

Variances:

1-Use variance to allow a total of 5 residential units and 3 commercial units where the subject property is split zoned between the Restricted Commercial RC zone and Garden Apartment GA zone

2-Lot area variance for Lot 3 (Garden Apartment GA Zone) existing lot area of 6,369 square feet where 7,500 square feet minimum is required

3-Lot width variance for Lot 3 (Garden Apartment GA Zone) existing lot width of 60' where 75' minimum is required

4-Rear yard setback variance for Lot 3 (Garden Apartment GA Zone) existing 0' where 20' minimum is required

5-Side yard setback variance for Lot 3 (Garden Apartment GA Zone) existing 0' where 10' minimum is required

6-Rear yard setback variance for Lot 4 (Restricted Commercial RC Zone) existing 4.14' where 20' minimum is required

Joseph Petriello represents the applicant, SHDK, LLC. They are seeking site plan approval and a D(1) use variance with various pre-existing non-conforming bulk variances. The property is split zoned with Lot 3 in the Garden Apartment GA Zone and Lot 4 in the Restricted Commercial RC Zone. The site plan was recently revised (9/26/22) to propose 5 residential units vs. the 8 residential units originally proposed. Mr. Petriello described the property as 3 commercial units on the first-floor and 2 existing residential units on the second-floor fronting on West Pleasant Avenue. He explained that there is a building in the rear that is presently vacant but had been used by the commercial units. They are proposing to convert the second-floor of the rear building into 3 residential units. He introduced architect Matt Evans, planner Peter Steck and the applicants Stella Haramis and Demetrius Kourkoulakos. Board Attorney Kara Kaczynski suggested swearing in all the witnesses together. Matt Evans, Peter Steck, Stella Haramis, Demetrius Kourkoulakos, Board Engineer Greg Polyniak and Board Planner Michael Kauker were sworn in. Board Attorney Kaczynski marked the following exhibits:

- Exhibit A-1: Application and supporting documents submitted with the application
- Exhibit A-2: Hearing notice and publication proofs
- Exhibit A-3: Planning report by Peter Steck dated 10/12/22
- Exhibit A-4: Site Plan Prepared by Matt Evans dated 3/12/20, revised 9/26/22
- Exhibit PB-1: Engineering review by Neglia Engineering Associates dated 9/23/20
- Exhibit PB-2: Engineering review by Neglia Engineering Associates dated 9/23/20, revised 10/5/22
- Exhibit PB-3: Engineering review by Neglia Engineering Associates dated 9/23/20, revised 10/14/22
- Exhibit PB-4: Engineering review by Neglia Engineering Associates dated 9/23/20, revised 10/18/22
- Exhibit PB-5: Planning review by Kauker & Kauker dated 9/24/20
- Exhibit PB-6: Planning review by Kauker & Kauker dated 9/24/20, revised 3/14/22
- Exhibit A-3: Planning report by Peter Steck dated 10/12/22, revised 11/3/22

Matt Evans was qualified and accepted. He then displayed Exhibit A-4 Site Plan dated 3/12/20, revised 9/26/22 and described the proposal to the Board. He emphasized that no additional building area nor impervious coverage was proposed. He believes that the plan addresses the open items raised in Board Engineer Polyniak's review. He identified the ADA parking stall that was added and noted that sanitary sewer calculations were provided. He stated that the existing exterior materials and architectural details for the commercial businesses would be carried through to the rear section of the building.

