

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
ASSOCIATES, INC.

Principals:

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MEMORANDUM

To: Borough of Midland Park Zoning Board of Adjustment
Jessica Harmon, Secretary

From: David Novak PP, AICP

Subject: James DeLucia
Use Bulk Variance Application
Block 10.27 Lot 1
330-336 Prospect Avenue

Date: January 4, 2024

BA#: 4008.02

Introduction

The applicant, James DeLucia, has submitted an application seeking "d(1)" use variance relief to convert a single-family dwelling with a home occupation space to a two-family dwelling for generational housing. The site, which is identified by municipal tax records as Block 10.27 Lot 1, is located at 330-336 Prospect Avenue in the R-1 Residential Zone.

Our office is in receipt of and has reviewed the following documents:

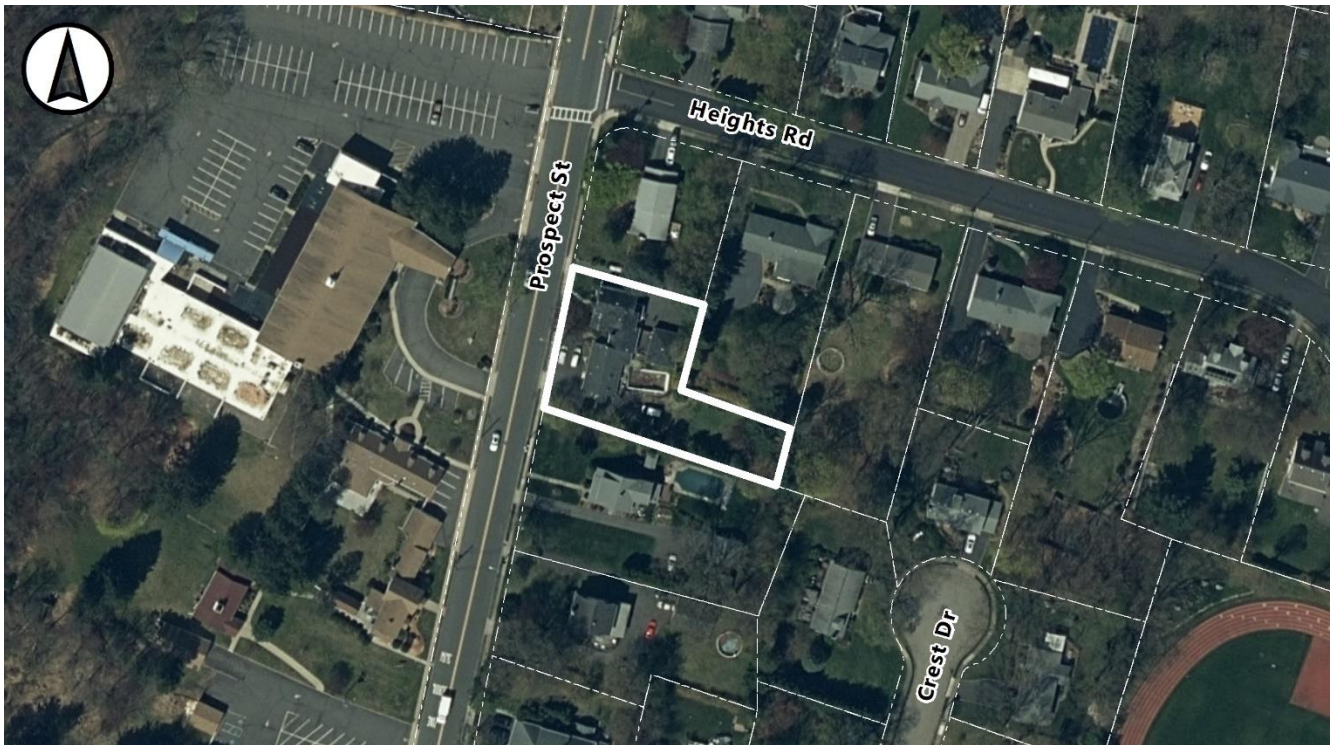
1. Application and site plan checklist
2. Survey prepared by Weissman Engineering Company and dated May 18, 2022 (last revised May 19, 2022).
3. Floor plans dated November 16, 2023 (no revision date).
4. Facade rendering.
5. Letter from Andrew S. Kohut dated December 15, 2023.
6. Application and related materials from 1968.
7. Application and related materials from 1977.
8. Application and related materials from 1984.
9. Application and related materials from 1985.

