

Resolution
Township of West Orange
Planning Board
PB-21-02- Goldberg Realty Associates
23 Wilfred Street; Block 140.02; Lot 2; R-G Zone
Decided on June 2, 2021
Memorialized on July 7, 2021
C(2) Variance and Minor Site Plan Approval

WHEREAS, Goldberg Realty Associates (hereinafter the "Applicant") has made an application for C(2) Variance and Minor Site Plan approval to expand an existing leasing office for an apartment complex into an adjacent garage, which would result in the reduction of one existing parking space; such action exacerbates an existing noncompliant condition with regard to the number or parking spaces at property located at 23 Wilfred Street, also known as Block 140.02, Lot 2, in the R-G Zone; and

WHEREAS, a properly noticed public hearing was conducted on June 2, 2021; and

WHEREAS, the Applicant was represented by Lawrence A. Calli, Esq.; and

WHEREAS, the Applicant provided testimony by John A. Buchholz, a professional architect whose credentials were accepted by the Board; and

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

SUBMISSIONS
ITEM

SIGNED BY

DATE/REVISION

Architectural Plans (2 sheets)
Boundary Survey (2 sheets)

John A. Buchholz, AIA, LEED AP
Michael Pronesti, PLS

3/2/21
10/11/06

WHEREAS, representatives of the public asked questions of the witness and had an opportunity to offer statements in regard to the application; and

WHEREAS, the Board reviewed and considered the application, testimony and documents submitted therewith; and

WHEREAS, the Board also considered the input of its professionals at the hearings and in written reports; and

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

1. The applicant is requesting approvals to expand an existing leasing office for an apartment complex into an adjacent garage, which would result in the reduction of one existing parking space. A "c" variance is necessary to allow for the applicant to exacerbate an existing noncompliant

condition with regard to the number of parking spaces. No other changes appear to be proposed to existing site conditions.

2. The property is located at the intersection of Wilfred Street and Mississippi Avenue along the northern boundary of West Orange. The surrounding area is primarily characterized by residential uses, including another apartment complex to the west, although a bus company facility is located on the south side of Wilfred Street across from the subject property.

3. The application requires the following bulk variance relief from this Board:

Section/Requirement	Required	Existing	Proposed
25-12.2 b.1. Minimum number of parking spaces	338	271	270

4. The subject property is just over 10 acres in area and is developed with a garden apartment complex. Parking is provided in surface parking lots as well as in one-story garages. The existing leasing office is located in one of the garage structures in a converted garage bay. The applicant is requesting approvals to expand the existing office into an adjacent garage, which would result in the reduction of one existing parking space. The proposal would replace an existing garage door with two windows and brick infill. A new window surrounded by brick infill would also be provided for the existing office space.

5. The Municipal Land Use Law (MLUL) at 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-70c. A “c(1)” variance is for cases of hardship due to factors such as shape or topography, or due to “an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.” A “c(2)” variance may be granted where 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 applicant also 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.

6. The Applicant requests a waiver from certain Minor Site Plan Checklist items and the Sustainability Checklist.

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

1. This application requires the following variance relief, as well as minor site plan approval:

Section/Requirement	Required	Existing	Proposed
25-12.2 b.1. Minimum number of parking spaces	338	271	270

2. 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 Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the statute.
3. Under the (c)(2) criteria, the Applicant must demonstrate 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.
4. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" variance relief, under Section (c)(2).
5. Also, an applicant for these variances must show that the proposed relief sought will not cause a substantial detriment to the public good and 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.
6. The proposal is limited to converting existing garage space to an office for the Co-Op apartment complex, thereby eliminating one (1) garage space / parking space.
7. The parking required on the property is: 338 spaces; there are 271 existing spaces and 270 are proposed by the elimination of one (1) garage space. Hence, the parking shortfall is already in an existing non-conformity on the property.
8. The removal of one additional garage space will cause no deleterious impacts to the Ordinance, Master Plan or community at large, as the proposal is limited to adding an office within the existing garage space and will allow for the property to better utilize the space to continue to attract and meet with potential residents.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that the application of Goldberg Realty Associates for property located at 23 Wilfred Street, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to N.J.S.A. 40:55D-(c)(2):

Section/Requirement	Required	Existing	Proposed
25-12.2 b.1. Minimum number of parking spaces	338	271	270

2. Minor site plan approval is granted along with the waivers for certain checklist items.

AND IT IS FURTHER RESOLVED that the above approval 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 and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or 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.
3. 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 successors 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.
4. 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.
5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, 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 notification or this approval shall be deemed withdrawn.
6. 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.
7. Applicant shall list all conditions of approval onto a final plan submission.
8. Applicant shall dedicate certain parking spots for visitors and employees to utilize.
9. Applicant shall reduce the number of trash/recycling/debris containers to two and shall increase the frequency of trash pickup on the property in order to sufficiently keep the trash container area clean and clear.

10. Applicant shall maintain and keep up to date all clearly marked fire lanes on the property and shall do the same with respect to signage on the property in accordance with all applicable regulations.

11. Applicant shall submit an up to date post-approval plan.

The undersigned secretary certifies the decisions set forth herein was made by this Board on June 2, 2021, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on July 7, 2021.

Diana L. Chandler-Zimmerman, Acting Board Secretary

Vote on Action Taken by the Board on June 2, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)	x		x			
Guarino			x			
Smeraldo			x			
Klein		x				
Trenk						x
McCartney			x			
McNair			x			
Wilkes (V.Ch)						x

Vote on Memorialization on July 7, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)						
Guarino						
Smeraldo						
Klein						
Trenk					x	
McCartney						
McNair						
Wilkes (V.Ch)					x	

