

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

March 3, 2020

PREMISES: BLOCK 1.02 LOT 68

121 Hibernia Avenue, Rockaway, NJ

CASE NO.: LUB-061

APPLICANT: PHEASANT WALK, LLC

RESOLUTION OF FINDING AND DETERMINATION

WHEREAS, PHEASANT WALK, LLC has applied to the Land Use Board of the Borough of Rockaway (the “Board”) for use variance relief, bulk variance relief and preliminary and final site plan approval to construct a parking lot with 14 spaces, gravel storage area, an approximate 783 square foot detached garage and a 1,407 square foot addition to the existing two and one-half story building together with associated site improvements; and

WHEREAS, the Board did hold a public hearing on February 4, 2020 at which time the applicant and all parties in interest were given an opportunity to be heard; and

WHEREAS, the Board has considered the following documents, exhibits and reports:

1. Land Use Board Application and Legal Rider, dated March 6, 2019, signed by James Cuneo
2. Site Inspection Authorization Form, signed and dated March 6, 2019
3. Affidavit of Ownership, signed and dated March 6, 2019;
4. Administrative Checklist;

5. Schedule "A" Checklist Preliminary Site Plan;
6. Schedule "A" Checklist Final Subdivision/Site Plan;
7. Schedule "A" Checklist "C & D" Variance;
8. Topographical Survey of Property prepared by Marc J. Cifone, PLS dated September 4, 2018, revised September 3, 2019;
9. Preliminary & Final Site Plan drawings, consisting of seven (7) sheets, prepared by Thomas F. Graham, PE, dated January 11, 2019, revised December 19, 2019.;
10. Cover letter dated December 20, 2019 from Thomas F. Graham, PE.;
11. Cover letter dated October 16, 2019 from Jason R. Rittie, Esq.;
12. "Additions & Alterations" drawings, Sheets A-101 and A-102 last dated for review November 21, 2019 consisting of two (2) sheets prepared, signed and sealed John E. Giammarino, Architect.
13. Reports of Ferriero Engineering dated October 24, 2019 and January 27, 2020.
14. Garage elevations, post plans and details, no date, prepared by elevations.com not signed or sealed;
15. Copy of the property deed;
16. Copy of certification of payment of taxes dated October 15, 2019 prepared by Donna L. Browne, Tax Collector, and
17. Planning Reports of H2M Architects and Engineers and final Planning report of Topology dated January 28, 2020.

WHEREAS, the Board after hearing all of the evidence presented as made the following findings of fact:

1. The applicant is represented by the firm of Einhorn, Barbarito, Frost & Botwinick, PC, Jason M. Rittie, Esq., appearing.
2. The owner of the property is Pheasant Walk, LLC, a New Jersey Limited Liability Company with an address of 4 Woodport Road Wharton, NJ 07885.
3. The property is located at 121 Hibernia Avenue, Block 1.02 Lot 68, consisting of 0.618 of an acre (29,908 sf). Frontage to the south is on Hibernia Avenue. Three municipalities are within a 200-foot radius of the property; Rockaway Borough, Rockaway Township, and Denville Township.
4. Located on the property is a vacant two and one-half story single family building with a footprint of approximately 950 sf.
5. The property lies In the GLI (General Light Industrial) zone. Mr. James Cuneo is the managing member of the applicant and explained that the

proposal is to construct a 1,407 sf addition on the existing non-conforming home together with a 783 sf detached garage, fourteen parking spaces and a gravel storage area.

6. The proposal is to rent the property to a company called National Microwave to be used for light industrial and office with a residential apartment on the second floor. The second floor apartment is to be occupied by an on-site caretaker associated with the Light Industrial Use on the first floor.
7. Mr. Mark Coleman of National Microwave advised the Board that the company facilitates cellular installations (fifth generation) for Verizon and Mobile One.
8. Hours of operation are Monday to Friday 7am to 5pm with eight (8) to ten (10) employees on site. There will be outdoor storage of reels of cable, no hazardous materials will be on site. The garage will be used for the storage of the equipment used in the installations. The Building will be for office space associated with the light industrial use and there will be no visitors to the site.
9. Four or five vans will respond to and from the site but will be primarily at job locations during the day. Vans will be parked on-site overnight, but are associated with the primary use of the property by national Microwave. No other unattended motor vehicles excepting the personal vehicle of the residential tenant will be located on the property. No waste materials will be stored on the property.
10. Material deliveries will be by Fed Express or UPS and will be scheduled in advance.
11. For security purposes, the residential apartment will be rented to an employee.
12. The relief required by the applicant is as follows:

The “D” Variances: 1. D(1) – §172-76 and 80: Prohibited Use Proposed- a use not specifically permitted is prohibited, here the applicant proposes a mixed-use building in GLI zone, where not permitted.