Property Description

The subject site is located in the north-central portion of the Borough, near the intersection of Prospect Street and Heights Road. The site has an area of 18,784.8 square feet (0.43 acres) and is irregular in shape. It fronts along Prospect Street for 126.33 feet and has a depth which varies between 108.84 feet and 200.23 feet.

The site is presently developed with a single-family dwelling which has historically contained space for a home occupation. As per publicly available tax records, the dwelling was constructed in 1902 and has a floor area of approximately 3,468 square feet. The northerly half of the building comprises two stories, while its southerly half comprises one story. A garage is located to the rear of the dwelling. Access to the site is provided by two driveways: one which extends along the northerly side property line, and one which extends along its southerly side property line. Macadam parking areas exist along the northerly rear and southerly front of the building.

Surrounding land uses consist predominantly of single-family dwellings. The Church of the Nativity is located to the immediate west of the subject site, while Midland Park High School is located approximately 520 feet to the south. See the accompanying aerial for an overview of the subject site and its surrounding environs.



Map 1: Aerial (scale: 1" = 150')

Development and Application History

The following development and application history is offered regarding the subject site.

1. 1968 Lot Line Adjustment. The subject site received subdivision approval for a lot line adjustment in 1968. As a result of this approval, the site received an additional 5,341 square feet of lot area from adjoining Block 10.27 Lot 3 located at 14 Heights Road.
2. 1977 Use Variance Approval. The subject site received use variance approval in 1977. This approval permitted the property owner to lease a physician's office located within the dwelling (which was formerly utilized by the applicant's deceased husband) to another practitioner who did not reside in the residence. A condition of this approval stipulated that this use would only be permitted as long as the property owner resided in the dwelling.
3. 1984 Use Variance Application. An application was submitted in 1984 to rent a portion of the dwelling to a "business couple." It appears that this application was ultimately withdrawn.
4. 1985 Use Variance Application. An application was submitted in 1985 to convert the building on site into a two-family dwelling. This application was denied by the Borough's Zoning Board of Adjustment.

Proposed Development

The applicant seeks "d(1)" use variance relief to convert the existing building into a two-family dwelling. Specifically, the area of the dwelling historically utilized as a home occupation would be converted. As noted in the application materials, the purpose of this conversion is for "generational housing purposes (a.k.a. a mother-daughter)."

The application materials further note that the intent of this conversion is for one portion of the dwelling to be occupied by the applicant and the other portion to be occupied by the applicant's mother. Separate entrances and separate cooking, sleeping, and sanitary facilities are proposed for each unit. The application materials note that the "applicant is not seeking to use the property as a two-family dwelling" and that the applicant "will agree to a deed notice being recorded against the property putting any potential purchaser of the property on notice of the parameters of the approval."

No exterior modifications or additions are proposed.

Master Plan

The following is noted regarding the Borough's master planning documents.

2008 Land Use Plan Element

As per the Borough's 2008 Land Use Plan, the subject site is located in the Single-Family Residential land use category which is designed to identify the locations where detached single-family residential development may occur at a maximum density of 3.5 units per acre. The 2008 Plan notes that the majority of the Borough is located in this category. It corresponds with the R-1 Residence District on the Zoning Map.

