

RESOLUTION NO. 2024-006
Borough of Roselle Park
Land Use Board
In the Matter of Tony Conigliaro
Decided on December 18, 2023
Memorialized on January 22, 2024
Variance Relief

WHEREAS, Tony Conigliaro (hereinafter the "Applicant") has made application to the Roselle Park Land Use Board for variance relief for property known as Block 204, Lot 7, as shown on the Tax Map of the Borough of Roselle Park, located at 607 W. Westfield Avenue in the B-3 Zone (hereinafter the "Subject Property"); and,

WHEREAS, a public hearing was held on December 18, 2023, after the Board determined it had jurisdiction; and,

WHEREAS, the Applicant was not represented by counsel.

NOW THEREFORE, the Land Use Board makes the following findings of fact, based on evidence presented at its public hearing, at which a record was made.

This variance application seeks to expand an existing front porch of a detached 2-family residence requiring d (2) and "c" variance relief for the Subject Property, located in the southwest portion of the Borough. The following documents were reviewed:

- A set of architectural plans entitled "Alterations for Conigliaro Residence, 607 West Westfield Ave, Roselle Park, NJ", consisting of three (3) sheets, prepared, signed and sealed by Theodora Boyadjis, RA, of Theodora Boyadjis Designs, LLC, dated September 9, 2023, and last revised October 31, 2023;
- A Boundary Survey of Tax Lot 7, Block 204, 607 West Westfield Avenue, Borough of Roselle Park, Union County, New Jersey dated September 6, 2023, prepared and signed by John J. Butler PLS, of Butler Surveying & Mapping Inc.;
- Municipal Land Use Board Application Package dated October 29, 2023;
- Board Planner Review Memo dated November 9, 2023; and
- Board Engineer Review Memo dated December 11, 2023.

The property is a 3,604 square-foot rectangular-shaped parcel with 34 feet of frontage along West Westfield Avenue (State Route 28) to the SE, and shares lot lines with the following tax lots within Block 204: Lot 6 (NE side), Lot 4 (NW rear) and Lot 8 (SW side). The property is 106 feet deep and contains an existing 2-story frame dwelling. The site is improved with an asphalt driveway located between the property and Lot 8, which leads to parking within the rear yard. There is a small porch and paver areas off the rear of the dwelling per the submitted survey. A new front porch with steps provides access to separate entrances to each unit of the 2- family dwelling. A review of publicly-available aerials indicates that portions of the steps of the former front porch ("former front porch") connecting the existing sidewalk is within the State Route 28 Right of Way ("SR 28 ROW").

Briefly, ARTICLE XXIV (B-3 Arterial Business District) § 40-2402.A (PERMITTED USES) of the Ordinance establishes permitted principal and accessory uses for the B-3 Zone District. This section of the Ordinance was revised by Ordinance No. 2665 (adopted October 7, 2021), referred to as the "2021 Ordinance Revisions" within this Review. These revisions included removing the following text, identifies as former § 40-2402.A.1 in this Review (“Any use permitted in the Residence Office Building and Central Business Districts”).

Public records confirm that the residential use of the Subject Property existed prior to the 2021 Ordinance Revisions, with the first and second floor dwelling units containing 2 and 3 bedrooms, respectively. As a result of the 2021 Ordinance Revisions, the two (2) family dwelling on the Subject Property a classified as a preexisting non-conforming use.

The Applicant proposes a new porch and steps to provide access the existing 2-family home, in a similar location to that of the area previously occupied by the former front porch. The existing steps are in poor condition and require repair. In order to improve the entrance serving

both dwelling units, the Applicant wishes to widen the steps and remove an existing window in order to install a door, which will allow elimination of the current interior vestibule. The modification of the front platform will further encroach into the right of way, but to such a limited degree as to minimize and conflicts with pedestrian usage of that right of way. The Applicant further testified that this change is also required to satisfy the building code and that no other changes are proposed.

The Applicant requires the following variance relief. First, variance relief pursuant to N.J.S.A. 40:55D-70d(2), Expansion of Nonconforming Use is required given the 2021 Ordinance Revisions. Second, variance relief pursuant to N.J.S.A. 40:55D-70c is required for minimum front yard (20 feet required; less than 20 feet existing and proposed). ARTICLE XIX (R- 3 Four-Family Residence District), § 40-1904.A (Area Regulations, Front Yard). The following pre-existing nonconformities are proposed to remain unchanged: (i) minimum side yard (6 feet required, 4.2 feet existing and proposed (NE Side Yard); (ii) minimum lot area (15,000 feet required, 3,604 square feet existing and proposed); (iii) minimum width and frontage (75 feet required, 34 feet existing and proposed); and (iv) parking in the front yard in any residence district not permitted.

There were no members of the public present expressing an interest in this application.

NOW THEREFORE, the Land Use Board makes the following conclusions of law, based on the foregoing findings of fact.