2. D(2) – §172-31: Continuance of nonconforming uses or structures may be continued if not altered or enlarged. The proposed use

calls for a non-conforming residential family converted into mixed-used with structural changes and additions.

D(2) §172-24: the applicant proposes more than one principal use on the lot.

The “C” Variances:

1. §171-11.A.2: Accessory Height, not to exceed height of the principal structure or 16’ whichever is lesser. Proposed 18.1’.
2. §171-11.A.6: Accessory Side Yard Setback (Trash Structure) § Permitted: 5’ § Proposed: Less than 5’ to west lot line.
3. §171-20D: Where two or more driveways connect a single site to any public or private road. Or individual driveways serve separate and adjoining sites, a minimum clear distance of 50 feet measured along the right-of-way lines shall separate the closest of any two such driveways. § Proposed: 2feet offset to west lot driveway.
4. §172-22.C: Accessory Side Yard Setback (Gravel Storage) § Permitted: Outdoor storage as an accessory use in any nonresidential zone district is permitted in the side and rear yard; provided, however, that no item shall be stored closer to the side lot line than the side yard setback requirement for a principal building on the same lot. § Proposed: 2.5’ to east lot.
5. §171-18: Loading Space § Required: 1 § Proposed: 0

6. §172-42: Freestanding Signs § Permitted: Zero § Proposed: 1

13. The applicant's engineer, Mr. Thomas Graham, PE introduced Ex A-1 a colorized site plan. He explained that there is an easement for overhead utility wire which prohibits permanent structures underneath, however the proposed parking is permitted.
14. The site is occupied by a vacant two and one-half story, two bedroom structure connected to municipal water and sewer. The proposal is to create an office on the first floor, a single bedroom for an employee on the second floor with the attic used for mechanicals and storage. The addition to the structure will be approximately 1,407 square feet.
15. Twelve parking spaces are required pursuant to ordinance, however, fourteen (14) will be provided, one of which will be for handicapped individuals. The parking area will have three lights as per the plans, a board on board fence will be constructed instead of a chain-link fence.
16. The front sidewalk will be reconstructed, curbing and landscaping will be provided per the site plan.
17. Drywells will be constructed to accommodate site drainage and a maintenance plan will be provided. Drywell overflows will be addressed to the satisfaction of the Board Engineer. Less than one acre of disturbance and less than one quarter acre of new impervious surface is proposed which is below the DEP threshold for a major storm water project.
18. Exhibit A-2 was introduced showing more detail on the site layout. The garage doors will be changed to a single 20' door. Deliveries will be stored in the garage and waste pick up will be by a private hauler. Parking will have to be arranged from time to time in front of the proposed detached garage doors to accommodate deliveries, but all such vehicles are employee cars or company vehicles.
19. Ingress/egress site distances on Hibernia Avenue are in excess of five hundred feet in either direction. The only vehicle access will be via the drive on the Westerly side of the lot. The adjoining neighbor to the West has a driveway parallel about two and one half feet from that of the subject. The

neighbor does not object to the proposed improvements. A fence will separate the two driveways.

20. Displaced soil shall only be removed with the proper permitting.
21. The trash enclosure shall be by slatted fence and non-transparent.
22. One free standing sign is proposed with dimensions of three feet high and five feet wide. Other signs for different businesses are in the area as well.
23. The applicant's architect, John E. Giammarino described the proposed building improvements.
24. The existing kitchen will be retained as a break room, the attic over the second floor apartment will be used for some mechanicals and residential storage, business related storage will be in the basement.
25. The exterior siding will be reconditioned and in some areas replaced. The color of the siding will be similar to that pointed out by the applicant across the street from the Community Center, and shall have white trim. The Board was very concerned about not creating a jarring effect on the neighborhood.
26. Planning testimony was provided by Donna Holmqvist, AICP who described the several variances needed (D-1 for mixed use, D-2 for expansion of the non-conforming use, setback variances for the storage, the trash enclosure, sign variance, etc.
27. Exhibit A-3 was introduced showing existing land use patterns with the subject surrounded by other business uses.
28. Exhibit A-4 shows the border of the GLI zone and the proximity to the R-3 residential zone which is distant from the applicant's property. This exhibit also shows the absence of any nearby residences.
29. The testimony established that to comply with the various setbacks would not allow the site to be used for the proposed purposes due to the nature of the materials used.

