

PLANNING & ZONING EVALUATION

PROPOSED CHILD CARE CENTER & DWELLING UNIT
BLOCK 6, LOTS 11.01, 43, 45 & 47
37 TOMPKINS STREET
TOWNSHIP OF WEST ORANGE
ESSEX COUNTY, NEW JERSEY

PREPARED FOR:

VALLEY SETTLEMENT HOUSE

PREPARED BY:

STONEFIELD ENGINEERING & DESIGN, LLC
92 PARK AVENUE
RUTHERFORD, NEW JERSEY

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JUNE 1, 2023

REVISED DATE
SEPTEMBER 6, 2023



MATTHEW SECKLER, PE, PP, PTOE
NEW JERSEY PROFESSIONAL PLANNER LICENSE #6247

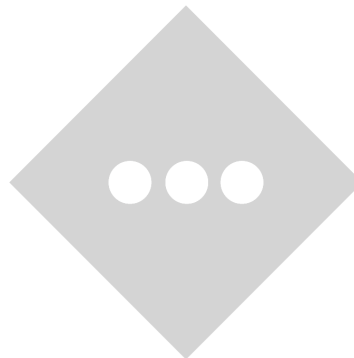


THOMAS RICCI JR., PP, AICP
NEW JERSEY PROFESSIONAL PLANNER LICENSE #6476



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1.0 INTRODUCTION

1.1 PROJECT DESCRIPTION

The subject property consists of four lots (Block 6, Lots 11.01, 43, 45 and 47) however the proposed improvements are confined only Lot 47. The applicant proposes to reutilize the existing vacant building on Lot 47, also known as 37 Tompkins Street in West Orange, New Jersey. Lots 43, 45, and 47 are located in the R-M Multi-Family Residences District and Lot 11.01 is located in the B-1 Retail Business District. The site is bounded by a multi-family residential dwelling to the north, Tompkins Street to the east, commercial buildings to the south, and a mixed-use building in the B-1 zone to the west.

The project proposes to convert an existing vacant building on Lot 47 to house a child-care center with a capacity of 15 children on the ground floor, and a 3-bedroom dwelling for the Valley Settlement House complex caretaker on the second and third floors. No exterior improvements are proposed. The applicant seeks one “d(1)” use variance to permit a child care center and one “d(1)” use variance to permit a mixed-use building, both of which are not permitted uses in the R-M zone. There are also two (2) bulk related “C” variances associated with the project. This Planning Evaluation has been prepared on behalf of the applicant and concludes that the statutory criteria is present to warrant approval of the application.

1.2 RELIEF SOUGHT

The applicant seeks relief for the following variances at 37 Tompkins Street:

1. “d(1)” Use: the R-M zoning district does not permit child care centers;
2. “d(1)” Use: the R-M zoning district does not permit mixed-use buildings;
3. “C” Maximum Building Height: a maximum of 2 ½ stories and 35 FT is permitted, whereas 3 stories and 32.6 FT exists and is proposed; and
4. “C” Minimum Side Yard: a minimum of 10 FT + 8 FT is required, whereas 4.3 FT + 3.9 FT exists and is proposed.

2.0 EXISTING CONDITIONS

2.1 SUBJECT PROPERTY

The subject property is situated along the western side of Tompkins Street between the intersections of Mitchell Street to the north and Freeman Street to the south. Lots 43, 45, and 47 are located in the R-M district and Lot 11.01 is located in the B-I Retail Business District which primarily contains a grass area. Lot 43 contains two 2.5 story frame dwellings and Lot 45 contains one 2.5 story frame dwelling, all used in conjunction with the existing daycare use. Lot 47, which is the subject of this application contains a vacant 2.5 story frame dwelling in the northeast portion of the lot as well as a gymnasium building in the southwest portion of the lot. The northeastern building was formerly used as a library and community center and is the area of the building that will be converted under this proposal. Despite the former use, the architecture of the structure suggests that this building was once a residential home before being converted into a library and community center. The southwestern building is a former gymnasium building that will remain undisturbed. The existing building and subject property do not conform with either the bulk or the use standards of the zoning district.