The application before the Board is a request for variance relief to expand the existing front porch of a detached 2-family residence on the Subject Property. Under the Municipal Land Use Law, the Board, acting in its capacity as a board of adjustment, when considering a “d” variance, cannot grant relief unless sufficient special reasons are shown and there is no

substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance. In addition, 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.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, 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. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of

the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

In reviewing the application, plans and testimony, the Board concludes the Applicants have met the minimum requirements of the Municipal Land Use Law, Case Law and Borough Ordinances to a sufficient degree so as to enable the Board to determine that the variance criteria is satisfied. The Applicant requires variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(2) for expansion of a preexisting nonconforming use. An applicant seeking approval for an expansion of a preexisting nonconforming use must satisfy both the positive and negative criteria under the Municipal Land Use Law. In regard to the positive criteria, an applicant must show that there are special reasons for the grant of the variance. However, an applicant for a d(2) variance does not have to show that a variance could have been properly granted to create the use initially. See Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 281, 282 (1967). The Courts have also found that special reasons can be shown by a reduction in the nonconformity of the use. Special reasons can also be met by showing that the application meets one or more purposes of the Municipal Land Use Law.

As regards the affirmative criteria, the Board first concludes this is a specific piece of land and is truly unique, having been impacted by the 2021 Zoning Amendments that rendered the existing residential use non-conforming. The steps requiring improvement to satisfy the building code already encroach into the public right of way, and the slight increase in that encroachment appears to have no discernable impact on the public right of way. The Board believes the proposed improvements will provide a safer means of providing pedestrian ingress and egress to the existing dwelling units. The Board also believes that it meets a number of the purposes of zoning as contained in the Municipal Land Use Law. Further, with the

improvements discussed at the hearing, the Board believes that this will result in an improvement to the property, as the improvements are both appropriate and represent a good civic design. Clearly this is an improvement and satisfies the affirmative criteria.

As regards the negative criteria, the Board concludes this will not negatively impact the public good nor the zone plan or zone scheme for the area. As noted, this existing two family dwelling was rendered non-conforming only recently as a result of the 2021 Zoning Amendments, which were not intended to prevent preexisting residential properties such as this from being maintained and improved in order to meet building codes. Further, the proposed improvements to the front steps and porch will enhance the visual appearance of the parcel. Finally, with regards to the zone plan and zone scheme, the Board concludes the Applicants are making improvements which when taken in their entirety are appropriate and fit with development patterns and, therefore, the Board concludes no negative impact will result.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a

specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board recognizes that the Applicants require “c” or bulk variance relief in regard to the minimum front yard (20 feet required; less than 20 feet existing and proposed); ARTICLE XIX (R- 3 Four-Family Residence District), § 40-1904.A (Area Regulations, Front Yard). The Board concludes that this condition is preexisting and is only being slightly exacerbated to accommodate the expanded porch/steps required to provide safe pedestrian ingress/egress. The Board finds that the Applicant has satisfied both the positive and negative criteria for granting “c” or bulk variance relief for the requested variances which are preexisting and which is only being slightly exacerbated as a result of the proposed improvements. Continued use of the public right of way fronting the Subject Property will not be impacted to any discernable degree. The Board finds therefore that “c” variance relief can be granted without substantial detriment to the public good and without substantial impairment of the zone plan and zoning ordinance. The Board further finds that the benefits of the deviations substantially outweigh any detriments and,

thus, the Applicants are entitled to variance relief under both c(1) and c(2) of the Municipal Land Use Law.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board that the application of Tony Conigliaro for Block 204, Lot 7, as shown on the Tax Map of the Borough of Roselle Park, located at 607 W. Westfield Avenue in the B-3 Zone, requesting variance approval is granted pursuant to N.J.S.A. 40:55D-70d and N.J.S.A. 40:55D-70c, subject to the following terms and conditions:

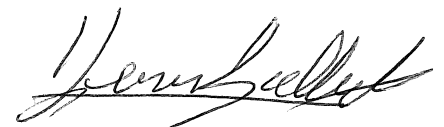
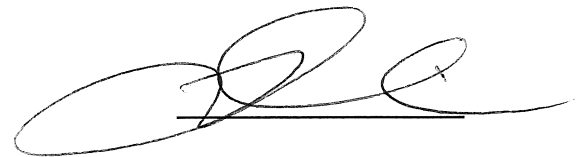
1. The development of this parcel shall be implemented in accordance with the plan submitted and approved.
2. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
3. Certificate that taxes are paid to date of approval.
4. Union County Planning Board approval, if necessary.
5. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Roselle Park, County of Union, State of New Jersey, or any other jurisdiction.

The undersigned Chairman certifies the within resolution was adopted by this Board on December 18, 2023 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 22, 2024

FOR:

AGAINST:

ABSTAIN:



Board Member(s) Eligible to Vote:

RPMLU-017E Tony Conigliaro 1-22-2024 Resolution Granting Variance Relief SRT(3438301.1)

Member Class	Board Members	Motion	Second	Yes	No	Abstain	Not Voting	Absent
Class I	Mayor Joseph Signorello						✓	
Class II	Andrew J. Casais						✓	
Class III	Councilman Jay Robaina					✓		
Class IV	Jorge Casalins			✓				
Class IV	Nicola Cristofaro		✓	✓				
Class IV	John Curia			✓				
Class IV	Loren Harms	✓		✓				
Class IV	Kevin Kolbeck			✓				
Class IV	Michael Quiroga					✓		
Alternate No. 1	Christian Camilo					✓		
Alternate No. 2	Richard G. Templeton III			✓				
Alternate No. 3	Darwin Roman					✓		
Alternate No. 4	Vrutti Patel							✓