

TOWNSHIP OF MIDDLETOWN

Zoning Board of Adjustment and Appeals

1 Kings Highway
Middletown, NJ 07748-2594

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TECHNICAL MEMORANDUM

DATE: December 2, 2020
BOARD: Zoning Board of Adjustment and Appeals
APPLICATION: Logan (#2020-010)
748 Monmouth Parkway
Block 63, Lot 7 & 8
R-5 Zone
Zoning Interpretation/ Bulk Variances

PROPOSAL

The applicant is seeking an interpretation of Section 540-708 to permit the applicant to complete the construction of a single family dwelling at the above-referenced location.

Additionally, the applicant is proposing to reconstruct a 1-story single family residential dwelling. It is our understanding that the existing dwelling unit was demolished to the foundation by the applicant. The reconstructed dwelling will be a 2-story, 2,192 square foot, residential dwelling. The reconstruction will require variance relief from the following requirements:

- Minimum Lot Area
- Minimum Lot Frontage
- Minimum Front Yard Setback
- Minimum Street Side Setback

PROPERTY DESCRIPTION & SURROUNDING LAND USE

The subject property is 4,979 square feet and located at the corner of Monmouth Parkway and Sycamore Avenue in the R-5 Residential Zone District. The site contains the reconstructed dwelling and an existing detached garage. The surrounding properties are single family homes in the R-5 Residential Zone District.

PROJECT HISTORY

The applicant applied for building permits in February of 2020, and received zoning approval for a 1,503 square foot two-story addition, 60 square foot porch and to elevate the structure.

Prior to the issuance of building permit, the applicant demolished the existing house and proceeded to build on the footings and foundation of the structure. On May 29, 2020 the Construction Official and the

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Monmouth Hills ◊ Navesink ◊ New Monmouth ◊ North Middletown ◊ Nut Swamp ◊ Oak Hill ◊ Port Monmouth ◊ River Plaza

Building Sub-Code Official issued a Stop Construction Order and Notice and Order of Penalty due to the structure being demolished to the foundation.

On June 9, 2020 the applicant filed for new building permits and on June 19, 2020 the Zoning Officer issued a denial letter due to the variances required. From June 9, 2020 to June 23, 2020 the applicant framed the dwelling, sheathed the exterior and installed a new roof. On June 26, 2020 the applicant was informed that a new Stop Construction Order had been issued. On June 30, 2020 the Planning Department issued a fee letter for the variance application.

The applicant paid the fees for the variance application on November 2, 2020 and informed the Planning Department that an Interpretation of Section 540-708 was also being sought. The applicant paid the additional fees on November 6, 2020 and the application was deemed complete on November 9, 2020.

INTERPRETATION

The applicant is seeking an interpretation of Section 540-708, Permitted Modifications and Exceptions. This section of the ordinance sets forth the specific conditions under which an applicant may obtain a building permit without triggering off variance relief. The Planning Department has reviewed Chapter 540, Planning and Development Regulations, henceforth referred to as “the ordinance” and offers the following comments in order to assist the Board in its interpretation.

The ordinance stipulates the following:

1. Section 540-708.A:

An existing detached single-family dwelling which is either a nonconforming use or structure may be enlarged or a detached accessory structure may be constructed or enlarged, provided that such enlargement or detached accessory structure conforms with all minimum yard area regulations except as modified below by § 540-708B and C, and provided that the resulting principal structure and detached accessory structures conform with the maximum coverage regulations of the zone district.

This ordinance provision is to protect single-family dwelling units that are either non-conforming, which means existing dwelling units in zones that do not permit residential uses, and/or are located on lots which do not conform to the bulk and yard standards of the zone district from undertaking the expensive and cumbersome process of applying for variance relief pursuant to N.J.S.A 40:55D-70(d)(2) or a D-2 variance and/or N.J.S.A 40:55D-70(c), respectively.

2. Section 540-708.B:

The maximum percent of lot coverage for a detached single-family dwelling which is either a nonconforming use or structure may be increased, provided the resultant lot coverage complies with the coverage limits in the most restrictive single-family residence zone to which the area of the undersized lot conforms. In no case shall coverage exceed 35%.

