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NEW YORK, NY

January 18, 2022

Chairman Dewey Burleson
and Members of the Planning Board
Borough of Hillsdale
380 Hillsdale Avenue
Hillsdale, NJ 07642

Regarding: **Block 1308, Lot 20, Borough of Hillsdale**
76 Broadway
Major Site Plan with Use & Bulk Variances Application PZ-12-21
Applicant: Donald Rubin, Architect
Owner: Flavio Puentes

Dear Chairman Burleson and Members of the Board:

We are in receipt of a Major Site Plan application with Variances that was submitted to the Borough. The applicant also submitted a site plan, survey, architectural drawings, and photographs.

The survey is prepared by Koestner Associates and dated December 8, 2020. The site plan and architectural plans are prepared by Donald Rubin Architect and consist of six sheets dated November 3, 2021.

This application is to appeal an August 31, 2021 denial of the Zoning Official for construction of residential apartments on the second level of an existing retail site on Broadway. The application requires a "d" use variance because apartments are not permitted in the Commercial Zone District.

The Mayor and Council Representative should recuse themselves from the application deliberations due to the use variance being sought.

General Site Description

Lot 20 consists of 6,224 SF (0.14 acre) and is located on the east side of Broadway, south of the Washington Ave. intersection, in the Commercial/"C" Zone District (7,500 SF minimum lot size). The lot is improved with a mixed use building and associated parking. The first level of the building contains two separate stores (a tailor and an interior designer). The second level contains a two-bedroom apartment that is located over the tailor shop, or classified as a low-rise apartment under the R.S.I.S.

The residential apartment use is not permitted in the Commercial Zone District. The subject property is also nonconforming for lot area.

The Application

The applicant proposes both a first and a second level addition. The first level addition consists of approximately 140 SF and contains a new entrance area for the proposed new apartment above. The second level consists of approximately 760 SF and contains a studio apartment.

Residential apartments are not permitted in the Commercial Zone. Therefore, a use (d1) variance is needed for the proposed new apartment. The applicant also has the burden of proof to show that the existing apartment was lawful at the time of its construction or pre-dates the zoning ordinance.

This may be an expansion of a nonconforming use d(2) variance versus establishment of a new, non-conforming use. Information on how the existing apartment came into existence, how long its there, etc. is necessary. If the apartment pre-dates zoning, then the application may be d(2) use variance. However, if it was established via a use variance, that may not be the case.

The applicant will have to provide the necessary proofs for the Board to make the above determination.

Completeness Review

The application is also considered a Major Site Plan due to the required variances and was reviewed against the requirements contained in Land Use Section 310-88, 89, 91 & 92 for Major Site Plan approval, as well as the completeness requirements for variance applications. The checklists were attached to the application forms which the applicant must follow or request waivers form same. The following items are deficient:

Major Site Plan

1. 310-88C: Referrals must be made to the municipal officials listed at least **30 days prior to the public hearing.**

310-88D: Proof by affidavit of the date the department referrals were made (provide proof at the public hearing).

2. 310-89A(2): Key Map showing the location of the tract with reference to surrounding properties and existing street intersections.
3. 310-89(3): Name and address of the owner.
4. 310-89A(5): Property owners within 200 ft.
5. 310-89A(6): The zoning district in which the parcel is located, together with zone boundaries included within the boundaries of the parcel or within 200 feet therefrom.

6. 310-89A(12): Existing and proposed contours.
7. 310-89A(15): Existing water lines.
8. 310-89A(16): Storm drainage within 500 ft.
9. 310-89B(2): The means of vehicular access for ingress to and egress from the site, showing in particular the size and location of driveways and curb cuts; walkways; the proposed traffic channels, if any; additional width, if any; and any other means of controlling vehicular and pedestrian traffic.
10. 310-89B(3): The location and design of any off-street parking areas or leading areas showing size and location of bays, aisles and barrier.
11. 310-89B(4): Lighting Plan.
12. 310-89B (5): The location and elevation plan of existing and proposed signs (if any).
13. 310-89B(6): Landscape Planting Plan.
14. 310-89C(1): Bulk Zone Table: The required parking must be provided based on retail square footage and existing/proposed residential housing. In addition, the table needs to indicate whether a parking variance is needed.
15. 310-89C(4): Details for curbs, sidewalks and other appurtenances shown on the plan.
16. 310-89C(5): Provisions for barrier-free designs.
17. 310-91F (1): Developer's Agreement (to be incorporated with resolution).
18. 310-91F (2): Performance guaranty for dedicated improvements and site safety (to be incorporated with resolution).
19. 310-91F (3): Maintenance guaranty for dedicated and on-site drainage improvements (to be incorporated with resolution).

