

Memorandum

To: Bedminster Township Land Use Board
From: Francis J. Banisch III, PP/AICP
Date: January 23, 2024
Re: 2475 Lamington Road Bedminster, LLC
Block 27, Lots 21 and 22
Use Variance and site plan
LUB# 2023-003 (BOA)

1.0 MATERIALS REVIEWED

- 1.1 Land Development Application with attachments
- 1.2 Application Checklist
- 1.3 Plans entitled *Variance Plan Lots 21 & 22 Block 27, 2475 Lamington Road* prepared by Paul Fox, P.E. dated October 10, 2023, revised through December 1, 2023 and consisting of 1 sheet
- 1.4 Architectural Plans entitled *2475 Lamington Road LLC* prepared by John Marchese Architect, dated April 29, 2023 revised through June 23, 2023 and consisting of 2 sheets

2.0 NATURE OF THE APPLICATION

- 2.1 Lots 21 and 22 (2475 Lamington Road) are roughly 150' west of Route 202. Improvements on the property include a 2-story frame building with a driveway the loops around the rear of the building. A drive through canopy is located on the west side

of the building, seen above in an October 2021 Google Streetview screenshot.



- 2.2 The site was previously approved for a catering facility. The applicant has since converted the 2nd story to a residential use while

the 1st floor remains vacant commercial use. The applicant did not receive prior approvals to convert the 2nd floor to a residential apartment, which is currently occupied.



3.0 VARIANCE RELIEF

3.1 Permitted uses in the VN Zone include:

- a. ***Detached dwelling units.***
 - b. Grocery stores, meat markets, delicatessens, and packaged liquor stores not to exceed 1,200 square feet.
 - c. Local retail activities such as seafood markets, bakeries, drug stores, furniture stores, sporting goods shops, gift shops, hobby shops, book stores, clothing stores, shoe stores, hardware stores, stationery stores, fabric stores and florists.
 - d. Local service activities such as barber and beauty shops, tailors, dry cleaning and laundering operations, appliance repair shops, shoe repair shops and upholsterers.
 - e. Banks, except the drive-through facilities shall be conditional uses (See Section 13-601 for additional standards).
 - f. Professional offices limited to doctors, dentists, architects, engineers, lawyers, real estate agents, insurance brokers or similar professional uses.
 - g. ***Mixed uses of any of the above, providing there is no more than one dwelling unit per lot.***
 - h. Restaurants.
 - i. Houses of worship.
 - j. Public playgrounds, conservation areas, parks, and public purpose uses.
 - k. Facility to support agriculture as a conditional use subject to the conditions set forth in subsection 13-601.11.
- (highlighting added)

In short, the VN (Village Neighborhood) Zone does not permit apartments or multi-family units.

- #### 3.2
- The applicant seeks a d(1) use variance to convert the entire building to residential use consisting of a two-bedroom apartment on the first floor and a two-bedroom apartment on the second floor. Apart from minor façade and siding work, it does not appear there are any additional site improvements proposed.

- 3.3 The site is undersized for the zone when taking into consideration the ROW area, and the existing building is non-conforming under most requirements for the VN district.
- 3.4 In relation to the d(1) variance requests, the Board has the power to grant “d(1)” variances to permit non-permitted uses or principal structures pursuant to N.J.S.A. 40:55D-70(1) “in particular cases and for *special reasons*.” This is the so-called *positive criteria* of a “d(1)” variance. The Board may not exercise its power to grant a “d(1)” variance otherwise warranted, however, unless the so-called “*negative criteria*” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a 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.”

Special Reasons (*positive criteria*)

The statute provides for a (d) type variance “*In particular cases and for special reasons...*” and generally there are sufficient "special reasons" for the grant of a d variance under two broad circumstances:

- (1) when the refusal to allow the project would impose on the applicant an undue hardship (see 32-2 below) and/or
- (2) when a proposed project carries out a purpose of zoning as defined in N.J.S. 40:55D-2.¹

Negative Criteria

The applicant must also demonstrate that the requested relief for the d(1) variances will not result in substantial detriment to the public good and shall not substantially impair the intent and purposes of the zone plan or zoning ordinance. According to Medici:

The board's resolution should contain sufficient findings, based on the proofs submitted, to satisfy a reviewing court that the board has analyzed the master plan and zoning ordinance, and determined that the governing body's prohibition of the proposed use is not incompatible with a grant of the variance. If the board cannot reach such a conclusion, it should deny the variance. 107 N.J. 23(emphasis added)

Enhanced Quality of Proof

Bedminster’s zone plan includes a Village Commercial zone in Pluckemin and Bedminster villages. This zone permits a wide range of commercial uses but does not permit more than one residential use per lot. In the Medici case, the N.J. Supreme Court identified the need an “enhanced quality of proof”, as follows:

In the use-variance context, we believe this can best be achieved by requiring, in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the

¹ Cox and Koenig, *New Jersey Zoning and Land Use Administration* (GANN, 2018), §32-1, p.679

intent and purpose of the master plan and zoning ordinance. The applicant's proofs and the board's findings that the variance will not "substantially impair the intent and purpose of the zone plan and zoning ordinance," N.J.S.A. 40:55D-70(d), must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district. For example, proof that the character of a community has changed substantially since the adoption of the master plan and zoning ordinance may demonstrate that a variance for a use omitted from the ordinance is not incompatible with the intent and purpose of the governing body when the ordinance was passed. [107 N.J. 21]

- 3.5 The applicant must therefore demonstrate how the proposed use can be reconciled with the zoning ordinance and the Master Plan. In this discussion the Board may wish to review any impacts of the proposed use on the adjoining property owners and how such impacts may be mitigated. These may include traffic, circulation, landscaping, and buffering of the proposed use. The applicant should demonstrate how the proposed use will impact the character of the area and its effect on the zone plan.

4.0 REVIEW COMMENTS

- 4.1 According to § 3-19.2 *Maintenance of Exterior Premises in the "VN" Village Neighborhood Zone*, the "exterior premises shall be maintained" so as "not promote or contribute to a blighting effect upon neighboring properties. Moreover, the exterior of the premises shall not contribute to the progressive deterioration and downgrading of neighboring properties. Conditions on the property on January 23, 2024 are seen below.



An examination of the exterior of the building and premises reveals a variety of blighting conditions including excessive coverage, broken porch railing, poor condition of exterior of building, expansive pavement in poor condition, abandoned drive-through window, accumulated junk in the rear yard and two driveways where only one is needed..

- 4.2 The VN District permits village scale professional and office uses, services, restaurants, and public spaces with the intent to provide local services to residents at a historic village

scale. The applicant shall provide testimony as to how the proposed conversion of the site to multifamily residential use will not negatively impact the vitality of the village as intended by the types of commercial uses in the zone plan.

4.3 It appears there are no site improvements proposed other than cosmetic updates to the existing building. Unless the blighting influences are eliminated, more residential units will only exacerbate the blighted conditions. The Board should recognize that this use variance application provides the opportunity to eliminate the blighting conditions on the property. Removal of the drive through window, removal of excess pavement and restoration of landscaping would be appropriate as conditions of approval.



4.4 Approval of two (2) 2-bedroom apartments should require approximately 6 or 7 parking spaces to accommodate full occupancy and visitor parking. As a result, the driveway and parking area can be limited to the approximate area shown on the aerial photo at right.

4.5 More residential foot traffic in the village clearly has benefits. If this property is refurbished, site restoration can help to put it in attractive condition as a residential setting.

4.6 The Zoning Board should also address whether the use variance will permit residents to conduct accessory home office occupations.

cc via email: Janine De Leon, Land Use Board Secretary
Land Use Board members
Paul Ferriero, PE
Thomas Collins, Esq.
2475 Lamington Road Bedminster, LLC
Paul Fox, PE
Michael Osterman, Esq.

APPENDIX A

§ 3-19.2 Maintenance of Exterior Premises in the "VN" Village Neighborhood Zone.

The exterior premises shall be maintained so that its appearance shall reflect a level of maintenance in general keeping with the standards of the "VN" Village Neighborhood Zone and neighborhood and such that the appearance thereof shall not promote or contribute to a blighting effect upon neighboring properties. Moreover, the exterior of the premises shall not contribute to the progressive deterioration and downgrading of neighboring properties. To this end, the following requirement shall apply:

- a. No temporary painting scaffold or other temporary equipment used for construction, repair or maintenance shall be permitted to remain in place beyond eight weeks after the erection and placement of such equipment without obtaining permission in writing from the Township Zoning Officer.
- b. Where exposed to public view, the landscaping of premises shall be maintained in keeping with the neighborhood and in an orderly state with lawns mowed and bushes and shrubs trimmed and free from becoming overgrown, littered and unsightly where such lawn bushes, shrubs and landscaping conditions would constitute or contribute to a blighting effect.
- c. Exterior areas shall not be used for the storage of accumulated refuse and rubbish for more than a two-week period and such shall be stored in appropriate sanitary receptacles or other containers.
- d. It shall be unlawful for any owner, possessor or occupant of lands to store, keep or accumulate, upon such lands, any motorized vehicles, automobiles or machines in need of repair so as not to be readily operated under their own power or requiring substantial repairs or not currently licensed.
- e. The paint or siding on a building shall be maintained in a condition that is not in a deteriorating state.
- f. Failure to remove or comply with Subsections a to e above shall constitute a nuisance which may be abated by the Township pursuant to its statutory authorization under N.J.S.A. 40:48-2.12.