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October 7, 2021

Jan Meyer, Chair
Township of Teaneck Zoning Board of Adjustment
Municipal Building
818 Teaneck Road
Teaneck, New Jersey 07666

RE: Application #ZB 2020-22
Preliminary and Final Site Plan Approval with Variances
54 West Englewood Ave LLC
54 West Englewood Avenue and 1347 Merserau Terrace
Block 4905 Lots 2 and 3
R-S Residential Single-Family Detached District
REVISED REVIEW LETTER

Dear Chairperson Meyer and Members of the Board:

The following is a review letter of the above-referenced development application. The following documents have been reviewed:

- Application for Approval of Site Plan with Site Plan Checklist
- Appeal for Variance from Certain Provisions of the Zoning Ordinance
- Site Plan for Proposed Multi-Family Residence No. 54 West Englewood Avenue, consisting of 6 sheets, prepared by Hubschman Engineering, PA, dated April 3, 2020 with Revisions through August 19, 2021.
- Architectural Plans for Multi-Family Residence, 54 West Englewood Avenue, consisting of 8 sheets, prepared by Chris Blake Architect dated May 7, 2020 with Revisions through August 19, 2021.

Project Description

The applicant is seeking preliminary and final site plan, "d(1)" use variance and "c" bulk variance approval in order to construct a new multifamily residential building consisting of 20 units within three residential floors over a parking level, as well as other associated site improvements. Multi-family residences are not permitted in the R-S district and so a "d(1)" use variance is required.

The site consists of two lots measuring 19,294 square feet and is located on the south side of West Englewood Avenue (Lot 2) and the east side of Merserau Terrace (Lot 3) to the west of Teaneck Road.

On Lot 2 there is a two-story single-family home with detached garage and shed. On Lot 3 there is a two-story brick dwelling. The existing improvements on the lots would be removed as would all of the existing trees and shrubs.



Land use in the vicinity of the site consists of single-family residential buildings. There is a three-story multi-family residential building on the north side of West Englewood Avenue to the northeast of the proposed project. There is commercial development along Teaneck Road in the vicinity of the site.

The first floor of the building would be comprised of 34 parking stalls inclusive of two ADA spaces, entrance lobby, trash room and mechanical rooms, as well as two stairwells. A total of 23 spaces are proposed to be unenclosed partially or fully under the building, and 11 spaces are proposed to be surface parking to the south of the building. Eight surface parking spaces are proposed to be compact in size, with nine feet in width and 16 feet in length, on the south row of parking spaces. The remaining spaces are proposed to be nine feet wide and 18 feet in length. Access to the parking area is proposed from two two-way curb cuts on Merserau Avenue.

The second and third floors would be comprised of eight units each, including six one-bedroom units on each floor. In addition, the second floor is proposed to consist of two two-bedroom units and the third floor is proposed to consist of a two-bedroom unit and a three-bedroom unit. The fourth floor is proposed to consist of four one-bedroom units. Each floor would be accessed by both an elevator and two stairwells. Among the 20 units the applicant is proposing three (3) affordable housing units distributed as follows: 1 one-bedroom, 1 two-bedroom and 1 3-bedroom units. The one-bedroom units (both market rate and affordable) are proposed to range in size from 701 to 940 square feet, and the two-bedroom units and three-bedroom unit (both market rate and affordable) are proposed to range in size from 1,779 to 1,223 square feet.

The applicant is proposing a row of arborvitae plantings and a six-foot fence along the eastern and southern property lines, which are shared with the adjacent residential properties. Arborvitae plantings are also proposed along the Merserau Terrace façade of the building. The applicant is proposing a total of five street trees along the West Englewood Avenue frontage and Merserau Terrace frontages. Shrubs are proposed along the West Englewood Avenue façade of the building.

The building would have a peaked roof and measure 38.42 feet in height to the roof peak. The ground floor of the building is proposed to have a stone veneer on the north and west façades, cement board siding on the second and third floor façades, and shingles on the roof gables. The ground floor parking level is proposed to be unenclosed on the south and east façades.



Zoning Compliance

The subject property is located within the Township's R-S zone, which does not permit multifamily dwellings. As such a "d(1)" use variance is required. A zoning compliance table is shown below.

Zoning	Required	Existing	Proposed	Variance
Min. Lot Area (SF)	7,500	19,294	19,294	—
Min. Lot Width (FT)	75	106	106	—
Front Yard Setback from West Englewood Avenue (FT)	35.04	N/A	16 ¹	V
Front Yard Setback from Mercerau Terrace (FT)	34.50	N/A	20	V
Min. Side Yard (FT)	15.9	N/A	14	V
Rear Yard Setback (FT)	25	N/A	N/A (corner lot)	—
Building Coverage (%)	25	N/A	42.96%	V
Lot Coverage (%)	40	N/A	73.89%	V
Building Height (Stories/ FT)	2.5/35	N/A	4/38.4	V
Max. Curb Cut (FT)	20	N/A	24	V
Min. Parking (Ordinance)	41 spaces ²	N/A	34 spaces	V
Min. Parking (RSIS)	37 spaces ²	N/A	34 spaces	DE
Location of Off-Site Parking	Not permitted in front or side yard	N/A	Does not comply (front, side yard parking)	V
Max. Fence Height (FT)	6	N/A	6	—

V= Variance. DE= de minimis exception from the RSIS.

¹Yard setbacks are measured to the building façade.

²The Applicant is proposing 16 one-bedroom units, three (3) two-bedroom units, and one (1) three-bedroom unit. The ordinance requires two spaces per one-bedroom unit and three spaces per two-bedroom unit. Garden apartments standards are used to calculate the RSIS requirement.

