of the need for using a dumpster as opposed to separate trash cans especially for the retail and restaurant uses. The Board agreed to give a bulk variance for height of the fence enclosing the trash area up to eight feet in order to properly fence in and shield the trash location. It was also determined that the outdoor seating for the coffee shop area must result in having the seating pulled in at nighttime, so it is not there as a place to hang around after hours. The Board agreed to the eight-foot fence even though it requires bulk variance, as a way to better shield the trash enclosure area. The Board also wants a requirement that the planters along the exterior area of the ground floor and the lighting to be shielded in a manner so as to ensure there is no bleed over to adjacent properties.

A neighboring property owner spoke concerning the application. He was concerned about the back property line and the need for additional landscaping and evergreens to help with being a buffer of noise and light. There were no other members of the public wishing to speak regarding the application at this time.

NOW THEREFORE the Board makes the following conclusions of law based upon the foregoing findings of fact.

With respect to the bulk variances, the Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other non-use related Ordinance requirements 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; physical features, or other extraordinary circumstances exist which uniquely affect the specific piece of property and limit its development potential in conformance with Ordinance requirements, such that the strict application of a 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. Alternatively, 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 purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an Applicant for these variances must also show that the proposed relief sought will not cause a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met. Based upon the application, plans, reports and testimony placed before the Board, The Board finds that the Applicant has met the requirements of the Municipal Land Use

Law, case law and City ordinances so as to grant the relief requested. Pursuant to these criteria, the purposes of the Municipal Land Use Law will be advanced and the benefits of granting the relief requested clearly outweigh the detriments. The mixed-use of the property for 30+ years demonstrates that a commercial use is less intense.

The uncontroverted evidence before the Board indicates that in this particular circumstance, variance relief can be granted given the historical use of the property, its unique configuration, and the agreement by the Applicant that no other type of use would be permitted in the first floor that exceeds parking requirements permitted in the zone, thus triggering the need for further variance relief. The reports from the Board engineer do not raise fundamental objections to the bulk variance relief and other approvals being sought by the Applicant.

Based upon the inquiries made by the Board and its professionals, the Board is satisfied that the proposed use and residential use upstairs is suitable for the property in question. Furthermore, the evidence before this Board indicates there will be no substantial detriment to the public good and no substantial impairment to the intent and purpose of the zoning ordinance or Master Plan by granting this approval.

The Applicant has demonstrated that in uncontroverted evidence placed before the Board that the relief can be granted in a manner without unduly interfering with the use and enjoyment of the surrounding properties. The Applicant has worked diligently with Borough officials and this Board to come up with a design consistent with the redevelopment plan but one that also addresses the Boards and neighbors' concerns with regarding to traffic, parking, noise and trash/recycling management. The Applicant has agreed on the record to satisfy the numerous open items as reported in the December 17, 2021 report. It is expressly noted that as a condition

of this Resolution that all outstanding condition items must be addressed and satisfied to the review of the zoning officer before the final site plans will be signed by his office and by other Borough officials as required by law. The Applicant is to provide on a quarterly basis, progress reports to the zoning officer, Board secretary and Board attorney as to how matters are progressing with regard to addressing all of those conditions which were giving completeness waivers in lieu of Applicant providing the same as a condition of this approval.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Deputy Ventures, LLC for property located at 300-306 Union Avenue, also known as Block 210, Lots 25 & 26 on the Tax Map of the Borough, is determined as follows:


1. The Application for Preliminary and Final Site Plan approval is granted pursuant to N.J.S.A. 40:55 D-46 and 50;
2. The requested bulk variance for fence height as recited herein is approved pursuant to N.J.S.A. 40:55D-70(c)(1) and (2).

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The implementation of the plans shall be implemented strictly in accordance with the plans submitted and approved by the Board.
2. The Applicant shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications from the Board's professionals.
3. Payment of all fees, costs and escrow due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary.

4. Certification of taxes have been paid to the date of approval.
5. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official, an affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply a copy of any approvals received.
6. A pre-construction meeting shall be held by the Applicant and the Borough officials at least one week prior to the start of construction to ensure all permits, approvals and documents are in order.
7. The Applicant shall seek approval or letter of no interest from the Monmouth County Planning Board.
8. The Applicant shall take all appropriate measures to control any dust, dirt and any vermin during construction/renovation of the building and premises.
9. The reports from T&M Associates of June 29, 2021 and December 17, 2021 are incorporated herein by reference.
10. 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 decision was adopted by this Board on December 20, 2021 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 26, 2022.


Madeline Russo, Planning Board

FOR: 6

AGAINST: 0

ABSTAIN: 2

Member(s) Eligible to Vote: Connors, Wells, Coffey, Sweeney, Andreuzzi and Cavallo