

RESOLUTION
Township of West Orange
Planning Board
PB 23-11 Tompkins Realty, LLC/ 34 Tompkins Street
Block: 7 Lot: 12.02; Zone: R-M
Decided on January 3, 2024
Memorialized on February 7, 2024
Application for Minor Subdivision Approval with Bulk Variances

WHEREAS, Tompkins Realty, LLC (Hereinafter the “Applicant”) has made an application for Minor Subdivision Approval with Variances to subdivide an existing lot developed with a two-family home and related improvements into two lots at property located at 34 Tompkins Street, also known as Block: 7; Lot 12.02(the “Property”), in the R-M zone; and

WHEREAS, a properly noticed public hearing was conducted on January 3, 2024; and

WHEREAS, the Applicant was represented by Richard Schkolnick, Esq.; and

WHEREAS, the Applicant provided testimony from Dr. Carmine Allonardo, owner, Frank D. Mileto, A.I.A., as a professional architect and Michael Tobia, P.P., as a planning expert; (the “Witnesses”); and

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package:

ITEM	SIGNED BY	DATE/REVISION
Survey of property	David J. VonSteenburg, PLS	12/8/2021
Minor Subdivision Plat	David J. VonSteenburg, PLS	8/28/2023
Architectural Plans	Frank D. Mileto, A.I.A.	5/9/2023
Planner’s Report	Lisa Phillips, P.P., AICP	10/13/2023

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Witnesses and also had an opportunity to offer statements in regard to the Application; and

WHEREAS, the Board reviewed and considered the Application and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing, including a review memo dated November 29, 2023, from John J. Hess, P.E., PP, CME (Township Engineer) and a Planner's Report by Paul Grygiel, AICP, PP, Township Planner dated October 23, 2023.

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

1. The Applicant is requesting approval for minor subdivision with variances to subdivide an existing lot developed with a two-family house and related improvements into two lots at property located at 34 Tompkins Street, also known as Block 7, Lot 12. 02.
2. The property is 4,098 square feet and is a through lot presently developed as a two-family dwelling on Tompkins Street and a detached one-story garage fronting Stockman Street.
3. The subject property is located in the southeastern section of West Orange and is located on a block bounded by Freeman Street and Mitchell Street.
4. The area surrounding the subject property is developed with a mix of land uses, which include one, two and multi-family residential, commercial and institutional uses.

5. A commercial use is located on the adjacent lot to the north and New Jersey Transit's Highland Avenue railroad station is located two blocks to the east and bus stops are located in the vicinity.
6. The applicant proposes subdividing the existing parcel into two lots with the existing home remaining on Lot A and demolishing the existing garage and replacing the garage with a two-family dwelling above the existing foundation.
7. The proposed two-family house on Lot B would have two bedrooms in each dwelling unit, along with one garage for each unit.
8. The garage for the proposed new two-family on Lot B would allow for two stacked cars, for a total of four off-street parking spaces on Lot B.
9. Applicant proposed construction of a paver parking area for two vehicles in the front of the existing dwelling on Lot A; however, the majority of the Board preferred that the property maintain the front hedge and lawn area which is aesthetically more pleasing and in keeping with the current neighborhood.
10. The Board did not foreclose a request in the future for on site parking in the front of the house on Lot A should conditions which currently are favorable for sufficient on street parking change.
11. Dr. Carmine Allonardo, the property owner's principal, testified that he bought the home from his mother-in-law in December of 2021, cleaned up the existing house with new windows, siding and interior improvements such as new bathrooms and plumbing.
12. Dr. Allonardo testified that the existing garage is falling apart and cannot be used.

13. The existing two-family house consists of a one bedroom unit on the first floor and a three bedroom unit on the second floor, which equates to a required 3.5 parking spaces as per the Code.
14. The proposed new two-family house would have a total of four bedrooms (with two bedrooms per unit) which would require 3 parking spaces (four spaces are proposed).
15. Applicant's planner, Michael Tobia, testified that the proposed new two-family fronting on Stockman Street would be an aesthetic improvement, bringing the street scape which now, though zoned residential, is not a residential street scape, into better conformity with the appearance of a residential zone.
16. As for the front yard setback and position of the new home on Lot B, Mr. Tobia testified that other houses on Stockman (specifically #'s 16, 18 and 22) are built close to the sidewalk.
17. The proposed new two family would be 31 feet high, which is 4 feet less than what is permitted and is three stories, designed as a duplex style with a rooftop amenity constructed with enclosed parapet for safety.
18. The rear yard of the new house on Lot B is proposed to be six (6') feet and the rear yard for the existing two family on Lot A would be 10.7 feet.
19. The Applicant's planner testified that the proposed new lot and two-family house would promote the purposes of the MLUL, specifically paragraphs a. (promote the public health, safety, morals and general welfare), c. (to provide adequate light, air and open space), e. (promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment), g. (to provide sufficient

space for a variety of residential uses to meet the needs of all New Jersey citizens), i. (to promote a desirable visual environment), and h. (to encourage location and design of transportation routes.)