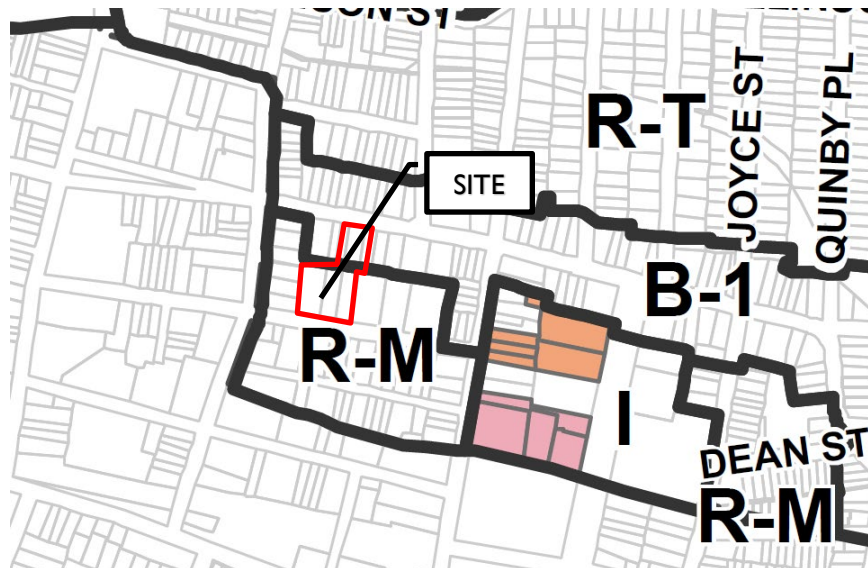
2.2 ADJACENT AREA

Uses immediately adjacent to the site include a multi-family residential dwelling to the north, Tompkins Street to the east, commercial buildings to the south, and a mixed-use building in the B-I zone to the west. The eastern half of the block is in the R-M zoning district, and the western half of the block is in the B-I zoning district. The surrounding area contains a variety of residential and commercial uses. The block is adjacent to the City of Orange Township municipal border.

Figure 1: Aerial Exhibit



Figure 2: Zoning Map



3.0 PROPOSED APPLICATION

3.1 SITE IMPROVEMENTS

The applicant proposes to convert the northeastern building on Lot 47 of the subject property into a ground floor child care center with a dwelling for the Valley Settlement House complex above. Interior improvements include reconfiguring the ground floor into a day care with new restroom and the second and third floor into a three-bedroom residence for use by the complex caretaker. A new private entrance for the dwelling will be added. All other existing exterior improvements shall remain. No improvements to Lots 43, 45, and 11.01 are proposed.

4.0 ZONING REVIEW

Lot 47 of the subject property is located in the R-M Multi-Family Residences zoning district. The R-M zoning district permits one and two family dwellings, multi-family dwellings, well towers, water reservoirs, government buildings, golf courses, greenhouses and similar uses, and hospitals. The proposed mixed-use building with ground floor child care center will require two (2) “d(1)” use variances. The application also requires “C” variance relief as it relates to bulk standards.

4.1 VARIANCE JUSTIFICATION

The project requires two (2) “d(1)” use variances, and two (2) “C” variances. Despite the relief requested, the project is still largely in conformance with the zoning ordinance and zone plan.

As it relates to the proposed development, deviations from the ordinance are outlined in **Table I**.

TABLE I: UNMET USE AND BULK REQUIREMENTS

Code Section	Zoning Requirement	Required/ Permitted	Proposed	Variance
§25-7.1	Use	Dwellings Water Reservoirs Government Buildings Golf Courses Greenhouses Hospitals	Mixed-Use Building	d(1) Variance
§25-7.1	Use	Dwellings Water Reservoirs Government	Child Care Center	d(1) Variance

		Buildings Golf Courses Greenhouses Hospitals		
§25-7.1	Maximum Building Height	2 ½ Stories and 35 FT	3 Stories and 32.6 FT	C Variance (EN)
§25-7.1	Minimum Side Yards	10 FT + 8 FT	4.3 FT + 3.9 FT	C Variance (EN)

Positive Criteria for Granting D(1) Use Variance

Pursuant to N.J.S.A. 40:55D-70d(1), the board has the power to grant d(1) “use” variances, “in particular cases and for special reasons.” The Medici v. BPR Co. case established the appropriate justification of a use variance, which includes the heightened criteria of demonstrating that the site is “particularly suited” for the proposed use. It is important to note that the Price v. Himeji case held that the site does not have to be the only viable site in a municipality to be particularly suited for the proposed use, but instead that the site remains “especially well-suited for the use, in spite of the fact that it is not permitted in the zone”. Additionally, it must be shown that the project carries out the purposes of zoning as defined in N.J.S.A.40:55D-2.

In the case of the proposed application, the location of the proposed use is within the existing Valley Settlement House (VSH) complex and the proposal is intended to expand the organization’s operations. VSH is a non-profit social service agency that has provided services to The Oranges and the surrounding communities for over one hundred years. VSH provides comprehensive childcare and related family services to children of all ages. Their current programs include preschool for 90 children between the ages of 2.5 to 5 years, an after school program for children between the ages of 6 and 13 years, teen nights, and a summer camp for 84 – 90 children each year. The proposed child care center will provide services to an additional 15 children.

The Valley Settlement House complex spans over four adjacent lots, and consists of multiple buildings, outdoor play areas and a large grass area. The existing buildings were built as early as 1910 and the complex requires a full-time caretaker for maintenance and security. The caretaker’s dwelling is intended to serve the inherently beneficial daycare use by utilizing available space in an existing building within the complex, which supports the need for it to be located on this particular site. Additionally, the caretaker’s dwelling will be located in a building that was originally built as a residential building. The project promotes purposes “a”, “g”, and “j” under N.J.S.A. 40:55D-2 by the reasons described above.

