

RESOLUTION
Borough of Union Beach
Planning Board
Union Beach American Legion Post 321
Decided on February 27, 2019
Memorialized on March 18, 2019
Amended Final Minor Site Plan Approval with Use and Bulk Variance Relief

WHEREAS, Union Beach American Legion Post 321 (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for Amended Final Site Plan, with (d)(2) use variance and bulk variance relief on property located at 524 Front Street, also known as Block 21, Lots 7 and 8 on the Tax Map of the Borough, in the W-C Zone; and

WHEREAS, a public hearing was conducted on February 27, 2019;

WHEREAS, the Applicant was represented by Michael Steib, Esq.; and

WHEREAS, the Application was deemed complete and evidence of compliance with the notice requirements was presented establishing that the Board has jurisdiction over the Application.

Some introductory remarks by counsel for the Applicant, describing how the American Legion hall had been rebuilt after Hurricane Sandy, the Applicant is back before the Board seeking Use Variance and Bulk Variance relief, specifically requiring (d)(2) for an expansion of a pre-existing non-conforming use, and bulk variance relief from increasing deficiency in the amount of parking. The first witness on behalf of the Applicant was the Commander of the Post, Mr. Robert Sandin, of Bayview Avenue. He testified that he has been a 25-year member of the Post. He testified that they have had a presence in Union Beach going back to 1923 and had been at the current location since 1953. The lower area is now being used for various activities including a make shift bar and various picnic tables. There are seats at both the bar and at the tables underneath the building. He noted that in terms of noise level or concern of neighbors, the

ordinance requires that live music or other entertainment stops at 10pm. He testified that only members are allowed to serve alcohol in the area in question. He testified that food is provided from the kitchen upstairs and that no cooking goes on downstairs. He said there are no firepits or combustible materials. All deliveries go directly upstairs. The dumpsters are picked up on each Monday.

As it pertained to parking, he said that the same number of spaces there, and that there are numerous pay parking spaces directly across the street. In response to questions from members of the Board, he agreed on behalf of the Applicant to put a gated fence and shrubs across the front to help screen and provide some privacy to those attending or at hall for various functions. He did acknowledge that membership cards must be shown at the bar in order to gain service. There would be no kegs or use of the parking area for any type of activities.

At this point, Ms. Robin Visconi, a neighbor and resident at 807 Second Street, spoke regarding noise levels, in particular with regard to band entertainment. The Board agreed to advise the Borough code official as to NJDEP Noise Control requirements.

The next witness on behalf of the Applicant was Mr. Richard Heuser, professional engineer and land surveyor who was sworn and qualified. He testified that there was no new construction being done on the premises. He testified that there are no new physical improvements. He agreed to coordinate with the Board engineer for the location of the fence and shrubs that was requested to be placed on the front by members of the Board with the consent of the Applicant. It was also, in response to questions of the Board, that the Applicant agreed that the area would not be rented out and that there would be an ADA accessible port-o-john placed on this level on a seasonal basis between May 1 and September 30. At this point, the hearing floor was again open and there were no other persons expressing an interest in asking any

questions of the Applicant or its witnesses.

NOW THEREFORE, the Board makes the following conclusions of law, based upon the findings of fact.

The application before the Board seeks Amended Final Site Plan, along with (d)(2) variance and bulk (c) variance relief as described above.

Under the Municipal Land Use Law, a Zoning Board of Adjustment, when considering a typical (d) variance, cannot grant relief unless sufficient special reasons are shown, there is no substantial detriment to the public good and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance. The burden of proof is on the applicant to establish that these criteria have been met. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law, and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute a special reason. Courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any other purposes of zoning set forth in N.J.S.A. 40:55D-2. However, in the final analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interest of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the

variance will not create an undue burden on the zone or the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the impact of the proposal on the public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect would be substantial. Furthermore, in most (d) variance cases, the applicant must satisfy an enhanced quality of proof and support by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

With respect to the bulk variance, the Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other non-use related Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions; physical features, or other extraordinary circumstances exist which uniquely affect the specific piece of property and limit its development potential in conformance with Ordinance requirements, such that the strict application of a regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Alternatively, under the (c) (2) criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment. These tests specifically enumerated above constitute the affirmative

proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an Applicant for these variances must also show that the proposed relief sought will not cause a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met.

Based upon the application, plans, reports and testimony placed before the Board, the Board finds that the Applicant has met the requirements of the Municipal Land Use Law, case law and City ordinances so as to grant the relief requested. Pursuant to these criteria, the purposes of the Municipal Land Use Law will be advanced and the benefits of granting the relief requested clearly outweigh the detriments.

The uncontroverted evidence before the Board indicates that in this particular circumstance, (d)(2) variance and bulk variance relief can be granted given the historical use of the property, its unique configuration, and the agreement by the Applicant that no other type of use would be permitted on the premises that exceeds parking requirements permitted in the zone, thus triggering the need for further bulk variance relief. The reports from the Board engineer do not raise fundamental objections to the use and bulk variance relief being sought by the Applicant. With regard to the expansion of the downstairs use, in reality the type of use that is being permitted by this approval is consistent with the overall use and enjoyment of the property since its reopening after Hurricane Sandy. There is no evidence before the Board indicating that there is an over intensification of use that would materially or adversely impact the use and enjoyment of surrounding properties. As it pertains to the parking variance relief, the testimony before the Board is that the same amount of parking that has been on premises since its reopening has remained unchanged. The Board acknowledges that there is a significant amount

of public parking available, including pay parking during the summer months, that are available to patrons of the Post. There is no evidence before the Board that granting this relief would pose an undue burden on neighboring property owners to find adequate parking both for residents and for guests.

Based upon the inquiries made by the Board and its professionals, the Board is satisfied that the proposed use is suitable for the property in question. Furthermore, the evidence before this Board indicates there will be no substantial detriment to the public good and no substantial impairment to the intent and purpose of the zoning ordinance or Master Plan by granting this relief.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Union Beach American Legion Post 321 for property located at 524 Front Street, also known as Block 21, Lot 7 and 8 on the Tax Map of the Borough, is determined as follows:

1. The Application for Amended Final Site Plan approval is approved pursuant to N.J.S.A. 40:55 D-50;
2. The requested use and bulk variance relief as recited herein is approved pursuant to N.J.S.A. 40:55D-70(c)(1) and (2) and 70(d)(2).

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:


1. The implementation of the plan shall be implemented strictly in accordance with the plans submitted and approved by the Board.
2. The Applicant shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications from the Board's professionals.

3. Payment of all fees, costs and escrow due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary.

4. Certification of taxes have been paid to the date of approval.

5. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Union Beach, County of Monmouth, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies the within decision was adopted by this Board on February 27, 2019 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on March 18, 2019.



Madeline Russo, Planning Board

FOR: 7

AGAINST: 0

ABSTAIN: 04 *Wells, Connors, Andreuzzi and Cavallo*

Member(s) Eligible to Vote: *Moriz, Faresse and Wade*

Councilmembers Andreuzzi and Cavallo recused themselves from the hearing on this application, since the Applicant was seeking (d) variance relief.