

Planning & Real Estate Consultants

November 4, 2020

Borough of Morris Plains Planning Board
531 Speedwell Avenue
Morris Plains, NJ 07950

RE: Application for Minor Subdivision Approval with Variances and Waivers
Planning Board Application #: PB-5-20
Applicant: Howard Kraus
Block 37, Lot 7
7 Carlyle Avenue
R-3 Residence District
Review Letter

Dear Members of the Planning Board:

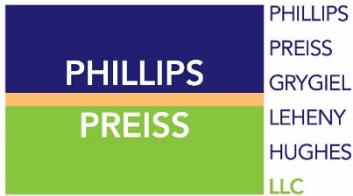
Introduction

The Applicant (i.e., Howard Kraus) proposes to subdivide a property located at 7 Carlyle Avenue into two lots which would be Block 37, Lots 7 and 8. The Applicant seeks variances for minimum lot size and lot width on each of the two proposed lots.

Documents Reviewed

The following documents were reviewed:

- Application for Development
- Schedule A
- Schedule F
- Zoning Denial letter dated March 19, 2020 and signed from Donald C. Salerno
- Letter from Paul Anderson, PE, PP, CME dated March 12, 2020
- Certified List of Property owners within 200 feet
- Certification of Tax Collector that taxes are paid
- Proposed Notice to Property Owners
- Proposed Notice for Newspaper
- Letter from Heritage Abstract Company dated March 3, 2020
- Morris County Planning Board Application
- Color photographs of each lot within 200 feet of the property
- Sheet S-1: Minor Subdivision- 7 Carlyle Avenue- Block 37, Lots 7 and 8, Borough of Morris Plains, Morris County, New Jersey prepared by John J. Hanlon, Professional Land Surveyor dated August 3, 2018 with revisions through October 20, 2020
- Sheet S-2: 500 Foot Radius Map- 7 Carlyle Avenue- Block 37, Lots 7 and 8, Borough of Morris Plains, Morris County, New Jersey prepared by John J. Hanlon, Professional Land Surveyor dated August 3, 2018 with revisions through August 11, 2020



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Description of the Site and Surrounding Uses

The subject property is located in the southwestern portion of the Borough on the east side of Carlyle Avenue near its intersection with Hawthorne Avenue. It is comprised of one tax lot: Block 37, Lot 7 measuring approximately ±12,000 square feet (0.344 acres). The lot is in the R-3 Residence District. The rear yard lot line abuts residential lots facing Homer Avenue and the southern lot line abuts residential lots facing Hawthorne Avenue (although 33 Hawthorne Avenue at the corner of Carlyle Avenue and Hawthorne Avenue has frontages on both roads). Lot 7 is currently improved with a 2-story single-family dwelling. The house is set back approximately 11 feet from the right side (southern) lot line and just under 65 feet from the left side (northern) lot line. A driveway runs along the north side of the house.

Summary of Proposed Project

The Applicant (i.e., Howard Kraus) proposes to subdivide the existing Lot 7 into two rectangular lots which would be identified on the Official Tax Maps of Morris Plains as Block 37, Lots 7 and 8. The existing home on Lot 7 would remain. The proposed lots would each be 7,500 square feet (0.172 acres). The lots would have 50 feet of frontage on Carlyle Avenue and extend 150 feet deep.

Zoning Compliance

The R-3 zone requires that lots be 7,200 square feet within 120 feet of Carlyle Avenue. The proposed lots would each be 6,000 square feet within 120 feet of Carlyle Avenue necessitating a “c” bulk variance. Additionally, the R-3 zone requires a minimum lot width at the building setback line to be 60 feet. The proposed lots would each be 50 feet at the 25 foot front yard setback line also requiring a “c” bulk variance. There is also an existing non-conformity on the proposed Lot 7: the existing dwelling is 24.8 feet from Carlyle Avenue where 25 feet is required.

Comments on Application

Below are comments on the review of the submitted application for the proposed project. Please note that this is based on an initial review of the application and I reserve the right to make future comments or request additional information as the hearing process on the application progresses.

There are “c” bulk variance(s) required in connection with the application. There are two forms of affirmative proof related to “c” variances:

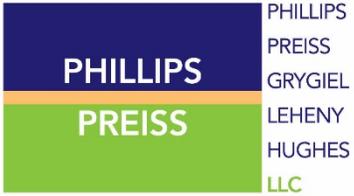
- Either the Board must find, under the Municipal Land Use Law at N.J.S.A. 40:55D-70c(1) that “by reasons of exceptional narrowness, shallowness or shape of a specific piece of property...the strict application of any regulation...would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the developer of a property.” In Cox and Koenig’s N.J. Zoning and Land Use Administration (2018) it states that “the term undue hardship has been variously interpreted, but in Lang v. Zoning Board of Adjustment, (1999), the Court made clear that it refers solely

to particular physical conditions of the property as those are described in subsection c(1) of the statute.” The hardship standard does not require that the applicant prove that without the variance the property would be zoned into inutility. Per Cox and Koenig, the c(1) applicant need only demonstrate that the property’s unique characteristics inhibit “the extent” to which the property can be used.” Further in Pereira v. Randolph Planning Board (2002), the hardship is defined as “substantial underutilization of the property” resulting from the unusual shape of the property in relation to the abutting property.

- Or, alternatively, the Board must find, under the Municipal Land Use Law at N.J.S.A. 40:55D-70c(2), that one or more purposes of zoning would be advanced by the deviation and the benefits of granting the variance(s) for this specific piece of property would substantially outweigh any detriment. Kaufmann v. Planning Board for Warren Township, (1988) stated that “by definition, then, no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a c(2) case, then, will be not on the characteristics of the land that, in light of the current zoning requirements, create a “hardship” on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

In addition, the Board must be satisfied that the granting of the variance(s):

- Would not cause substantial detriment to the public good. Per Koenig and Cox, “the focus of the substantial detriment prong of the negative criteria is on the impact of the variance on nearby properties.” In other words, the Board must evaluate the impact of the proposed variance on adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.” In this instance, the neighborhood can be defined as properties within 200 feet of the subject property. The Board should evaluate whether granting the variance would create two lots with characteristics in terms of size and lot width as nearby lots; or
- Would not substantially impair the intent and purpose of the zone plan and zoning ordinance. In other words, the Board must evaluate whether the proposed subdivision would present a better zoning alternative at this location than exists in the current lot configuration.



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Should you have any questions on the above, I will be pleased to answer them at the public hearing on the completeness of the proposed application.

Respectfully submitted,

Elizabeth C. Leheny, AICP, PP