This ordinance provision is to protect existing single-family dwelling units that are located in zones that do not permit such uses and on undersized lots to avoid applying for variance relief pursuant to N.J.S.A 40:55D-70(d)(2) and N.J.S.A 40:55D-70(c), respectively, unless they are noncompliant with the most restrictive zone district to which the lot area conforms. For e.g. if there is an existing dwelling unit on a lot, containing an area of approximately 10,000 square feet, which is located in zones that have a higher lot area requirement or is located in a nonresidential zone and the applicant is proposing improvements which would increase the lot coverage, the Zoning Officer would then apply the standards in the R-10 Zone District. However, the R-10 Zone District permits a maximum lot coverage of 25% but as per this

section of the ordinance the lot coverage with the proposed improvements would be capped at 35% to not trigger variance relief.

3. Section 540-708.C:

An existing detached single-family dwelling or detached accessory structure which is either a nonconforming use or structure may be enlarged, provided that such enlargement does not decrease the distance between the structure and the property line contiguous to the nonconforming yard area nor extend the structure into a yard area which is now conforming, except as stipulated within § 540-708F. In no case shall this exception apply to an enlargement within a nonconforming yard area previously authorized by variance. However, in the case of alterations to a nonconforming structure where more than 25% of the area of the perimeter wall are either demolished or to be removed, such activity shall constitute more than a permitted modification, and any structure resulting therefrom shall comply with all applicable zoning requirements.

This ordinance requirement permits a structure to be enlarged or expanded provided the proposed improvement continues to maintain the same setback as the existing structure. For e.g. should there be an existing home in the R-5 Zone District, which maintains an existing nonconforming front yard setback of 15 feet while the zone requires a setback of 20 feet, an addition to the side or on the second floor may be permitted as long as this setback continues to be maintained. However, if that 15-foot setback were granted by variance then an expansion to that structure would require variance relief from the Zoning Board of Adjustment.

Similarly, should there be an existing non-conforming structure where more than 25% of the area of the perimeter wall is demolished or removed then that would trigger variance relief as well. The key question is understanding the definition of demolition or removal. Section 540-202.B of the ordinance stipulates that “words or word groups which are not defined below shall have the meaning set forth in the Municipal Land Use Law or as given in Webster’s Unabridged Dictionary.” Therefore, the word perimeter is defined as “the boundary of a closed plane figure,” which in this case means the outer walls of an existing dwelling unit. “Demolish” is defined as “tear down” or “raze.” Furthermore, tear down is defined as “the act or process of disassembling” or taking apart. Removal is defined as “the act or process of removing” and that removing is defined as “to move by lifting, pushing aside, or taking away or off.” Using this definition, any improvement that would cause taking away or taking off or tearing down of more than 25% of the outer walls of the building would require variance relief and an expansion would not be permitted by right as per this provision of the ordinance. It is important to note that the operative word is “area of the perimeter wall.” An area is defined as the surface included within the set of lines; therefore, it is the surface which is the length and height of the wall and is typically measured in square feet (square meters or square inches) and removal or demolition of a maximum of 25% of the area of the perimeter wall would be permitted without requiring variance relief.

4. Section 540-708.D:

A variance shall not be required for the construction of any building on an undersized lot as long as such structure can be built in conformance with all setback, lot coverage, and floor area ratio standards required by the zone district in question.

Any structure on an undersized lot would require to comply with all the setback requirements. For e.g. the board very recently approved a single-family house on an undersized lot where the proposed dwelling unit complied with all the setback requirements but needed relief from lot area, frontage, and circle diameter requirement given the undersized nature of the property.

5. ***Section 540-708.E***

The maximum percent of building coverage and lot coverage for a detached single-family dwelling on a nonconforming lot may be increased, provided the resultant building coverage and lot coverage complies with the coverage limits in the most restrictive single-family residence zone to which the area of the nonconforming lot conforms. In no case shall building coverage exceed 35% or lot coverage exceed 40%.

This section is self-explanatory in that this provision of the ordinance is to protect existing single-family dwelling units that are located on undersized lots to avoid applying for variance relief unless they are noncompliant with the most restrictive zone district to which the lot area conforms, and should not exceed 35% for a building coverage or 40% for a lot coverage. For e.g. the maximum building and lot coverage in the R-22 Zone District is 15% and 20%, respectively, while the maximum building coverage in the R-10 Zone District is 20% and 25%, respectively, which is a 5% increase than what is permitted. So a conforming 21,875 square foot lot in the R-22 Zone District could have a maximum building coverage of 3281.25 square feet and a maximum lot coverage of 4,375 square feet. But a nonconforming lot of 10,000 square feet that conforms closely to the R-10 Zone District could have a maximum building coverage of 2,000 square feet and lot coverage of 2,500 square feet, which is much lower than what would be permitted. But with this provision, the upper threshold of 35% building coverage and 40% lot coverage would permit a nonconforming house in the R-22 Zone to have a building coverage of 3,500 square feet and lot coverage of 4,000 square feet more in accordance with the houses that are typically seen in the R-22 Zone District.