Mr. Petriello did not have a copy of Exhibit PB-4: Engineering review by Neglia Engineering Associates dated 9/23/20, revised 10/18/22. Board Engineer Polyniak explained that his review included Mr. Steck's planning report but there were no changes to his engineering review of the architectural site plan. Mr. Petriello referenced Exhibit PB-3: Engineering review by Neglia Engineering Associates dated 9/23/20, revised 10/14/22 and confirmed with Mr. Evans that most comments have been satisfied. Mr. Petriello wished to address the open Completeness Item 11 location of drainage facilities to serve the proposed structure specifically the roof leader location, connection location, etc. as a Condition of Approval. Mr. Evans pointed out the roof leader locations on the site plan. The next open item under Engineering Comments that Mr. Petriello would like to address is Item 4 regarding exterior and interior building modifications, façade materials, colors, traditional design elements, visual access, entrances, awnings, lighting and roofing which he believes that Mr. Evans just testified about. The next open item under Engineering Comments that Mr. Petriello would like to address is Item 11 regarding screening the at-grade HVAC systems located within the existing parking lot. Mr. Evans explained that the at-grade HVAC systems will be relocated to the roof. The next open item under Engineering Comments that Mr. Petriello would like to address is Item 23 regarding fire escape stairs relocation. Mr. Evans pointed out the new stairway on the parking lot side of the building on the site plan. The next open item under Grading, Drainage & Utility Comments that Mr. Petriello would like to address is Item 3 regarding existing on-site stormwater systems and their maintenance frequency. Mr. Evans noted that there are existing roof leaders and drainage. The next open item under Grading, Drainage & Utility Comments that Mr. Petriello would like to address is Item 5 regarding sanitary improvements. Mr. Evans provided calculations showing the sanitary sewer demand would decrease with the change of use from commercial to residential and would be adequate for the proposed use. The final open item under Lighting & Landscaping Comments that Mr. Petriello would like to address is Item 1 regarding landscaping and lighting proposed improvements. Mr. Evans identified parking area site lighting and the two proposed planting beds near the rear building on the site plan.

Mr. Petriello invited the Board to ask questions of Mr. Evans. Board Engineer Polyniak visited the site and observed that there are several employee-dedicated parking spaces. He believes that 10 parking spaces are required for the 5 proposed residential units. Since the Applicant is providing 13 parking spaces in total, he asked that no more than 3 parking spaces be employee-dedicated. Mr. Evans deferred to the Applicant on this issue. Board Engineer Polyniak understands that 1 ADA parking space is required but believes that the size on the site plan is undersized. Mr. Evans answered that the parking space will be restriped to be the correct size which was acceptable to Board Engineer Polyniak. Board Engineer Polyniak asked if any of the proposed residential units would be ADA accessible. Mr. Evans responded that they are proposing larger hallways and doors for the adaptive reuse. Board Engineer Polyniak confirmed

that elevator access would not be required per the 20% rule. Board Engineer Polyniak noted that impervious coverage is not increasing so stormwater systems are not required. He believes that the roof leaders go to the street and is concerned that direct surface discharge into the parking lot may cause icing conditions. He asked that roof leaders be tied in below ground and not discharging at grade which may cause icing. He asked about reusing the existing sanitary lateral and requested that it be cleaned and televised to ensure that it is in good condition. If it is not in good condition, he believes that the Applicant would need to replace it as a Condition of Approval. Mr. Evans will provide a video of the sanitary line and agreed to replace any damaged sections. Board Engineer Polyniak asked about matching the stucco façade and Mr. Evans answered that the rear building would be the same stucco and not patched. He added that new windows would be installed in the rear building that would match the style of the existing commercial units. Board Planner Michael Kauker had no questions for this witness. Board Attorney Kaczynski asked about will serve letters. Board Engineer Polyniak answered that the Applicant will be reducing the sanitary sewer and water flow demand.

Chairperson Charlotte Panny invited the Board to ask questions of Mr. Evans. Derek Eisenberg asked if the sewer line runs to West Pleasant Avenue or Oak Avenue. Mr. Evans replied that the sewer goes out to West Pleasant Avenue.

Chairperson Charlotte Panny invited the public to ask questions of Mr. Evans. Fire Official Thomas Tuttle asked about the apartment entrance. Mr. Evans showed the entrance to the two existing second-floor apartments from West Pleasant Avenue and the parking area entrance to the three proposed second-floor apartments in the rear building on the site plan. Mr. Evans clarified that there are no changes proposed to the two existing second-floor apartments above the commercial units. Dave Wiseman of 522 Bergen Avenue began to comment on the application and had no questions of Mr. Evans.