Based on the submitted application materials, the application is incomplete and may not be scheduled for a public hearing.

Zoning Review

The engineering plans include a bulk table. It appears that the following variances are required:

Existing:

1. **Lot Area:** 6,224 SF existing vs. 7,500 SF required, a difference of 1,276 SF.

Proposed:

2. **Use Variance Pursuant to N.J.S.A. 40:55D-70d(1):** The proposed residential use is not permitted in the Commercial Zone District.
3. **On-site Parking:** five spaces provided versus 17 spaces required.

Use or (d) variance:

A use variance pursuant to N.J.S.A. 40:55D-70d(1) is required when the proposed use is not permitted in the zone district. A use variance requires the applicant to show special reasons for the Board to approve the application. Special reasons are said to exist where the applicant has shown that the proposed project promotes one of the purposes of zoning contained in N.J.S.A. 40:55D-2 or, alternatively, where denying the variance would result in an undue hardship on the applicant.

The zoning purpose most often relied on to prove special reasons is the promotion of the general welfare. Inherently beneficial uses, such as hospitals and day care centers, are typically found to promote the general welfare. However, a use that is not inherently beneficial may be found to promote the general welfare if the proposed site is peculiarly suited for the proposed use.

Promotion of the general welfare requires “particular suitability” and a showing that the property in question must be the location in which the proposed use is to be located. The applicant must show that there is a need for the use in the municipality or in the region.

Additionally, all use variance applications must satisfy the conventional negative criteria, which is a showing that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

For the first prong of the negative criteria, the “detriment to the public good,” the focus is on the impact of the variance on nearby properties. The Board should evaluate the impact of the proposed use variance upon the nearby properties and determine if it will cause damage to the neighborhood character that establishes a substantial detriment to the public good.

For the second part of the negative criteria, “impairment of the zone plan and zoning ordinance,” the applicant must show that the use sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. As an added requirement, for all d(1) variances, such as the current application, an enhanced quality of proof is necessary. The enhanced quality of proof

reconciles the proposed variance with the zoning ordinance's omission of the use among those permitted in the zoning ordinance. This additional proof reflects the required periodic review of the municipal master plan and zoning ordinance.

General Comments

In addition, we offer general comments on the plans as follows:

1. It appears that the existing parking area is shared with adjacent Lot 3. If that is the case, Lot 3 is considered part of the application. The application form must be revised to reflect this, and notice will be required for 200 ft. *from both properties*. This includes the adjacent property owner's consent to file the application.
2. The ingress/egress easement document should be provided to the Board as it is a may be a restriction on the use of the subject property.
3. The applicant needs to provide plans that show the existing parking (it appears striping exists), exterior lighting, landscape plantings, garbage and recycling locations, etc. The applicant is removing greenspace and mitigation for same should be provided.
4. Based on proposed 1,915 SF of 1st floor retail/service use, 13 parking spaces are required (Section 310-59). The proposed residential uses requires two parking spaces per unit or four spaces (R.S.I.S. Table 4.4) since the Borough does not have a parking standard in the commercial district for residential use. It appears a total of 17 spaces are required where the applicant is portraying five parking spaces on the site plan.
5. With the additions to the existing building, this should include on-site stormwater management to mitigate the additional impervious coverage.
6. Should the application be approved, the new construction requires payment to the Borough's Affordable Housing Trust Fund.
7. As a condition of approval, all sidewalks and driveway aprons in disrepair must be replaced along Broadway (see photo).
8. The parking lot must be striped and signage provided for barrier-free accessibility for the retail use(s).
9. Fire Lane provisions, signage and striping must be discussed with the Fire Official and represented on the site plan.
10. Bergen County Planning Board approval or a waiver of same must be provided.



We will provide additional comments upon receipt of revised application materials.

Very truly yours,

C. P. STATILE, PA

(Original signed)

Christopher P. Statile, P.E.
Planning Board Engineer

CPS/mr

cc: Donald Rubin, Architect

Tom Behrens, PP

1120.052/Site Plans