2019 Reexamination Report of the Master Plan

The Borough adopted its most recently Reexamination Report of the Master Plan on March 18, 2019. It continues to incorporate the following pertinent goals and associated policy statements.

Goal 1. To maintain and enhance existing areas of stability in the community and encourage a proper distribution of land uses by designating areas which have their own uniform development characteristics. A principal goal of this plan is to preserve and protect the residential character and moderate density of the community by restricting incompatible land uses from established residential areas, and limiting intensities of use to the level, and locations, prescribed herein.

Policy Statement. The Borough of Midland Park recognizes that one of its most significant attributes is its uniform land use arrangement, with limited intrusions of non-residential development in residential neighborhoods. The plan's land use recommendations are designed to protect and reinforce the prevailing detached single family residential development patterns, encourage multifamily development only in those areas specified in the plan and in the Borough's Housing Element and Fair Share Plan, preclude any introduction of incompatible non-residential uses in areas designated for residential use, and reinforce the intensities of use recommended in this plan.

Goal 4. To provide a variety of housing types, densities and a balanced housing supply, in appropriate locations, to serve the Borough and region.

Policy Statement. The Borough policies encourage a varied housing stock and recognize that the State has specifically refined the housing issues to direct attention to the specific need for very low-, low-, and moderate-income housing. Through its Housing Element and Fair Share Plan, the Borough seeks to continue its ongoing compliance with the affordable housing regulations set forth by the Council on Affordable Housing (COAH), the New Jersey Fair Housing Act (FHA), the Uniform Housing Affordability Controls (UHAC), and the applicable requirements of the Courts of the State of New Jersey.

Zoning

The site is located in the R-1 District. Compliance with the R-1 District standards are summarized in the following table. This is based upon estimates from our office as well as information provided in the application materials. The applicant should confirm these estimates.

Requirements	R-1	Existing	Proposed
Min. Lot Area (sf)	12,500	18,784.8	18,784.8
Min. Lot Width (ft)	100	126.3	126.3
Min. Lot Depth (ft)	100	108.8	108.8
Max. Height (ft/st)	2.5/30	2/26	2/26
Max. Building Coverage (%)	30	18.2	18.2
Max. Improved Lot Coverage (%)	45	45.2	45.2
Min. Front Yard (ft)	25	20.9	20.9
Min. Side Yard (ft)	12	14.2/17.2	14.2/17.2
Min. Rear Yard (ft)	25	43.0	43.0

Variance Relief

The applicant has requested variance relief pursuant to NJSA 40:55D-70d.(1) of the Municipal Land Use Law (MLUL) for a use or principal structure in a district restricted against such use or principal structure.

The R-1 District permits single-family dwellings as well as: accessory uses incidental to a permitted use; uses of land and buildings by the Borough for public purposes; automobile parking operated in conjunction with permitted uses; boarders - not more than two per dwelling unit; community residences for the developmentally disabled; home occupations; libraries; and public buildings of a governmental or cultural nature.

As previously noted, the applicant seeks "d(1)" use variance relief to convert the existing building into a two-family dwelling, the purpose of which as noted in the application materials is for "generational housing purposes (a.k.a. a mother-daughter)." The Borough's zoning code does not provide definitions for either "generational housing" or "mother-daughter." It does provide a definition of "dwelling, one-family" which is as follows. As previously noted, the proposed building will have a separate entrance as well as separate cooking, sleeping, and sanitary facilities.

Dwelling, One-Family. A building containing one dwelling unit only and not occupied or designed for occupancy by more than one family. A building intended for occupancy or occupied by two or more families, with a separate and direct means of access to the outside for each family, and provided with separate cooking, sleeping and sanitary facilities for each family, separated from each other, either vertically or horizontally, shall not be construed to be a one-family dwelling.