Mr. Petriello called his next witness professional planner Peter Steck who was qualified and accepted. Mr. Steck prepared a planning report dated 10/12/22, revised 11/3/22 which had been marked as Exhibit A-3. His report details the subject property existing conditions and the property and building split zoning between the Garden Apartment GA zone and Restricted Commercial RC zone. He noted that a third commercial tenant called School of Rock will be occupying the vacant commercial unit. He explained that the subject property is surrounded by multi-unit residential properties. He reviewed the Borough Master Plan which recommends that the bulk of the property be in the Restricted Commercial RC zone with the southeast portion in the Garden Apartment GA zone. He noted that the most recent Master Plan Reexamination Report recommended development in the central business district. Per the Housing Element and Fair Share Plan, he stated that there is an overlay zone for the Garden Apartment GA zone with some low and moderate-income units for development over 5 units which he does not believe applies to this application. When reviewing the zoning requirements, he explained that the setback bulk variances are all preexisting non-conformities which would create a hardship to rectify. He believes that the biggest issue is the D(1) use variance due to the split zoning where the Applicant must demonstrate special reasons, particular suitability and satisfy the negative criteria. He does not consider this a 'Medici Case' but believes that the Applicant would satisfy that stricter standards of proof that would be required. He feels that this is an expansion of a non-conforming use which would be a D(2) variance since there is existing residential use which

is not permitted in the Restricted Commercial RC zone. Under the Medici standard, the Applicant must prove that several purposes of the Municipal Land Use Law (MLUL) would be advanced. Mr. Steck identified purposes A, G, I and M of the MLUL:

A. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare.

G. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.

I. To promote a desirable visual environment through creative development techniques and good civic design and arrangement.

M. To encourage coordination of the various public and private procedures and activities shaping land use development and to the more efficient use of land.

Mr. Steck considers the proposed residential conversion as particularly suited since the vacant commercial space will be reused as residential which is beneficial to the surrounding commercial businesses and does not trigger a parking variance. He repeated that the building dimensions are not proposed to change and believes that a C(1) hardship variance would be justified. He added that the benefit of the better use of the second floor of the rear building which would satisfy the C(2) variance. Regarding the negative criteria, he believes that the application can be approved without substantial detriment to the public good and without substantial impairment to the zone plan and zoning ordinance. He has several reasons for this position such as that there is a substantial difference between the existing zoning pattern and the pattern recommended in 2003 Land Use Plan which makes the variance application an appropriate remedy. He also believes that the proposed development is within an existing building which minimizes any adverse consequences in terms of light, air and open space. He considers that the well-established planning principle to encourage residential use in a downtown business setting as it promotes additional customer use of local retail and service uses. As stated previously, he noted that the site complies with the parking requirements. Lastly, he understands that the introduction of three one-bedroom apartments adjacent to commercial center will advance the goals of the Master Plan in promoting downtown vitality. Mr. Petrillo confirmed with Mr. Steck that the Applicant has demonstrated special reasons and particular suitability that would satisfy the D variance request. Mr. Steck believes that the application satisfies the stricter Medici standard which advances four purposes of the MLUL and the use is particularly suited. He considers the D(2) standard less stringent but considers it satisfied. He believes that the negative criteria standard has also been satisfied.

Chairperson Panny invited Board Planner Kauker to ask questions of Mr. Steck. Board Planner Kauker believes that the D(1) use variance would be the more conservative approach for this application. As such, he explained that the Medici standard would apply. He considers the review of the 2019 Master Plan Reexamination Report appropriate regarding the GA Midrise Overlay zone to the Garden Apartment GA zone. He added that the Housing Element and Fair Share Plan included a recommendation agreed to by Fair Share Housing and the Special Master of second-story development in the Restricted Commercial RC zone. He noted that the parking requirements would be satisfied. Regarding the affordable housing obligation, Board Planner Kauker believes that the entire development of 5 total residential units may not trigger the

obligation. Board Attorney Kaczynski believes that per the Master Plan the affordable housing requirement is for more than 5 units. Mr. Steck added that the split zoned nature of the building and property would be considered an extreme hardship which would be a special reason for granting the D variance. Board Planner Kauker believes that the development fee ordinance would apply to this application regarding the improvements that would be made. Board Attorney Kaczynski suggested a Condition of Approval that the Applicant would comply with all COAH obligations and development fee ordinance obligations if applicable based on the Master Plan and ordinances. Mr. Petrillo asked for Board Planner Kauker's conclusion regarding the affordable housing obligation. Board Planner Kauker agreed with Mr. Steck's assessment that the affordable housing obligation would not apply.

Board Engineer Polyniak asked if Mr. Steck would be providing testimony related to the employee-designated parking spaces. Mr. Steck asked for the Applicant to testify and he would follow up with additional testimony if needed. Board Attorney Kaczynski confirmed that the Applicant is proposing 13 parking spaces of which 10 parking spaces would be assigned to the residential units.

