

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Becikoglu Real Estate LLC
717-719 Union Avenue
Block 198, Lots 2 and 3
Decided on November 30, 2022
Memorialized on December 19, 2022
Application for (c) and (d) Variances

WHEREAS, Becikoglu Real Estate LLC, (the “Applicant”) has made an application to the Borough of Union Beach Planning Board for a use variance and numerous bulk (c) variances, located at 717-719 Union Avenue, also known as Block 198, Lots 2 and 3 as shown on the tax map of the Borough, located in the B-1 Neighborhood Commercial Zone; and

WHEREAS, the Applicant was represented by Catherine Kim, Esq.; and

WHEREAS, a public hearing was conducted on this application on November 30, 2022, 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 a deli/cafe is not a permitted use in the B-1 zone. In addition to needing a (d)(1) use variance, the Applicant also requires a (d)(6) height variance where 20’ is the maximum and the existing building is 25.5 feet. In addition the Applicant requires bulk variance relief as follows:

	REQUIRED	PROPOSED
Minimum Front Yard Setbacks (Principal Building)	20 feet	2.1 feet (Columbia Avenue), 10.3 feet (Union Avenue)*
Minimum Lot Frontage on Union Avenue	100 feet	80.41 feet*
Minimum Lot Width on Union Avenue	100 feet	80.41 feet*

Minimum Lot Depth on Union Avenue	150 feet	141.76 feet*
Minimum Lot Frontage on Columbia Avenue	150 feet	149.84 feet*
Minimum Lot Area	15,000 sq.ft.	12,480 sq.ft.*
Minimum front yard setback for accessory structures	20 feet	15 feet (scaled)*
Maximum Building Height (feet)	20 feet	25.5 feet*
Maximum Lot Coverage	65%	35%
Parking – 1 :Unit, 3BR Residential Swelling (2 spaces per unit)	2 spaces	2 spaces
Parking Non-Residential	15 spaces	11 spaces
Total Parking spaces	17 spaces	13 spaces

*Pre-existing non-conforming

The first witness on behalf of the applicant was Mr. Paul Lieber, 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. Lieber prepared the engineering drawings for the application. He handed out a color sheet which was a version of the site plan where the applicant was seeking variance relief as has been described here in. He proceeded to describe how there were two uses on the property, namely the one-story office area and the residential above as well as a freestanding one-story garage to the rear. He noted that the lot, given its pre-existing configuration, has a lot of pre-existing non-conformities that are triggering the need for bulk variance relief. He said the building height is supposed to be no more than 20 feet, but 25.5 feet is the current configuration, which is also pre-existing in nature. He noted that the location of the property being on the corner of Columbia Avenue and Union Avenue makes it impossible for the Applicant to meet the setbacks along Columbia Avenue. He stated that the Applicant is not proposing any type of expansion or demolition work. He noted that the proposed use for a café/deli had been a prior use and had since been replaced by an office for small construction firm.

He then referred to sheet A 1.1 describing the proposed deli/café store which would feature breakfast in the morning and lunch and delivery by a local service or to businesses or residents. He described how there would be 10 seats inside the proposed cafe. There would be a couple of tables outside seasonally from approximately April 1st to September 30th. The store will close at 9:00 PM under current thinking, but he noted that could change if there's significant demand. He testified that the Applicant envisions having just two employees. Given the small scope of the nature of the business they did not see a need for a separate loading area; any delivery could be handled off Columbia Avenue.

As it pertains to parking, Mr. Lieber noted that there were two spaces in front of the garage that could be utilized by the residential tenant. There would be three new on street parking spaces. He also noted that there is a municipal lot directly across the street that offers additional public parking for potential patrons. There was some additional discussion over the amount of parking that was needed for both the residential use and the proposed commercial use. It was noted that the public parking would be there in a 24/7 basis. The Applicant agreed that there would be no use of the garage for any residential use of any kind. It would only be for storage and parking. The Applicant agreed to a condition that would be articulated in this resolution that no residential use be permitted in the garage whatsoever.

At the direction of the Board, the Applicant agreed to put in a bike rack to take advantage of the bike trail nearby. The Applicant was also advised that Monmouth County road requirements must be met. The witness testified that garbage and recycling would be kept behind the fence and there would be two containers for trash and two for recycling. There was then some discussion between the Applicant and the Board over the scope of lighting and landscaping and buffering to be done and the type of planting to be used, subject to the approval of the

Zoning Officer. There would be a few shrubs put in and a four-foot white vinyl fence to be installed to replace the existing fencing. The other areas where there is a 6-foot fence a new one would be installed in certain select locations to be coordinated with the Borough Zoning Officer. This was also discussed in the June 27, 2022, report from T&M Associates, under Section 5 Landscaping and Signage. There was a brief discussion of the items under the general Section 6 of the T&M Report. It was noted that the Applicant would have to get approvals from the Fire department and Health department for any type of additional ventilation needed as part of the configuration of the kitchen in the deli.

At this point Catherine Reiter, P.P., Board planner, proceeded to testify at great length as to the issues concerning the proposed (d) variances for the use and the height of the building. As it pertained to the use variance, she testified that this was a mixed-use configuration. The Applicant has come in with the building that is in good condition and has functioned as a shared use for a significant amount of time. It was noted that prior to the more recent use the building had been previously used as a coffee shop/deli; in effect it was returning to a prior use. The use variance was still needed because there was an interruption in the uses and the previous use as a café/deli could not be bootstrapped into the intervening use. As it pertained to the height variance, the planner noted that this was a pre-existing condition. She noted that the site was suitable for the existing use and there was no change to the ongoing use or configuration of the residential unit in the building. Ms. Reiter saw no negative impact from the proposed use as well as from the height of the existing building. She testified that in her professional opinion there was no impairment to the Master Plan and Zoning Ordinance of the Borough. She called out various other types of uses that are already permitted in the area, many of them commercial in

nature. This is the type of use that could be patronized by local residents and businesses as part of the customer base for people in the area.

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.

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, a (d)(6) height variance and numerous bulk variance relief, as described above, in order to convert the first floor building to a deli-cafe on the property at 717-719 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.

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)(6) height variance and 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) 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 and has done so in the past. The

evidence before the Board indicates that the property in question has been a mixed-use residence, albeit with the deli use having been interrupted, dating back in time. As to whether the use is particularly suited to the property in question, given the period of time it has 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's planner, the evidence before the Board further indicates that there will not be substantial impact of the use and enjoyment of the surrounding properties. The evidence before the Board indicates that 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 primarily pre-existing in nature. There is no evidence before the Board indicating that the Applicant is seeking to exacerbate any of this 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 Becikoglu Real Estate, LLC for (d)(1), (d)(6) and bulk variance relief as described above for property located at 717-719 Union Avenue is approved as follows:

1. (d)(1) use variance and (d)(6) height variance as described herein is approved pursuant to N.J.S.A. 40:55D-70(d)(1) 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.

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 (if required).

6. The Applicant shall take appropriate dust control, noise control and vermin control measures during any construction and/or renovation 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 must post performance guarantees and inspection fees with the Borough prior to the beginning of any additional onsite activities.

10. The stand-alone garage shall not be used for any type of residential use.

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 30, 2022, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 19, 2022.

Laurette Wade, Planning Board

FOR:

AGAINST:

ABSTAIN: