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788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

LEON S. AVAKIAN, P.E., P.L.S. (1953-2004)
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JENNIFER C. BEAHM, P.P., AICP
CHRISTINE L. BELL, P.P., AICP
SAMUEL J. AVAKIAN, P.E.

October 12, 2020

April Claudio
Municipal Clerk/ Registrar
601 Main Street
Belmar, NJ 07719

Re: 1006 14th Avenue
Belmar, NJ 07719
Block 139, Lot 18
Variance Request

Dear Ms. Claudio:

The subject application is seeking use variance and site plan approval for the construction of a new 2.5 story single family structure. The applicant is proposing to retain an existing one-story dwelling in the rear of the subject property. The application will require d(1) use variance relief to permit two (2) principal structures on one (1) lot, whereas multiple dwellings are not permitted on one lot in the R-50 zone district. Additional variances and waivers may be required as they relate to the proposed development.

This application requires a use variance pursuant to N.J.S.A. 40:55D-70.d(1) to permit multiple dwellings on one lot. Testimony is required to demonstrate that the application satisfies the positive and negative criteria of the Municipal Land Use Law for the granting of the use variance relief. To obtain a d(1) use variance, the Applicant must show that the proposal meets four separate criteria:

1) Positive Criteria

- (a) *That the site is particularly suited to the use.* The Applicant must prove that the site is particularly suited for the proposed use. This requirement sets a high bar, requiring findings that the general welfare is served because the use is particularly fitted to the proposed location of the use. It requires the Applicant to show why the location of the site within the Borough is particularly suited for the proposed use despite the underlying zoning, or the unique characteristics of the site that make it particularly appropriate for the proposed use rather than a permitted use.
- (b) *Special Reasons.* The Applicant must prove that special reasons exist for granting the use variance by demonstrating either that there is an unreasonable hardship in not granting the

variance, or that the proposed project furthers one or more of the purposes of the Municipal Land Use Law.

2) Negative Criteria

- (a) *The variance will not substantially impair the intent and purpose of the zoning plan and ordinance.* The Applicant must prove that the proposal does not substantially impair the intent of the zoning ordinance or master plan. This criterion comes out of the basic principal that municipalities should make zoning decisions by ordinance rather than by variance, and that the grant of a variance should not represent a complete departure from the enacted policy of the governing body.
- (b) *The variance can be granted without a substantial detriment to the public good.* This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.

The applicant is not proposing any improvements to the rear dwelling located on the property. However, the minimum rear yard setback required in the R-50 zone district is 35 ft., whereas 2.27 ft. is existing. This is an existing non-conformity requires a technical variance for this application. **As identified on the provided survey, the first-floor elevation of the existing structure is 12.48 ft., whereas the minimum permitted elevation by the Borough's flood damage prevention ordinance is 11 ft, meeting the minimum requirements of the Borough's ordinance. Testimony should be provided regarding the first-floor elevation of the structure and the structure's compliance with the Borough's ordinance.**

It should be noted that while no improvements are proposed to the existing rear structure, the applicant is seeking a d(1) use variance to permit multiple dwellings on a lot where only one dwelling is permitted. If the existing rear dwelling does not meet the Borough's flood damage prevention ordinance requirements, the applicant's testimony for d(1) variance relief must address how permitting a structure that does not meet the minimum requirements of the Borough's ordinance meets the required criteria for variance relief.

Should you have any questions or require any clarification regarding this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, Inc.



Christine L. Bell, PP, AICP, CFM
Floodplain Administrator