Additionally, for e.g. a conforming lot can have a maximum building coverage of 2,625 square feet (35% of 7,500 square feet) and lot coverage of 3,000 square feet (40% of 7,500 square feet). But an undersized lot in the R-7 Zone District containing an area of 7,000 square feet would have to have a maximum building coverage of 2,450 square feet (35% of 7,000 square feet) and a lot coverage of 2,800 square feet (40% of 7,000 square feet). At no point, shall the lot exceed that upper threshold.

6. ***Section 540-708.F:***

A variance shall not be required for the construction of a roof over any open structures such as steps, platforms, and paved terraces or landing places which do not extend above the first floor level of the building for a distance not exceeding eight feet into the required front yard. Such roofed structures shall not be enclosed into a living space or balconies erected above it. Porch enclosures shall be limited to traditional porch elements, such as railings, columns, etc., required by the building code.

This provision permits owners of houses with open steps and platforms encroaching into the front yard to construct a roof without having to seek variance relief, as long as they do not extend beyond eight feet into the required front yard. This ordinance provision provides some flexibility to enable homeowners to construct a modest roof over steps or platforms to provide protection from the elements and was incorporated in accordance with the recommendation made in the 2014 Zoning Board Annual Report to address the prevalence of homeowners seeking variance relief to construct an overhang over existing steps and landing.

PLANNING COMMENTS

1. Variances and Non-Conformities

- a. **Lot Area-** Section 540-917.A(1) requires a minimum lot area for corner lot in the R-5 Zone District of 6,000 square feet. The existing lots are undersized and merged and total a lot area of 4,979 square feet.
- b. **Front-Yard Setback-** Section 540-917A(2) requires a front-yard setback of twenty (20') feet in the R-5 zone. The applicant is proposing a setback of 14.1' feet, therefore encroaching 5.9' into the front yard.
- c. **Street Side Yard Setback-** Section 540-917A(2) requires a rear yard setback of ten (10') feet in the R-5 zone. The applicant is proposing a setback of six (6') feet.
- d. **Lot frontage-** Section 540-917A(3)(b) requires that corner lots have sixty (60') feet of frontage in the R-5 zone. The existing lot has fifty (50') feet of frontage along Monmouth Parkway.

It should be noted that the demolished dwelling unit maintained the above-referenced front yard and street side yard setback. The proposed 12.7' x 28' addition located to the north of the existing footprint complies with the ordinance requirement.

2. Statutory Requirements for the granting of bulk variance relief

Based on the Municipal Land Use Law standard for granting bulk variance relief, the applicant shall indicate to the Board whether a "hardship" variance or "flexible C" variance will be sought for the bulk variance indicated above, and provide testimony supporting the chosen approach.

Physical Characteristics - N.J.S.A. 40:55D-70.C(1) (a/k/a Hardship Variance) – Testimony should indicate if strict application of the setback requirement would result in peculiar and exceptional difficulties, or exceptional and undue hardship, to the applicant.

- By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property;
- By reason of an extraordinary or exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

Benefits Outweighing Detriments - N.J.S.A. 40:55D-70.C(2) (a/k/a Flexible C Variance) - The applicant may also establish, in the absence of proving "hardship," whether the granting of a variance will further the purposes of the Municipal Land Use Law, and if the benefits of granting the variance will substantially outweigh any detriment.

Negative Criteria - Additionally, with any type of C variance, testimony should confirm that the proposed changes requiring bulk variance relief will not create a substantial detriment to the public good or substantial impairment of the intent and purpose of the Master Plan and the Zoning Ordinance.

The variance sought should be considered with respect to the character of the neighborhood.