An applicant requesting a “d” variance must demonstrate that special reasons exist for the granting of the variance, and that the granting of such variance will further the purposes of the MLUL (positive criteria). In addition, the applicant must prove that there will be no substantial detriment to the public good and no substantial impairment to the intent of the Master Plan (negative criteria). For a non-inherently beneficial use, the applicant has an enhanced burden of proof to demonstrate that the site is particularly suited for the use, and that the use is not inconsistent with the Master Plan’s intent.

Planning Review

The following planning review comments are offered.

Res Judicata

As previously noted, an application was submitted in 1985 to convert the building on site into a two-family dwelling. That application was ultimately denied by the Borough’s Zoning Board of Adjustment. Thus, the applicant and the Board should discuss the doctrine of res judicata.

Under the doctrine of res judicata, if the same parties or their privies¹ seek the same relief previously sought in a prior application in the same factual settings, the case may be dismissed on the ground that it has already been decided.

In order for the doctrine of res judicata to be applicable, it must generally be shown that:

1. The second application is substantially similar to the first;
2. The same parties or their privies are involved;
3. There must be no substantial change in the application itself or conditions surrounding the property;
4. There must have been an adjudication on the merits in the first application;
5. Both applications must involve the same cause of action.

It is for the Board to determine whether an application is to be rejected on the grounds of res judicata. The applicant and the Board should therefore discuss whether this application is substantially similar to the first. We note that both the 1985 application and this current application involve the conversion of the building on the subject site into a two-family dwelling. However, in this current application, the applicant notes that the purpose of the proposed conversion is for “generational housing purposes (a.k.a. a mother-daughter)” and that the “applicant is not seeking to use the property as a two-family dwelling.”

¹ “persons having by operation of special doctrines of law a mutual interest in or successive relationship to the same estate or right in the same property (as where one takes property from another by escheat) and succeeding to property with its attendant benefits and burdens” (Merriam Webster Dictionary)

In addition, the applicant also notes in this current application that it “will agree to a deed notice being recorded against the property putting any potential purchaser of the property on notice of the parameters of the approval.” These aspects were not mentioned in the 1985 application.

The applicant and the Board should also discuss whether there have been substantial changes in the application itself or the conditions surrounding the property.

Particular Suitability

In regard to particular suitability, the applicant should be prepared to discuss why the location of the site within the municipality makes it particularly suited for the use despite its zoning, and what unique characteristics of the site make it particularly appropriate for the proposed use. The site’s surrounding development pattern should be discussed, and a comparison of the site to its surrounding properties should be provided. The applicant should discuss the nature of the Prospect Street corridor.

Site Functionality

The applicant should provide testimony as to how the site can function properly as a two-family dwelling. In particular, testimony should be provided as to how vehicles currently circulate the site as well as where those vehicles park. The applicant and the Board should discuss how this circulation and parking pattern may be impacted by the proposed conversion. The applicant should discuss whether separate parking areas are proposed for each half of the building.

In addition, the Residential Site Improvement Standards (RSIS) requires 3.0 parking spaces for a five-bedroom dwelling and 1.5 parking spaces for a two-bedroom dwelling (no parking standard is identified for a one-bedroom unit). Testimony should be provided ensuring that the subject site can accommodate parking for each portion of the building.

Conditions of Approval

The applicant has noted that should the application be approved, “the applicant will agree to a deed notice being recorded against the property putting any potential purchaser of the property on notice of the parameters of the approval.” The applicant and the Board should discuss what these parameters should entail and how they may be enforced in the future.

Furthermore, the application materials note that the “applicant is not proposing and is not seeking a use variance for a typical two-family dwelling.” Accordingly, the applicant and the Board should discuss the propriety of combining the utilities inclusive of water, sewer, and electric. As noted in the application materials, the building presently has separate utilities for the dwelling space and the home occupation space.

<https://burgis.sharepoint.com/sites/BurgisData/Shared Documents/W-DOCS/PUBLIC/Pb-4000series/Pb-4008.02/4008.02 330 Prospect Street - Planning Review 01.docx>