

June 9, 2020

*Revised August 12, 2020*

Borough of Bradley Beach  
Zoning Board of Adjustment  
701 Main Street  
Bradley Beach, NJ 07720

**Re: Cotler Residence  
Block 78, Lot 14  
306 Monmouth Avenue  
Our File BBBA 20-07**

Dear Chairman and Board Members:

Our office has received and reviewed an application submitted for Board approval in connection with the above referenced project. Submitted with the application are the following:

- A variance plan consisting of one (1) sheet prepared by Laurence G. Murphy, P.E., of GreenSite Engineering & Consulting, LLC, dated November 19, 2019, with no revisions.
- A garage foundation location plan consisting of one (1) sheet prepared by Russell J. Palubniak, P.L.S. of DPCSS Land Surveyors dated August 7, 2019, with the latest revisions dated August 26, 2019.
- An architectural plan consisting of one (1) sheet prepared by Michael P. Conoscenti, AIA of Michael P. Conoscenti, AIA Architect, dated August 19, 2019, with the latest revisions dated September 15, 2019.

The application has been deemed complete. *Upon further review of the plans, our office has provided additional comments that are noted in bold italic type. Our original review comments remain as noted in the letter dated June 9, 2020. We report as follows* Our office has reviewed the plans to determine if they conform with the requirements of the Borough Ordinance and report as follows:

1. **Property Description**

- A. The property is located at house number 306 Monmouth Avenue (Lot 14, Block 78) with a total area of 7,081.89 square feet.

- B. The existing lot contains a two-story dwelling with detached garage, swimming pool, driveway, and paver patio.
- C. The Applicant is removing the detached garage and proposing a garage apartment.

2. **Zoning and Land Use**

- A. The property is located in the R-1 Residential Single-Family Zone. The existing single-family dwelling is a permitted principal use in this zone.
- B. The existing swimming pool and proposed garage apartment are permitted accessory uses.
- C. The Applicant requires Board approval for *d(1) use* variances *for living space other than on the second floor of a garage apartment and a number of c variances* for side yard setbacks for accessory structure, accessory building height, internal parking spaces, ~~living space other than the second floor of a garage apartment~~, distance between the accessory structure and the swimming pool, impervious coverage, and others as described in this report.

3. **Variations and Waivers**

- A. In accordance with Section 450-26.B.(1), garage apartments, the following variances or existing non-conformities are noted below:
  - 1) In accordance with the Section 450-26.B.(1)(d), garage and common areas are only permitted on the ground floor. The Applicant is proposing two (2) rooms. One is a garage/storage room and the other is a bathroom with a washing machine and dryer. **A *d(1) use* variance is required for the bathroom.**
  - 2) In accordance with the Section 450-26.B.(1)(e), living accommodations are permitted on the second floor only. The Applicant is proposing living space on the ground floor (bathroom) and above the second floor (loft area). **A *d(1) use* variance is required.**
  - 3) In accordance with the Section 450-26.B.(1)(f), the maximum building (peak) height of an accessory structure (garage apartment) is 25 feet. The Applicant is proposing a building height of 25.8 feet. **A variance is required.**

- 4) In accordance with the Section 450-26.B.(1)(h), the minimum number of internal parking spaces is two. The Applicant indicates two (2) internal parking spaces. After review of the architectural plans it is not clear how two (2) vehicles can be stored within the garage area. **A variance is required. We recommend the Applicant revise the plans to include two garage doors.**
  - 5) In accordance with the Section 450-26.B.(4), a private swimming pool is subject to the requirements and limitations of Chapter 406 Swimming Pools. The following variance or existing non-conformities are noted below:
    - a) In accordance with Section 406.B.(4), swimming pools, pool decks, and pump and filtration system shall maintain the following minimum setback of 10 feet to an accessory structure. The proposed garage apartment is approximately 7.5 feet to the swimming pool. **A variance is required.**
- B. In accordance with the Section 450-26.D, area, yard and building requirements, the following variances or existing non-conformities are required:
- 1) In accordance with Section 450-26.D.(1)(d), the minimum front yard setback permitted for a street running east to west (Monmouth Avenue) is 25 feet and for a street running north to south is 15 feet, or the minimum depth of any front yard within the block and fronting on the same street on which the structure fronts, whichever is greater. When the prevailing setback of the existing buildings along a block front is less than the setback requirements, the front yard setback distance may be reduced to the average of front yard setbacks of principal structures on all developed properties on the same side of the street within 200 feet of the property as documented by a map prepared by a licensed land surveyor. The average depth will be from the front wall of the structure, provided that such setback is not less than 10 feet. Front porches shall also be averaged within 200 feet on each side of the lot and within the same block front. The Applicant did not provide the average setback.