MISCELLANEOUS

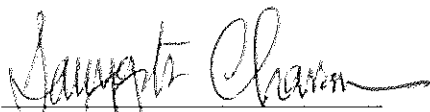
1. The Zoning Table shows the existing and proposed buildable lot area at 1,980 square feet. Section 540-203 of the ordinance defines buildable lot area as “the contiguous area of any lot exclusive of Class I Critical Areas and with not more than 25% of its area classified as Class II Critical Areas.” Furthermore Section 540-624.A.1 identifies tidal and non-tidal wetlands, steep slopes 25% or greater, and surface waters and watercourses as Class I Critical Area and steep slopes 15% or greater but less than 25% and fresh water wetlands transition areas as Class II Critical Areas. Therefore, it is not clear how the buildable area was identified as 1,980 square feet. The applicant shall provide calculations clarifying the buildable lot area as per the ordinance.
2. The applicant shall indicate in testimony whether removal of trees and/or vegetation is proposed.
3. Based on a recent site visit, the existing garage appears to be in poor condition the applicant shall ensure that the colors and materials of the garage shall match the dwelling unit.

DOCUMENTS REVIEWED

- Plot Plan for 748 Monmouth Parkway prepared by Ramierz Engineering consisting of one (1) sheet dated October 27, 2020;
- Topographic Survey for 748 Monmouth Parkway prepared by Ramierz Engineering consisting of one (1) sheet dated December 18, 2019;
- Proposed Addition and Alterations for 748 Monmouth Parkway prepared by Matthew T. Cronin, AIA consisting of two (2) sheets and dated January 20, 2020 revised through October 13, 2020;
- Denial of Development Permit dated June 19, 2020;
- Deed of Ownership;
- Project Narrative;
- Proof of Taxes; and
- Letter from applicant’s attorney, Jordan Gale, dated November 2, 2020.

We reserve the right to make additional comments based upon the submission of additional documents or testimony presented to the Board.

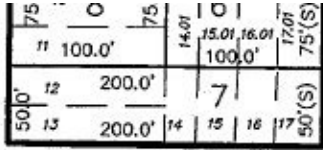
Report Prepared by:



Sanyogita S. Chavan, PP, AICP
Director of Planning



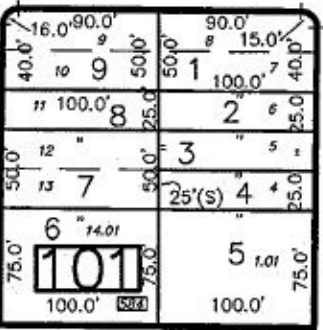
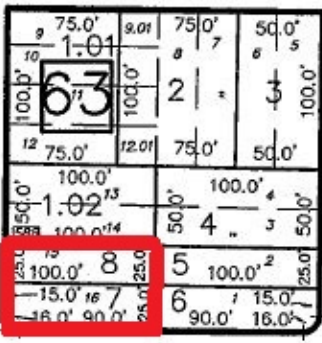
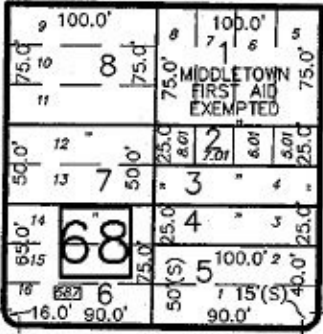
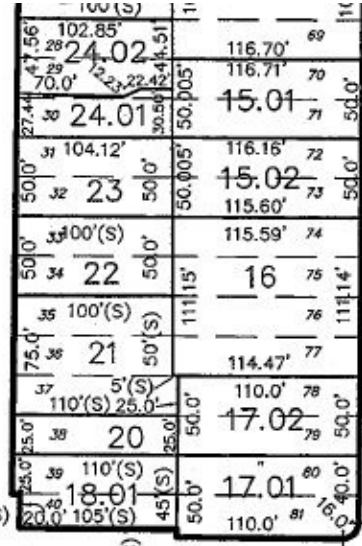
Thomas M. Incorvaia
Assistant Planner



CRUSE PLACE 40'

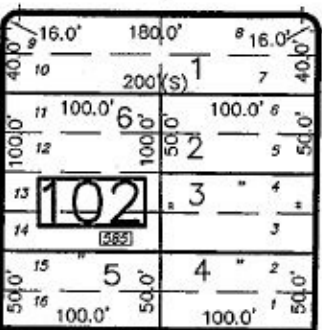


CRUSE PLACE 50.0'

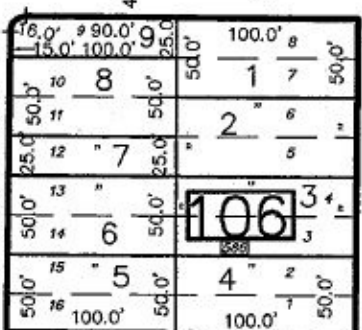


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