



TOWNSHIP OF WEST ORANGE DEPARTMENT OF ENGINEERING

25 LAKESIDE AVENUE, WEST ORANGE, N.J. 07052

ZAYIBETH CARBALLO
Director/ Municipal Engineer

Tel/Fax: (973) 325-4160

Email: engineering@westorange.org

MEMORANDUM

TO: ZONING BOARD MEMBERS

FROM: ZAYIBETH CARBALLO, P.E., P.L.S., P.P, CME, CFM
DIRECTOR/MUNICIPAL ENGINEER

DATE: MARCH 8, 2024

SUBJECT: ZB-23-12/WASHINGTON
USE VARIANCE FOR ACCESSORY STRUCTURE
4 HARVARD TERRACE (R-6)
BLOCK 41.01, LOT 123



We are in receipt of the following information pertaining to the above-referenced application:

- A. Plan entitled, "Survey of Property, Lot 123, Block 41.01, Township of West Orange, County of Essex, New Jersey". The plan prepared by Morgan Engineering & Surveying, Inc. (David J. Von Steenburg, PLS) is dated October 31, 2022; and
- B. Report entitled, "Professional Planning Report, 4 Harvard Terrace, Township of West Orange, NJ, Block 41.01, Lot 123, Zoning District: One-Family Dwellings on 6,000 square foot lots (R-6), Applicant: Blair and Aja Washington, Zoning Board of Adjustment, Public Meeting Date: TBD, 2023". The report prepared by Nishuane Group and signed by George Wheatle Willims, P.P. and Steven Martini, P.P. is dated December 6, 2023;
- C. Township's Board Application and associated documents.

I. INTRODUCTION

The subject site is located along the Northeasterly side of Harvard Terrace and located within the Township's Residential (R-6) Zone District on a ±0.172 Acres lot. The site is currently developed with a single-family 2-1/2-story dwelling and associated amenities.

The Applicant is seeking relief for conflicts with section 25-4 of the Township's land use regulations to utilize an accessory structure as a child care/ early learning center when it is a non-permitted accessory use.

II. ZONING

This proposal does not meet the requirements noted above, the Applicant must seek relief from the Board pursuant to the Municipal Land Use Law under N.J.S.A. 40:55D-70d.

"D" or "Use" Variance

When considering a "d" variance, relief cannot be granted unless sufficient "special reasons" are shown and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance.

The burden of proof is upon the Applicant to establish the above criteria. 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.

There is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial. Each case must be heard on its own circumstances. Generally, there are sufficient special reasons under two broad circumstances: (1) where refusal to allow the use would impose an undue hardship and (2) when the project carries out a purpose of zoning as set forth in N.J.S.A. 40:55D-2.

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 interests 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 owners of the surrounding properties.

Furthermore, in most "d" variance cases, the Applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by the Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

III. PROPOSED CHILD CARE/EARLY LEARNING CENTER

1. Survey Plan needs to be updated to show the existing accessory structure that is being proposed to be converted into a child care/ early learning center to include dimensions to the adjacent property lines, the height of the structure, square footage and the location of the roof leaders;
2. Applicant should provide testimony as to the circulation of children to/from the proposed child care/early learning center since a sidewalk/path is not shown on the Survey Plan and/or pictures provided;
3. Testimony should be provided regarding licensing and/or certification for the child care/learning center;

4. Planning Report does not indicate the maximum number of children under the age of 13 that will be attending; hours of care and age group of children. The Applicant is advised that if the proposed child care/learning center serves more than six children under the age of 13 is classified as a “Child Care Center” under N.J.A.C. 3A:52-1.2 definition and compliance will be required with NJ Statutes;
5. Testimony should be provided by the Applicant regarding the licensed maximum capacity for the proposed child care/early learning center including staff members required (staff/child ratio per age group) and usable indoor floor space;
6. Testimony should be provided regarding utilities such as heating, ventilation, air conditioning (HVAC), lighting, on-site water, and sewer (restroom) to the accessory structure to be converted in use;
7. Testimony should be provided by the Applicant and Professionals regarding the physical facility requirements for the proposed child care/early learning center are met in accordance with current regulations and compliance with New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23;
8. Should the board approve this application; Applicant shall obtain a Certificate of Occupancy (CO) that reflects center’s compliance with the provisions of the NJUCC; and
9. We recommend an As-Built Survey Plan be submitted prior to the issuance of a CO.

Please contact me if you have any questions.