The existing front yard setback is 18.61 feet, which represents an existing non-conformity.

- 2) In accordance with Section 450-26.D.(1)(e), the minimum side yard setback permitted is 5 feet and 10 feet. The existing east side yard setback is 4.87 feet, which represents an existing non-conformity. The existing west side yard setback is 10.64 feet, which conforms.
  - 3) In accordance with Section 450-26.D.(1)(i), the maximum impervious coverage permitted is 60%. The existing impervious coverage is 77.5%, which represents an existing non-conformity. The Applicant is proposing an impervious coverage of 77.2%. **A variance is required.**
  - 4) In accordance with Section 450-26.D.(1)(k), the minimum side yard setback (accessory structure) permitted is 5 feet. The Applicant is proposing a side yard setback of 4.8 feet. **A variance is required.**
- C. In accordance with Section 450-26.E.(1)(c), living quarters on the second story of an accessory two-car garage shall require two (2) street parking spaces in addition to those required for the single-family dwelling. The Applicant is not proposing two (2) parking spaces in the garage but providing four (4) parking spaces on the driveway, which conforms.
- D. In accordance with Section 450-41.A.(1), driveways and parking areas installed for one- and two-family dwellings shall be a minimum of eight feet in width inside the property lines and shall be located a minimum of three feet from a side lot line.

The existing driveway is 10 feet wide, which conforms. The existing driveway has no setbacks, which represents an existing non-conformity.

#### *4. Proof Required for Variance Relief*

##### *A. D(1) Use Variance*

*This application requires a use variance pursuant to N.J.S.A. 40:55D-70.d(1) to allow for a use which is not permitted in the zone district. The applicant is proposing a garage apartment with living space on the first (garage) level and in the ½ story, whereas living space is only permitted on the second floor. 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 Township 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.*

**B. C Variances**

*A number of “c” variances are required. There are two types of c variances with different required proofs.*

- 1) *Boards may grant a c(1) variance upon proof that a particular property faces hardship due to the shape, topography, or extraordinary and exceptional situation uniquely affecting the specific property.*
- 2) *Boards may grant a c(2) variance based upon findings that the purposes of zoning enumerated in the MLUL are advanced by the deviation from the ordinance, with the benefits of departing from the standards in the ordinance substantially outweighing any detriment to the public good. The Supreme Court’s ruling in Kaufmann v. Planning Board for Warren Township provides additional guidance on c(2) variances, stating that “the grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of the c(2) case, then, will be...the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”*
- 3) *C variances must also show consistency with the negative criteria as well.*

**4.5. General Comments**

- A. A General Note should be added to the plan indicating the planting area between the sidewalk and curb should be natural grass.
- B. General Note should be added to the plan indicating the existing curb and sidewalk along the frontage will be replaced if found in poor condition.
- C. The Applicant should provide information that taxes are currently paid.
- D. The Applicant shall secure any and all construction permits needed for the project.

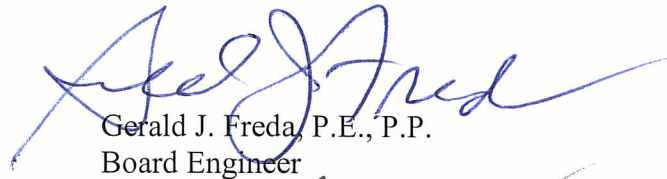
Our office reserves the right to provide additional comments upon receipt of revised plans.

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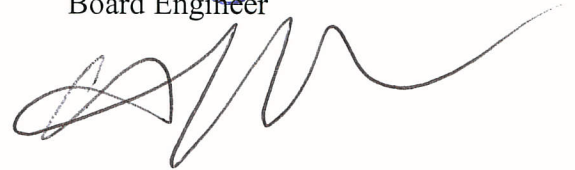
If you have any questions, or require additional information on this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, INC.



Gerald J. Freda, P.E., P.P.  
Board Engineer



Christine Bell, A.I.C.P., P.P.  
Board Planner

DMH:mfl

cc: Kristite Dickert, Board Secretary  
Mark Kitrick, Esq. Board Attorney  
Richard B. Stone, Esq., Applicant's Attorney  
Laurence G. Murphy, P.E., Applicant's Engineer  
Beth and Harold Cotler, Applicant

BB/BA/20/20-07a