

RESOLUTION
Borough of Union Beach Planning Board
Joseph M. Savi
Application No. R1400
Decided on August 29, 2018
Memorialized on September 26, 2018
Revised November 28, 2018
Preliminary and Final Minor Site Plan Approval with Bulk Variance Relief

WHEREAS, Joseph M. Savi (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for Preliminary and Final Minor Site Plan approval with bulk variance relief on property located at 1500 Union Ave., also known as Block 73, Lot 3 on the Tax Map of the Borough, in the R-8 Residential Zone; and

WHEREAS, a public hearing was conducted on August 29, 2018;

WHEREAS, the Applicant was represented by Laurence Kantor, Esq.; and

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

NOW THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made. By way of background, this is a bifurcated application. The Applicant was previously before the Board last December wherein the Board granted the (d) (1) use variance to the Applicant, who is proposing to open a retail motorcycle repair, parts, and sales store. The proposed hours of operation are Monday to Saturday 9:00 a.m. to 7:00 p.m. with two owners and one part-time employee. Based on the initial review from the Board Engineer, the Applicant requires six bulk variances from Borough Ordinance as follows:

1. Section 13-10.4.f.5 of the Ordinance requires a minimum front yard setback of 20

feet. The existing building has a pre-existing non-conforming front yard setback of 10 feet.

2. Section 13-10.4.f.6 of the Ordinance requires a minimum rear yard setback of 30 feet. The existing building has a pre-existing non-conforming rear yard setback of 15 feet.
3. Section 13-10.4.f.7 of the Ordinance requires a minimum side yard setback of 8 feet. The existing building has a pre-existing non-conforming side yard setback of 7.08 feet.
4. Section 13-8.4.a requires a 20 foot wide buffer along all side and rear property lines which abut areas zoned residential. Variances are required to permit the required buffer along only 70% of the westerly side property line. No buffer is proposed along the rear property line.
5. Section 13-5.5.d of the Ordinance states that the total coverage of all buildings shall not exceed 25% in a residential zone and the total coverage of all buildings and structures shall not exceed 50%. While the building coverage conforms, a variance is required to permit 53% total coverage, where 50% currently exists.
6. The plans note that a wall mounted sign is proposed on the southerly elevation that is approximately 12 ft. wide by 5 ft. high. While this sign conforms with the 2 square foot maximum sign area set forth in Ordinance Section 13-8.26.d.1. A variance is required as wall signs are not specifically permitted, and the proposed sign is located more than 4 feet above ground.

The first witness was the Applicant, who testified as to the proposed motorcycle repair

parts and sales activities at the proposed store. He testified as to the hours of operation and that there would be the two owners and one part-time employee. He testified that there would be no vehicles parked outside of the building overnight. He testified that there would be a daily UPS delivery and on occasion a tractor trailer delivery which would park in the parking lot. He testified that there was a new lighting plan and planting schedule that would be provided. There would be one sign that is illuminated from inside the sign and that it will be attached to the outside of the building and would be shut off when the business is closed. The Applicant agreed to work with the Board Engineer with regard to the design of the landscaping and the selection of trees. The Applicant agreed that trash would be stored inside the building and that scrap metal would be also kept inside and picked up on a weekly basis.

Mr. James Higgins, professional planner, was sworn in and qualified as an expert in his field. He testified that granting the variance relief was beneficial to the area and there were no detriments to the zoning ordinance or Master Plan by this approval.

Mr. Irv Walling, 1252 Florence Avenue, spoke in favor of the application. There were no other residents or persons wishing to speak for or against the subject application.

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

The application before the Board seeks Preliminary and Final Minor Site Plan approval. There is the need for the bulk variance relief as described above.

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. All bulk variances that are being sought are not fundamentally objected to in the report of the Board Engineer almost all of the relief is needed

due to pre-existing conditions on the property. With respect to the pre-existing, non-conforming conditions, the Board Engineer noted that no changes were proposed that would alter or exacerbate such conditions. Based upon the inquiries made by the Board and its professionals, the Board is satisfied that the proposed retail and service facility 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.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Joseph M. Savi for property located at 1309 Florence Avenue, also known as Block 73, Lot 3 on the Tax Map of the Borough, is determined as follows:

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

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

1. The implementation of the plan 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 take all appropriate measures to control any dust, dirt and any vermin during construction/renovation of the building and premises.

8. 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 August 29, 2018 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on September 26, 2018. Revision on November 28, 2018


Madeline Russo, Planning Board

FOR: 8

AGAINST: 0

ABSTAIN: 0

Board Member(s) Eligible to Vote:

Yes Steiner Yes Wells AB Moniz Yes Devino Yes Andreuzzi Yes Cavallo
Yes Wade Yes Hoadley