Chairperson Panny invited the public to ask questions of Mr. Steck. Councilperson Louis Roer of 663 Maywood Avenue asked if the residential parking spaces would have signage designating them for the tenants. Board Attorney Kaczynski believes that the Applicant would be better able to answer that question. Councilperson Roer then asked what the address would be for the three residential units in the rear building. Mr. Steck believes that the Postmaster or Tax Assessor would make that decision. Councilperson Roer asked if the property owner were to make changes to unit #3 in the future, which zoning would apply; Garden Apartment GA zone or Restricted Commercial RC zone. Mr. Steck asked what changes would be proposed and Councilperson Roer suggested interior renovations. Mr. Steck believes that those types of renovations would require a Building Department permit. Councilperson Roer clarified that there is a secondary means of egress from the 3 second-floor apartments in the rear building as there is a secondary stairwell.

Fire Official Thomas Tuttle has visited the site and observed a condenser unit in one of the parking spaces. Mr. Steck deferred to Mr. Evans. Mr. Evans answered that the HVAC equipment will be relocated to the roof. Fire Official Tuttle added that he will be requesting stiped fire zones and Mr. Evans agreed.

Chairperson Panny invited the Board to ask questions of Mr. Steck. Derek Eisenberg asked about the sound from music school affecting the 3 second-floor apartments in the rear building. Mr. Steck answered that soundproofing will be installed.

Mr. Petrillo called his final witness Applicant Stella Haramis who was sworn in. Ms. Haramis confirmed that 13 parking spaces are proposed. She noted that there are three commercial tenants; Pleasant Avenue Barber, Amici's Pizzeria and School of Rock. Mr. Petrillo asked if there was a contractual agreement to provide parking spaces for the commercial tenants. Mr. Haramis responded that only School of Rock has contracted 1 parking space. She agreed that 10 parking spaces would be dedicated to the residential tenants. She explained that the remaining 2 parking spaces could be flexible. Thomas Anzevino asked how many parking spaces would be

ADA accessible and Mr. Petriello answered that 1 parking space would be ADA accessible which is required. Douglas Herrick asked about parking enforcement. Ms. Haramis agreed to install signage. Board Attorney Kaczynski asked if the Applicant would grant the Borough Title 39 jurisdiction allowing illegally parked cars to be towed and signage indicating the same to be installed. Ms. Haramis agreed to this Condition. Board Engineer Polyniak had his question answered.

Chairperson Panny invited the public to ask questions of Ms. Haramis but no one came forward.

Mr. Petriello summarized that all of the bulk setback variances are pre-existing and the requirements for the D(1) use variance Medici standard or the D(2) pre-existing nonconforming use variance have been satisfied. He added that the parking requirements would be satisfied and requested that the Board approve the application. Board Attorney Kaczynski listed the variances being sought as:

1. 1-Use variance to allow a total of 5 residential units and 3 commercial units where the subject property is split zoned between the Restricted Commercial RC zone and Garden Apartment GA zone
2. 2-Lot area variance for Lot 3 (Garden Apartment GA Zone) existing lot area of 6,369 square feet where 7,500 square feet minimum is required
3. 3-Lot width variance for Lot 3 (Garden Apartment GA Zone) existing lot width of 60' where 75' minimum is required
4. 4-Rear yard setback variance for Lot 3 (Garden Apartment GA Zone) existing 0' where 20' minimum is required
5. 5-Side yard setback variance for Lot 3 (Garden Apartment GA Zone) existing 0' where 10' minimum is required
6. 6-Rear yard setback variance for Lot 4 (Restricted Commercial RC Zone) existing 4.14' where 20' minimum is required

Chairperson Panny invited the public to comment on the application. Dave Wiseman of 522 Bergen Avenue confirmed that the Applicant is not seeking a parking variance. He believes that the Borough should pursue parking requirements for the commercial businesses which is a burden on the residents of the adjacent streets. Board Engineer Polyniak explained the Borough parking ordinance for the Restricted Commercial RC zone based on 80% floor area ratio (FAR) which does not apply to this application. Derek Eisenberg commiserated with Mr. Wiseman as he lives close to West Pleasant Avenue.