Bulk and “C” Variance Justification

As it pertains to the remaining variances being requested, the board has the power to grant “C” variance relief based on “hardship” criteria pursuant to N.J.S.A. 40:55D-70c(1) or based on “flexible” criteria pursuant to N.J.S.A. 40:55D-70c(2). All “C” variance relief associated with this application can be granted under the “flexible” or “C(2)” criteria by demonstrating that the benefits of the project substantially outweigh the detriments. When considering the balance test, the Pullen v. Tp. Of South Plainfield Plan. Bd. 291 N.J. Super. 303 (Law Div. 1995) courts have determined that the board should consider the benefits of the entire application when weighing against the detriments. We find that the benefits of the project as a whole substantially outweigh any detriments for the following reasons:

Maximum Building Height (2 ½ Stories and 35 FT vs. 3 Stories and 32.6 FT)

The height of the existing building complies with the allowed maximum height, however the number of stories is greater than allowed. Therefore, it does not meet the 10 FT or 10% threshold for “d(6)” height variances and is considered a “C” variance. The existing building was built in 1945 and is consistent with the height and scale of the buildings on the street, including the number of stories. The third floor of the building is located under a mansard roof with dormer windows, which diminishes the prominence of the third story. Because of the age of the building and neighborhood, it is more appropriate to adapt the building to a new use, rather than build a new building that is compliant with the ordinance but inconsistent with the appearance of the area. Additionally, the building is intended to house the caretakers dwelling unit which is incidental to the inherently beneficial use of a daycare facility which serves the public interest.

Minimum Side Yards (10 FT + 8 FT vs. 4.3 FT + 3.9 FT)

The zoning ordinance requires a minimum side yard of 10 FT on one side and 8 FT on the other side. The existing site has side yards of 4.3 FT and 3.9 FT. Due to the staggered configuration of the buildings on the site, the side setbacks are not consistent across the lot. The northeastern building has setbacks of 4.3 FT to the north and 39.4 FT to the south, and the southwestern gymnasium building has setbacks of 19.7 FT to the north and 3.9 FT to the south. Therefore, the effect of the smaller side yards is diminished to the neighboring properties. In addition, the Lot to the north (Lot 45) is part of the subject property, therefore the smaller side yard of the northeastern building only impacts the owner themselves. The southern side yard of the lot is adjacent to the rear yards of commercial properties. These rear yards are used for parking, therefore the small side yard of the southwestern gymnasium building has less of an impact on those properties than if they were residential properties with adjacent side yards.

Negative Criteria for all Variances

The Supreme Court identified child care centers as inherently beneficial uses in the Sica v. Board of Adjustment of Tp. Of Wall case. In the case of the proposed application, the expansion of a day care center constitutes a special reason for approval therefore automatically satisfying the positive criteria. The negative criteria is analyzed under the “Sica Balancing Test” which analyzes the following:

1. Identify the public interest at stake;

The Valley Settlement House provides social services to children and families in the community and surrounding area. The proposed project will expand their capacity to serve young children and increase their continued positive impact on the community.

2. Identify the detrimental effect that will ensue from the grant of the variance;

The grant of the variance may slightly increase traffic in the area during drop-off and pick-up times, however the traffic generated by this use will be less intensive than the traffic generated by the former use of the building as a library. The remainder of the site will remain as it is, and existing traffic conditions are expected to be maintained. The residential unit for the complex caretaker will have no substantial impact on the surrounding area. Therefore, no detrimental effects are anticipated by the proposed project.

3. Consider reasonable conditions the board may impose on the use to reduce the detrimental effect;

While no detrimental effects are anticipated, the board may impose any reasonable conditions should they arise.

4. Weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

The proposed project will allow the Valley Settlement House to expand and improve its services to the community by increasing the capacity of the overall complex and providing an updated space for child care services. The project will also reutilize an existing vacant building and therefore isn't intended to impact the neighborhood in a substantial manner. While there may be a minor increase in traffic to the site during certain times, there will be a considerable benefit to the community served by Valley Settlement House.

As pertains to the negative criteria of a “d(1)” use variance and all “C” variances, the board must find that the variances can be granted without substantial detriment to the public good, and will not substantially impair the intent and purposes of the zone plan and zoning ordinance. The project carries out the vision of the Master Plan,

which is to ensure the preservation of historic structures and promote community sustainability and resiliency. The proposed development is substantially consistent with the intent of these goals and expands an important social service in an existing building. The exterior of the buildings will remain in their current condition. No adverse impacts to surrounding properties are anticipated for these reasons.

5.0 CONCLUSION

Based on a review of the subject property, surrounding area, and applicable zoning requirements, it is concluded that the statutory requirements are present to warrant both “d(1)” use variances, and that the “Sica Balancing Test” is satisfied. It is concluded that the bulk variances can be granted under the “flexible” “C(2)” criteria, in which the many benefits of the project that have been provided would substantially outweigh any detriments, which are minimal. Finally, it is concluded that the application can be approved without substantial detriment to public good or substantially impairing the intent and purposes of the zone plan and zoning ordinance. It is the opinion of our office that the statutory criteria has been met for all of the relief required as presented by the planning proofs and the justifications presented in this report.

