

# Memorandum

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**TO: MEMBERS OF THE PLANNING BOARD**

**CC: DAN STEINHAGEN, ESQ., BOARD ATTORNEY**

**FROM: SANYOGITA S. CHAVAN, AICP, PP**

**DATE: JUNE 26, 2024**

**RE: BLOCK 1608, LOT 1, 169 BROAD AVENUE (PB 24-08)  
JESSICA SIM  
H2M Project No.: LEON2402**

This memorandum is to provide you with guidance regarding the review of the proposed application to expand a nonconforming use and the proofs required pursuant to N.J.S.A. 40:55D-70(d)(2). I have reviewed the following submitted application materials, along with the Borough's Land Use Ordinance and Master Plan:

- Application prepared by Peter Pulice, RA
- Boundary Survey prepared by Andrew A. Schmidt, Schmidt Surveying, dated May 15, 2024
- Architectural Floor Plans prepared by Pulice/William Architects, dated May 28, 2024 and consisting of five sheets

## **Project Overview**

The subject site is a corner lot, located at the southeastern corner of Broad Avenue and Highwood Avenue, in the A Residential Zone District. The adjacent uses are primarily single-family residential uses. The site is developed to contain a 3-story frame dwelling unit with two appurtenant driveways from Highwood Avenue and Broad Avenue, respectively.

The following are the permitted uses in the zone district pursuant to Section 290-7 of the ordinance:

- 1) Single-family, detached dwelling, used as a residence by not more than one family and not to exceed one such dwelling unit on each lot. Further, this use shall not be deemed to include any accommodation used, in whole or in part, for transient occupancy.
- 2) A home professional office of a practitioner of a recognized profession of a resident who resides on Broad Avenue, Grand Avenue or Fort Lee Road, provided that not more than two persons are employed upon the premises, and that such office shall be part of the dwelling in which the practitioner resides and shall not occupy more than 1/2 of the area of one floor of said building. A home professional office shall not include the office of any person professionally engaged in the purchase or sale of goods kept or displayed on the premises. A home professional office shall not include a biological or other medical testing laboratory except those that are incidental to and used in conjunction with a resident or physician or dentist.
- 3) Home occupations as per Section 290-7.E of the ordinance.

From the application, it appears that the existing use is a two-family residential use with a professional office. The applicant is proposing to expand the living space and reconfigure the existing two-family dwelling unit as follows:

- 1) First floor: Expanding the existing footprint to include a new roofed entry with stairs and a separate entry for the second unit. Enclose the existing porte-cochere and open porch to be used as a living, dining and kitchen. Convert the existing kitchen into a bathroom, breakfast room into a bedroom, and existing dining room into a library.
- 2) Second floor: The second floor will be reconfigured to replace the existing four bedrooms with a living, dining, kitchen, study, powder room, and one bedroom with a bathroom.
- 3) Third floor: The third floor will be reconfigured to replace the existing living, dining, kitchen, and two bedrooms with two bedrooms and a playroom.

From the plans it appears that currently Unit A occupies the first and second floor, while Unit B occupies the third floor. This will change to Unit A occupying the first floor and Unit B occupying the second and third floor. Although the proposed use will continue to remain as a two-family house with a professional office, the second dwelling unit (Unit B) is expanding from a 2-bedroom apartment to a 3-bedroom apartment with a playroom. The playroom could potentially be converted into a fourth bedroom. The proposal intensifies the existing nonconforming use and thus requires variance relief pursuant to N.J.S.A. 40:55D-70(d)(2) or a “d-2” variance.

**Use Variance Comments**

As mentioned in the prior section, the existing two-family use is not permitted in the zone district and requires variance relief pursuant to N.J.S.A. 40:55D-70(d)(2). While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review. An applicant for a D-2 variance permitting an expansion to a lawfully created preexisting nonconforming use need not show that it would have been entitled to a variance for the initial nonconformity, but it must nevertheless satisfy the positive and negative criteria.

- A. Positive Criteria: To satisfy the positive criteria, also known as “special reasons”, the applicant must demonstrate that a proposed project carries out a purpose of zoning OR that there is a substantial practical hardship to the development of a conforming structure on the property. The board must keep in mind that the only “special reasons” that can be considered are those which promote the general purposes of zoning.

“Special reasons” – In *Burbridge v. Mine Hill Twp* the court instructed that the term “special reasons” takes its definition from the purposes of zoning.

- 1) Promotes purposes of MLUL
- 2) Promotes purposes of Master Plan
- 3) Promotes purposes of SDRP
- 4) The site must be particularly suited to the proposed use.

- B. Negative Criteria: Should the applicant satisfy the positive criteria; it must also be demonstrated that the granting of the variances can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan. Impact to the public good typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. Substantial detriments are usually nuisance related such as noise, dust, trash, parking, traffic, visual distraction, light and aesthetics that cannot be adequately mitigated. The applicant should address any impacts to the character of the neighborhood resulting from the proposed intensification of the use with the subdivision. Testimony should be provided to address the following:

- 1) Will not cause a substantial detriment to the public good.

- 2) Impacts on the surrounding properties and the character of the neighborhood should be evaluated.
- 3) Will not substantially impair the intent and purpose of the zone plan and zoning ordinance.