

TOWNSHIP OF MIDDLETOWN

Zoning Board of Adjustment and Appeals

1 Kings Highway
Middletown, NJ 07748-2594

JAMES HINCKLEY
Chairman



AMY H. CITRANO, P.P., A.I.C.P.
Director of Planning

ERIN URIARTE
Zoning Board Secretary

Tel: (732) 615-2102
Fax: (732) 615-2103

TECHNICAL MEMORANDUM

DATE: November 22, 2022
BOARD: Zoning Board of Adjustment and Appeals
APPLICATION: Almost Home, Inc. (#2022-017)
Use “d(2)” Variance for the Expansion of a Non-Conforming Use, and
Bulk Variance for Off-Street Parking
Block 1049, Lot 1
276 Sunnyside Road

PROJECT DESCRIPTION

The applicant, Almost Home, Inc., requires Use Variance approval for an Expansion of a Non-Conforming Use, and bulk variance approval for deficient number of off-street parking to expand the existing business to include tables and seating for 18 patrons while maintaining the residence on the second floor.

PROPERTY DESCRIPTION, ZONING AND SURROUNDING LAND USES

The subject property is located on Crawfords Corner-Everett Road and Sunnyside Road, and presently contains a 2-story building, with Almost Home General on the first floor and residential apartment on the second floor; 12-stall parking lot, front porch patio, side patio, detached shed and walk-in refrigerated cooler and refuse enclosure located in the rear yard. Fencing extends along the eastern and southern perimeter. Additional fencing encloses the rear yard. The building is oriented towards Sunnyside Road, and site ingress/egress is from both Crawfords Corner Road and Sunnyside Road.

The subject property is located in the Residential (R-130) Zone. Residential uses in the R-130 Zone are located to the east and south of the site. Vacant land in the R-130 Zone is located to the north of the site across Sunnyside Road, and residential and farm uses in Holmdel Township are located to the west of the site across Crawfords Corner-Everett Road.

PLANNING COMMENTS

1. Use “D2” Variance

The subject property contains the Almost Home General food establishment. The subject property is a commercial use which is non-conforming in the Residential (R-45) Zone. The applicant is proposing the addition of tables and chairs to accommodate 18 patrons for dine-in seating. The proposal is an expansion of the non-conforming use and requires Use (“d(2)”) Variance approval.

An application for an expansion of a non-conforming use pursuant to NJSA 40:55D-70(d)(2) or a “d(2)” variance must provide special reasons for the variance. The applicant must provide testimony satisfying the positive criteria. The applicant must also provide testimony satisfying the negative criteria wherein the variance relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Master Plan and the Zoning Ordinance.

It should be noted that “d(2)” variances are proper only for expansions of lawfully created pre-existing nonconforming uses; not for expansions of nonconforming uses permitted by prior “d(1)” variances. As per the Middletown Township Construction Official, in a letter dated June 10, 2021 to Mr. Doran, the subject property is permitted to operate as a cash and carry deli operation only, with no interior or exterior seating. The proposal for tables and chairs to accommodate 18 patrons for dine-in eating is an expansion of the existing nonconforming use.

2. Off-Street Parking Bulk (“c”) Variance

The minimum number of off-street parking required for a Restaurant, Café, Deli and/or Diner is one parking space per 50 square feet. The food establishment is located on the first floor of the building and approximately 1,500 s.f in area. Based on the area, 30 parking spaces are required; and 12 are provided. Further, the applicant shall indicate in testimony how many bedrooms the second floor apartment contains to determine additional off street parking requirements. Bulk “c” variance relief is needed for lack of off-street parking for the food establishment use, and second floor apartment. Testimony shall be provided addressing the variance relief needed. It should be noted a plan for off-site parking may be considered by the Board as per 540-627S(3).

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 structure lawfully existing thereon.

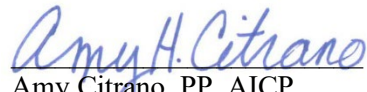
Benefits Outweighing Detriments – N.J.S.A. 40:55D-70.C(2) (a/k/a Flexible C Variance) – The applicant may also establish, in the absence of proving “hardship”, whether the granting of a variance will further the purposes of the Municipal Land Use Law, and if the benefits of granting the variance will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

Negative Criteria – Additionally, with any type of C variance, testimony should confirm that the proposal 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.

DOCUMENTS REVIEWED

- Notice of Appeal, prepared by Michael Steib, Attorney for Almost Home, Inc., dated October 12, 2022;
- Zoning Officer Denial dated September 23, 2022;
- Application for Development Permit, dated September 9, 2022;
- Survey of Property, Block 1049, Lot 1, prepared by Morgan Engineering and Surveying, dated August 11, 2021, last revised August 30, 2021;
- Site work Sunnyside Deli, Floor Plan, prepared by Parallel Architectural Group, Sheet A-100, dated April 7, 2021, last revised August 26, 2021;
- Consent of Owner;
- Disclosure of Ownership; and
- Proof that property taxes are current.

Report Prepared by:


Amy Citrano, PP, AICP
Planning Director

LOCATION MAP