20. As for the negative criteria, Mr. Tobia testified that there was little negative impact caused by the proposed new house and removing blighted buildings (such as the dilapidated garage) is good civic design.
21. The subject property is in the R-M Residential zone, which permits one-family detached dwellings, two-family dwellings and multi-family development, in addition to certain nonresidential uses permitted in all of the Township's residential zones. Therefore, the existing two-family dwelling and the proposed two-family dwelling are permitted uses in the zone.
22. There are a number of existing non-conforming conditions with regard to the R-M zone bulk standards and other zoning regulations, and various new noncompliant conditions that are proposed.
23. The Application requires the following variance relief from the Board:

SECTION/REQUIREMENT	PERMITTED/ REQUIRED	EXISTING	PROPOSED LOT A	PROPOSED LOT B
25-7.1 Minimum lot area- two-family dwelling	7,500 sq. ft.	4,098 sq. ft.	2,584 sq. ft.	1,514 sq. ft.
25.7/1 Minimum lot area per unit- two-family dwelling	3,750 sq. ft.	4,098 sq. ft.	1,292 sq. ft.	757 sq. ft.
25-7.1 Minimum front yard	30 feet	20.5 feet/ 2.4ft	20.5 feet	5.0 feet
25-7.1 Minimum side yard	10 ft. & 8 ft.	2.3 ft./0.3ft.	4.7 ft/0.3 ft.	2.3ft./0.7ft.
25-7.1 Minimum rear yard	30 feet	N/A	10.7 feet	6 feet

25-7.1 Maximum building coverage	40%	45.7%	45.2%	69.6%
25-7.1 Maximum lot coverage	50%	50.4%	63.4%	78.7%
25-12.2a.1 Minimum off-street parking spaces- two-family dwelling	2 BR: 1.5 3BR:2.0 4BR:2.5	Three (3)	Two (2)	Four (4)
25.12.4a.2 Minimum driveway setback to side lot line	5 feet	<5 feet	<5 feet	< 5 feet
25-12.4. b.2 Maximum portion of required front, side or rear yard used as a parking area	30%	Not provided	>30%	>30%

24. N.J.S.A. 40:55D-47 governs the Board's review of the minor subdivision application.

N.J.S.A. 40:55D-47 provides that minor subdivision approval shall be deemed to be final approval of the subdivision by the board, provided that the board or said subcommittee may condition such approval on terms ensuring the provision of improvements. Further, approval of a minor subdivision shall expire 190 days from the date on which the resolution of municipal approval is adopted unless within such period a plat in conformity with such approval and the provisions of the "Map Filing Law," (or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the municipal engineer and the municipal tax assessor. Any such plat or deed accepted for such filing shall have been signed by the chairman and secretary of the planning board. As such, if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

25. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance as part of site plan or subdivision review. The variance proofs are the same as for “c” variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a “c (2)” variance must include benefits to the community as a whole, not just the applicant or property owner. A “c” variance must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. The proposed two-family house on Lot B is a permitted use in the zone.

2. The requested variances satisfy the c (2) criteria as noted in the case of Kaufman v. Planning Bd. For Warren Tp., 110 N.J. 551 (1988) and Pullen v. Tp. Of South Plainfield, 291 N.J. Super. 1 at 9 (App. Div. 1996) “cannot be considered in isolation, but must be considered in the context of its effect on the development proposal, the neighborhood, and the zoning plan.”
3. The proposed two family home satisfies the c (2) criteria because the project as a whole advances the purpose of the MLUL as it satisfies a number of the principals of the MLUL (specifically paragraphs a, c, e, g, h and i), provides needed in-fill housing, and is a significant aesthetic improvement to the neighborhood.
4. The benefits of the project outweigh any negatives.
5. The proposed minor subdivision and related bulk variances for the proposed two-family house meets the goals set forth in the Master Plan.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that approval for minor subdivision with c variances to construct a new two-family house on Lot B is granted; and

IT IS FURTHER RESOLVED that the approval granted to Tompkins Realty, LLC, is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations, and directives, including without limitation, obtaining all applicable local, state, and federal approvals, or permits. If another governmental entity or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view

that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.

2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
3. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
4. The Applicant shall pay all outstanding application fees and technical review fees, board attorney fees for preparation of the resolution, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.
5. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.

6. Applicant agrees to abide by all of the suggestions and directives set forth in the Hess report dated November 29, 2023.
7. The new two-family on Lot B will be constructed with a white roof.
8. The garage area of the two-family house on Lot B may not be used as living space.
9. Trash and recycling containers must be stored in the back of the house or in the garage and not on the street.
10. Rear man doors will be added to the rear of each garage or provide access to the backyard.
11. The fire and sub code official shall each provide guidance for the roof amenity area.
12. No flame producing appliances or grills may be used on the roof amenity area.
13. A wall mounted rubber bumper shall be installed at the rear of each of the garage units.
14. The plans shall be revised to remove the proposed parking area in front of the existing structure on Tompkins Street, with the front hedges and lawn area to remain. Applicant may return to the Board at a later date if parking for Lot A becomes a problem and on-site property is necessary.
15. The property shall be graded to drain toward Stockman Street.
16. The garage shall be equipped and maintained with a functioning warning system to alert pedestrians and vehicles of vehicles exiting the garage. Applicant shall provide notes or cut sheets or similar documentation of the warning system, which shall be subject to review and approval by the Board Engineer.
17. When selecting an automatic garage door system, Applicant must consider noise and safety and such system must be approved by the West Orange Township Zoning Official.

18. Applicant shall perfect the subdivision with a deed to be reviewed by the Township Planning Board Attorney and Township Engineer within the time frame allowed under the MLUL.

The undersigned secretary certifies the decision set forth herein was made by this Board on January 3, 2024, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on February 7, 2024.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on January 3, 2024:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino			X			
L.Klein			X			
S. McCartney			X			
C. Morgan						----
P. Smeraldo		X	X			
W. Wilkes			X			
W. Rutherford			X			
J. Cardoza			X			
R. Bagoff	X		X			

Vote on Memorialization on February 7, 2024:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper						
J. Guarino						
L.Klein						
S. McCartney						
C. Morgan						
P. Smeraldo						
W. Wilkes						
W. Rutherford						
J. Cardoza						
R. Bagoff						