30. The signage requires a variance because the building is less than twenty-thousand square feet. Exhibit A-5 depicts signage existing in the vicinity such that the applicant's proposed sign would be consistent.
31. The Master Plan proposes adaptive re-use with infill development in order to minimize negative impacts. Essentially what is proposed here. Market needs are trending toward mixed uses which is also in accordance with the Master plan.
32. Mixed uses are prevalent in the neighborhood and variances have been granted previously in that regard. The structure will retain its residential appearance, although residential uses are not permitted in the GLI zone, however, residential occupancy addresses a community need. The storage will not be visible from Hibernia Avenue.
33. Exhibit A-6 shows the property to be deteriorated and disused. The applicant will revitalize and restore the property to accommodate the proposed uses.
34. The site is particularly suitable for the proposed use and through this proposal will advance zoning purposes a., g., and while not historic the structure is an old home therefore purpose j. is also included.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined that the Applicant has demonstrated that the relief satisfies the positive criteria required for the grant of a d (1) and (2) use variances for the following reasons:

1. The use will advance the public welfare because it will provide space for needed housing and a viable business.
2. The property is uniquely suited to the proposed use.
3. The proposed uses advances several of the purposes of zoning and several goals of the 2018 Master Plan as identified by applicant's planner.

4. The property has been vacant for several years and the proposal represents an adaptive re-use of the property with very low impact; and

WHEREAS, THE Land Use Board has determined that the benefits of a departure from the requirements of the zoning ordinance outweigh any detriments in that the reduced setbacks are necessary in order to allow the site to function and further the Board perceives no negative impacts; and

WHEREAS, the Land Use Board also finds that the foregoing facts support a finding that the relief can be granted without substantial detriment to the public welfare and that the grant of the variances will not impair the intent and purpose of the zone plan and zoning ordinance of the Borough of Rockaway in that the proposal advances several purposes of zoning and is in the most part, consistent with the Master Plan.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that site plan approval and the variance relief requested by the Applicant is granted as follows:

1. N.J.S.A. 40:55D-70d(1) use variance relief to allow the two principal uses on the site (mixed uses).
2. N.J.S.A. 40:55D-70d(2) use variance to allow the expansion of the non-conforming residential use.
3. The C variance relief is granted to allow the rear garage height of 18.1', the trash enclosure to have a side yard setback of 5'; the gravel storage area to be set back 2.5' from the easterly lot line; to permit the use without a loading space; to permit one free standing sign; and to allow less than required spacing between driveways. To the extent relief is required for driveway sight distance, that relief is also granted.

THE FOLLOWING CONDITIONS SHALL APPLY:

- a. Morris County Planning Board approvals shall be obtained and a copy provided to the Board and its advisors.
- b. A note should be added to the plan that states "Soil disturbance permit(s) must be obtained in accordance with §169-66 and §170-6-12 when soil

removed from the site is deposited onto other properties within the Borough.”

- c. The Rockaway Valley Regional Sewerage Authority approval shall be obtained to address additional discharge.
- d. The plans shall be revised if required by the Engineer if necessary to comply with the storm water management.
- e. Provisions shall be added to the plan to address the maintenance of the storm water detention facilities, these shall be incorporated in a deed restriction.
- f. The second floor apartment shall not be enlarged or expanded beyond the plans shown.
- g. The applicant shall coordinate with the assessor and treasurer regarding calculation and payment of the development fee in accordance with the prevailing ordinance.
- h. The soil sedimentation and control plan shall be submitted to the Morris County Soil Conservation District. A copy of the certification shall be provided to the Board and its professionals.
- i. The applicant shall comply with all engineering comments and requirements in the engineering review letter of January 27, 2020.
- j. The requirements of the Borough Planning consultant shall be incorporated and followed by the applicant. (review letter of Topology date January 28, 2020).
- k. The property fencing shall be “board on board” to the east and west, the reference to a chain link fence shall be removed from the plans. The trash enclosure shall have non transparent fencing that does not allow the contents to be seen.
- l. Except as otherwise modified by this resolution or by the testimony, the site improvements shall be in accordance with the site plan and architectural plans submitted.
- m. The plans shall be revised to include garbage truck wheel turning movements.
- n. All lighting details on the site plan and architectural plan shall be shown to the satisfaction of the Board professionals.
- o. The applicant shall show all ground mounted HVAC on the plans.

- p. Applicant shall revise architectural plans to show accurate siding materials and colors for the building and addition as per testimony.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Board of Adjustment held on March 3, 2020.

Colleen Reardon, Secretary