Signage

Signage is subject to the requirements of Section 33-18(c) of the zoning ordinance. Permitted signage for residential uses is generally limited to that of a residential nameplate (not exceeding 72 square inches), home professional office signs (not exceeding one square foot) and temporary for sale/for rent and political signs. Details regarding sign area and materials have not been provided. As such, "relief may be required for the proposed signage should it exceed the above-referenced standards.



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Inclusionary Housing

The proposed multifamily residential development is required to set aside units that are affordable to low- and moderate-income families in compliance with the New Jersey Uniform Housing Affordability Controls (UHAC) (i.e., no more than 20 percent of affordable units can be 1-bedroom; at least 30 percent of affordable units must be 2 bedroom units; and at least 20 percent of affordable units must be 3-bedroom units.) The applicant is proposing three (3) units to be set aside as affordable for low- and moderate-income families, consisting of one one-bedroom, one two-bedroom, and one three-bedroom unit.



Planning Comments

1. The applicant is seeking a d(1) use variance. Pursuant to N.J.S.A. 40:55D-70d(1) of the Municipal Land Use Law (MLUL), a Zoning Board of Adjustment in "particular cases" and for "special reasons", may grant a variance to permit a use or principal structure in a zone in which the zoning ordinance does not permit such use or principal structure. In order to obtain a "d(1)" use variance, a licensed professional planner, on behalf of the applicant, must address both the "positive" and "negative" criteria.

The "special reasons" requirement of the statute referenced above is also referred to as the "positive criteria." In instances where the proposed use is not deemed "inherently beneficial" as defined in N.J.S.A. 40:55D-4 (and the proposed use here is not listed under that definition), it is the applicant's burden to show "special reasons" in order for the board to exercise its jurisdiction to grant relief under N.J.S.A. 40:55D-70d(1). Generally, there are sufficient "special reasons" for the grant of a "d(1)" use variance under two broad circumstances: (1) when the refusal to allow the project would impose on the applicant an undue hardship and/or (2) when a proposed project promotes the "general welfare" because it carries out a purpose of zoning as defined in N.J.S.A. 40:55D-2 of the MLUL. The Court found in Kohl v. Mayor and Council of Fair Lawn, (1967) that merely demonstrating that a particular use promotes one or more of the purposes of zoning is not enough to satisfy the positive criteria but the zoning board must find that the general welfare is served because the use is "peculiarly fitted" or "particularly suitable" to the site for which the variance is sought. This is so because nearly all lawful uses of property promote, in greater or lesser degree, the general welfare. In the context of the positive criteria, site suitability is not concerned with ordinance zoning criteria but is instead focused on (1) why the location of the site within the municipality or region is particularly suited to the use despite the zoning and/or (2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use. It should be emphasized that the site need not be uniquely suited to such use. Or, more specifically, it need not be the only site available for the proposed use. The Supreme Court held in Price v. Himeji, LLC, (2013) that "demonstrating that a property is particularly suitable for use does not require proof that there is no other potential location for the use nor does it demand evidence that the project must be built in a particular location." Rather, the test is whether the property is "especially well-suited for the use, in spite of the fact that it is not permitted in the zone."

In addition to satisfying the positive criteria an applicant seeking a "d(1)" use variance must also address the "negative criteria." Per N.J.S.A. 40:55D-70 no variance or other relief may be granted without showing that such variance or other relief can be granted without "substantial detriment to the public good"

and “will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The proof required to satisfy the first prong of the negative criteria focuses on the impact of the variance on nearby properties and the determination as to whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.”

In Medici v. BPR Co. (1987), the Supreme Court held that the second prong of the negative criteria be demonstrated through an “enhanced quality of proof” defined as “reconciling the proposed use with the Master Plan and zoning ordinance’s omission of the use from those permitted in the zone district.” This requirement came from the court’s recognition that use variances are by their very nature inconsistent with the municipality’s zoning policy embodied in its adopted zoning ordinance and master plan.

2. As “c” bulk variance(s) are required in connection with the application, the Board must find that there is either undue hardship or practical difficulty associated with the strict application of the requirements of the zoning ordinance in connection with this specific piece of property; or 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. In addition, the Board must be satisfied that the granting of the variance(s) would not cause substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.
3. The applicant should provide testimony regarding how it is anticipated that parking would operate on the site in light of the requested parking variance (e.g., Would parking spaces be assigned to residents? Where would visitors park?)
4. The applicant should provide testimony regarding site operations, including trash removal and loading/deliveries. The applicant should discuss how it is anticipated that deliveries would occur on the subject property, as there are no designated loading areas, as well as frequency and timing of said deliveries. The Applicant should also indicate where moving vans would park. Lastly, is the Applicant should describe the method and frequency of trash removal.
5. Details have not been provided regarding signage. The applicant should provide additional details regarding this signage or confirm that approval for the above-mentioned signage would be sought under a separate application.
6. The electric vehicle supply equipment legislation that was signed into law on July 9, 2021 (NJ S3223, 2020-2021), does not apply to this application as it was filed before the legislation was enacted. However, the applicant should provide testimony as to whether electric vehicle charging station spaces or “make ready” electric vehicle charging station spaces are contemplated at this project.



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We trust that the above information is responsive to your needs.

Respectfully submitted,

Elizabeth Leheny, AICP, PP

Spach Trahan, AICP, PP

cc: Rosiland McLean
Joe Vince, P.E.
Joe Vince, P.E.
Dan Melfi, Zoning Officer

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