Chairperson Panny invited the Board to comment on the application. Harry Hillenius recalled that restaurants were required to have parking based on the amount of seating when he was the Zoning Officer years ago. Chairperson Panny requested clarification on the proposed parking. Mr. Petriello explained that the 1 ADA accessible parking space is included in the 10 residential parking spaces. Discussion ensued regarding the ADA accessible parking space requirements. Chairperson Panny confirmed that the proposed refuse/recycling shed would be for the residential units only and not the commercial units. Mr. Evans indicated on the site plan where the proposed refuse/recycling shed would be located. Board Engineer Polyniak requested that the dumpster for the commercial units be screened by an enclosure as a Condition of Approval and Mr. Petriello agreed to the Condition. Board Attorney Kaczynski confirmed that the

commercial units use a private garbage/recycling collector and residential units use municipal collection. Board Engineer Polyniak requested that the 2 separate refuse enclosures be shown on the site plan to the satisfaction of his office and Fire Official Tuttle's office as a Condition of Approval. Mr. Petriello agreed to the Condition.

Councilperson Louis Roer of 663 Maywood Avenue asked for clarification of the proposed parking spaces. Mr. Petriello explained that there are 10 residential parking spaces proposed which includes 1 ADA accessible parking space. There was discussion about how the ADA accessible parking space would be used if there was no tenant that needed the ADA accessible parking space. Board Engineer Polyniak noted that the Applicant is proposing 1 electric vehicle (EV) charging space which would count towards 2 parking space obligations. Discussion ensued. Board Attorney Kaczynski summarized that the Applicant is proposing 9 parking spaces for the residential units in total which would include 1 ADA accessible and 1 EV charging. Harry Hillenius is concerned about parking demand. Thomas Anzevino believes that the proposed parking satisfies the requirements and will be safe. Derek Eisenberg considers mixed use of residential and commercial uses to be complimentary. Chairperson Panny understands that the Applicant satisfies the parking requirements. Douglas Herrick considers the application an expansion of pre-existing nonconforming use with pre-existing bulk variances. Gary Neumann believes that this application is in compliance with the Housing Element and Fair Share Plan. He feels that the Applicant has a satisfactory proposal which satisfies the parking requirements. Vice Chairperson Anthony Klymenko believes that the Applicant has satisfied the parking requirements.

Board Attorney Kaczynski listed the Conditions of Approval agreed to by the Applicant:

1. Compliance with all COAH obligations and development fee ordinances, if applicable
2. HVAC to comply with all noise requirements and screening requirements per the Board Engineer review
3. Applicant is bound by all testimony, submissions and exhibits
4. All Conditions of the Board Engineer review will be addressed including televised laterals and/or replacement to the Board Engineer's satisfaction
5. Roof leader redesign and connections to the Board Engineer's satisfaction
6. All outside agency approvals
7. Compliance with all ADA requirements
8. Any planned amendments must come back to the Board
9. No stucco patchwork on the façade
10. Compliance with all International Fire Code and International Building Code requirements
11. Soundproofing would be installed
12. Alarm system in all parts of the building should be connected
13. 9 parking spaces for the residential units in total which would include 1 ADA accessible space and 1 EV charging space
14. Applicant will work with the Tax Assessor and Post Office to determine proper addresses
15. Condenser should be relocated and fire lanes provided to the Fire Official's and Board Engineer's satisfaction
16. Title 39 jurisdiction with regard to parking is granted to the Borough

17. Refuse areas shall be separated (1 for residential and 1 for commercial) and enclosures of the refuse areas shall be provided to the Board Engineer's and Fire Official's satisfaction
18. Applicant agrees to any additional refuse/recycling collections as may be necessary once all of the units are occupied
19. Residential parking spaces will be reserved with signage

Thomas Anzevino made a motion to approve the application with the Conditions of Approval listed by Board Attorney Kaczynski and Derek Eisenberg seconded the motion. All eligible members present voted in favor of the motion except Harry Hillenius who voted no.

Informal Hearing None

Closed Session None

Old Business

- Review of Application Requirements Checklist (Schedule C)

New Business

- 2023 Meeting Schedule
 - Douglas Herrick made a motion to adopt the 2023 meeting schedule
 - John Gargagliano seconded the motion
 - All eligible members voted in favor of the motion

Open Meeting to the Public

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. John Gargagliano seconded the motion. All eligible members present voted in favor of the motion. The meeting was adjourned at 9:45pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary