

**EWING TOWNSHIP ZONING BOARD**  
**RESOLUTION No. 2020-ZB-08**

Applicant:	Amitkumar Shah
Application No.	ZBA-20-007
Location of Premises:	Block 93, Lot 2 1562 Parkside Avenue, Ewing Twp., Mercer County
Present Zoning:	Residential District-2 (R-2) Zone
Approval Date:	October 15, 2020
Date Resolution Memorialized:	November 19, 2020
Relief Sought:	Preliminary and final site plan approval, bulk and use variance relief pursuant to <u>N.J.S.A.</u> 40:55D-70(c) and (d), together with any other necessary variances or waivers, to permit the conversion of a former retail boutique store on the first floor of the existing structure into a two (2)-bedroom apartment.

**WHEREAS**, Amitkumar Shah ("Applicant"), has applied to the Ewing Township Zoning Board of Adjustment (the "Board") seeking use and bulk variance relief, as well as preliminary and final minor site plan approval, to allow for the conversion of the existing mixed-used structure into a multifamily residential building, as more specifically described below, on certain real property designated as Lot 2 in Block 93 on the Ewing Township tax map, located at 1562 Parkside Avenue (the "subject property"), in the R-2 Residential-2 zoning district (the "R-2 zone"); and

**WHEREAS**, the Board held a hearing on this application on October 15, 2020; and

**WHEREAS**, the Board provided an opportunity for comments and questions from interested parties and the public; and

**WHEREAS**, the Board reviewed the evidence presented, and based on said evidence, the information contained in the application, representations made by the Applicant, and the testimony provided during the hearing, made the following factual findings and conclusions of law:

## **JURISDICTION**

1. The Board entertained jurisdiction over the application pursuant to Sections 215-90, -91 and -95 of the Ewing Township Land Use Ordinance ("LUO") and N.J.S.A. 40:55D-70(c)-(d).
2. Applicant has complied with the notification and publication requirements of the LUO and Municipal Land Use Law ("MLUL").
  - a. Applicant has certified that all real estate property taxes for the subject property have been paid, as well as all escrow fees required by ordinance for the application. The escrow certification includes an agreement to pay all future monies due under the escrow ordinance for consultants and other professional review work related to the subject property and the relief sought.
  - b. Applicant filed an affidavit stating that public notice of the application was given at least ten (10) days prior to the hearing date to all property owners within 200 feet of the subject property and to the public entities required to be notified. The Board secretary confirmed that newspaper publication was made in conformance with all legal requirements and that proof of publication was filed with the administrative officer.
  - c. Applicant has also submitted all Township Contribution Disclosure Statements in accordance with Ewing Township Ordinance No. 06-19.

### **APPLICATION SUMMARY & FINDINGS OF FACT**

3. Project.
  - a. The subject property is a 5,241.80± square foot (0.12± acre) irregular-shaped parcel located adjacent to the intersection of Parkside Avenue and Buttonwood Drive that is owned by the Applicant. The subject property is improved with a 1,624± square foot two (2)-story mixed-use building. The mixed-use consists of a commercial use on the first floor and residential housing on the second floor. The store on the first floor was most recently utilized as a retail boutique, and has been supported

by sufficient on-site parking. There is a one (1)-bedroom apartment on the second floor of the mixed-use structure.

- b. Applicant proposes to convert the first floor retail space into a separate two (2)-bedroom apartment. Specifically, Applicant intends to replace the commercial use located on the first floor with a second residential dwelling. Neither commercial operations nor multifamily housing is a permitted use within the R-2 zone.
  - c. The following nonconforming conditions are present on the subject property: existing impervious cover of 75.76% where 26% is the maximum permitted; existing lot area of 5,241.8 square feet where 10,000 square feet is required; existing lot width of 65 feet where 80 feet is required; existing lot depth of 43 feet where 100 feet is required; existing front yard setback of 38.6 feet where 40 feet is required; existing side yard setback of 4.5 feet where 10 feet is required; existing rear yard setback of 12 feet where 35 feet is required; and existing floor area of 1,628± square feet where 1,236 square feet is the maximum permitted. Applicant and his professional(s) have stated that the project will not expand the structure/footprint or cause any of these existing nonconforming conditions to be made worse. In fact, Applicant will provide four (4) compliant parking spaces on-site, and remove the remaining parking area currently servicing the first floor commercial use. This reduction of the parking area will decrease the impervious cover from 75.76% to 54.10% of the subject property.
4. Plans. Details of Applicant’s proposal are more particularly shown on the following plans submitted with the application:
- a. “Concept Plan, Block 93, Lot 2 1562 Parkside Avenue,” prepared by James T. Kyle, P.P., A.I.C.P., of Kyle McManus Associates, consisting of one (1) sheet, dated September 3, 2020.
  - b. “Plan of Survey,” prepared by Daren C. Leeper, P.L.S. of Leeper Land Group, LLC, consisting of one (1) sheet, dated August 13, 2020.
  - c. Floor plan of first floor for proposal, unsigned and not dated, consisting of one (1) sheet.

5. Requested Relief.

- a. Variance Relief under N.J.S.A. 40:55D-70(d):
  - i. Pursuant to N.J.S.A. 40:55D-70(d)(1), Applicant requests use variance relief from the limitations imposed by Section 215-15(A) of the LUO.
- b. Pursuant to N.J.S.A. 40:55D-70(c), Applicant requests the following bulk variance relief from the requirements of Section 215-15 of the LUO:
  - i. Minimum lot area, interior lot (§215-15(D)(1)(a)): 10,000 square feet required / 5,241.8± square feet existing and proposed.
  - ii. Minimum lot width, interior lot (§215-15(D)(1)(e)): 80 feet required / 65± feet existing and proposed.
  - iii. Minimum lot depth (§215-15(D)(1)(f)): 110 feet required / 43± feet existing and proposed.
  - iv. Minimum front yard setback (§215-15(D)(1)(g)): 40 feet required / 38.6± feet existing and proposed.
  - v. Minimum side yard setback (§215-15(D)(1)(h)): 10 feet required / 4.5± feet existing and proposed.
  - vi. Minimum rear yard setback (§215-15(D)(1)(i)): 35 feet required / .2± feet existing and proposed.
  - vii. Principal building coverage (§215-15(D)(3)(a)): 15% maximum coverage permitted / 17.5% existing and proposed.
  - viii. Total impervious lot coverage (§215-15(D)(3)(b)): 26% maximum coverage permitted / 75.76% existing / 54.01% proposed.

6. Access, Parking, & Circulation. The application proposes to remove a portion of the existing paving and provide a parking area with four (4) parking spaces. The plan also shows an improved driveway entrance and sidewalk along Parkside Avenue. Considering the intended use, Applicant testified that there is more than sufficient parking on-site for residential housing purposes.

7. Environmental. No environmental issues are expected from the increase in housing. The subject property has been historically used for more intensive commercial operations.

- a. Applicant will comply with all Federal, State, and local environmental requirements.
8. Stormwater Management. Applicant will provide the Board with a grading and drainage plan to demonstrate adequate stormwater management and drainage.
9. Fire & Emergency Services. The intended use and structure will meet all Code requirements.
10. Signage. No signage is proposed.
11. Lighting. Applicant has testified that no changes to lighting are proposed.
12. Utilities. No changes to septic, sewer, water or other like utilities are expected.
13. Witnesses. During the hearing, the Board considered the testimony of the following witness(es):
  - a. Amitkumar Shah, Applicant.
  - b. James T. Kyle, P.P., A.I.C.P., Applicant's planning professional.
  - c. Charles Latini, P.P. and Zoning Officer, on behalf of the Board.
  - d. Martin G. Miller, P.E., P.L.S., P.P., C.M.E., engineering professional on behalf of the Board.
14. Exhibits. None.
15. Staff / Professional / Consultant Reports. In addition to the materials submitted by the Applicant, the Board received and considered the following staff and consultant reports:
  - a. Fire department report dated October 9, 2020, prepared by James J. Hall, Jr., Township Fire Official/Marshal.
  - b. Engineering report dated October 14, 2020, prepared by Martin G. Miller, P.E., P.L.S., P.P., C.M.E., Board Engineer.
16. Public Comment(s). None.
17. Planning Considerations. Mr. Kyle provided planning testimony on behalf of the Applicant.
  - a. He opined that, in terms of the positive criteria, this use will be in keeping with the neighborhood and R-2 zone. In this regard, Mr. Kyle explained that Applicant has proposed a better operation when compared to the existing mixed-use. The

Applicant's proposal will eliminate the existing retail space, which is a nonconforming commercial use in the R-2 zone. Thus, the project brings the subject property more into compliance than the existing mixed-use.

- i. Additionally, he testified that granting of the requested variances will be in keeping with the Township's Master Plan. The conversion is intended to provide appealing housing options within a residential zoning district. The location and proposed multifamily use are particularly well-suited on the subject property. Moreover, the subject property is not located within a residential development; rather, it is along a main road. By providing housing in this location, it will incentivize other residents to build and live along this section of the R-2 zone. Mr. Kyle continued by stating that re-establishing the sidewalk and renovating the exterior will offer an improved visual environment without the need for dramatic change in overall design and appearance, and provides better access to nearby Moody Park.
- b. In terms of the negative criteria, Mr. Kyle opined that the deviations necessitating use and bulk variance relief may be granted without a substantial detriment to the public and will not amount to a substantial departure from the Master Plan. There is no proposed additional lighting, the existing structure will be designed to appear as if it is a single-family home in keeping with the neighborhood, create a less intensive use, and the improvements will serve to enhance safety within the community.

#### **BOARD'S FINDINGS WITH RESPECT TO PROOFS**

18. After considering the testimony provided above and reviewing the materials submitted in connection with the Application, the Board finds that Applicant has met the criteria for granting the requested use and bulk variance relief in accordance with N.J.S.A. 40:55D-70(c)- (d), which requires a demonstration that the purposes of the zoning act would be

advanced by a deviation from the zoning requirements and that the benefits would outweigh the detriments, for the following reasons:

- a. The proposed use will be a practical and appropriate use for the subject property, and will allow the Applicant to re-establish the site for one (1) use. Any intensification of use by way of an increase in residential dwellings is dwarfed by the benefit inherent to eliminating the retail space, which is an existing nonconforming use.
- b. Moreover, the subject property is particularly well suited for Applicant's intended use despite the deviations from the above-referenced sections of the LUO. Specifically, the deviations are less intrusive than the existing mixed-use operations found on the subject property. Indeed, the existing building is presently utilized for residential housing and the record is devoid of any suggestion that the site is unsuitable for the proposed increase of one (1) apartment that is similar in size and intended occupancy. To the contrary, based on the proffered evidence, the Board is satisfied that the subject property will accommodate multifamily use proposed by Applicant and the impacts associated with the project. In fact, the reduction in impervious coverage demonstrates that the improvements depicted in Applicant's plans and presented to the Board during the hearing will reduce adverse impacts present on the subject property. Further, the Board agrees that Applicant's plan enhances the aesthetics of the subject property and offers a better layout, which satisfies the reasons for zoning articulated in N.J.S.A. 40:55D-2(a).
- c. With respect to the Board's obligation to consider the Application in terms of the negative criteria of N.J.S.A. 40:55D-70, which provides that "no variance may be granted without a showing that the relief can be granted without substantially impairing the intent and purpose of the zone plan," the Board finds that this threshold has been met, as the deviations with the above-referenced Sections of the LUO will neither cause a detrimental impact to the public good and there will be no substantial detriment to the zone plan or zoning ordinance(s) by reason of the grant of the requested relief. Furthermore, the Board's granting of the requested

variances will not have a detrimental impact on the neighboring properties and will not impair or impede the goals of the Township Master Plan or LUO.

- d. The Board has determined that Applicant has sustained his burden of satisfying the criteria for obtaining the requested variances, and that the application is in the public interest and is in compliance with the applicable standards set by the MLUL and LUO.
- e. The Board also finds that the site plan is proper in all respects and complies with the LUO requirements for such that preliminary and final minor site plan approval should be granted. Notwithstanding this finding, Applicant will amend his site plan to incorporate the condition(s) of approval and findings of the Board.

### **CONCLUSIONS AS TO FINDINGS OF FACT AND PROOFS**

The Board has determined that the requested use and bulk variances, with preliminary and final minor site plan approval, may be granted, provided that Applicant adhere to and comply with his representations and the conditions recommended by the Board and its professionals.

### **DECISION OF THE BOARD**

**NOW, THEREFORE BE IT RESOLVED** that, based upon all the aforesaid findings, determinations and conclusions which are all specifically made a part hereof, by a vote of seven (7) in favor and none (0) opposed, the Zoning Board of the Township of Ewing hereby grants the requested use and bulk variance relief to permit the conversion of the existing ground floor boutique into a two (2)-bedroom apartment, such that the structure is to be used exclusively for residential housing, as requested by Applicant at the hearing on October 15, 2020, and as stated in Application No. ZBA-20-007. This approval is subject to Applicant's adherence and satisfaction of the following conditions:

1. Payment of all professional escrow, inspection and engineering review fees associated with this application shall be furnished by Applicant within thirty (30) days of receipt. It is Applicant's responsibility to contact the Board office to settle any outstanding review escrow accounts.



2. Applicant shall replace any trees that are removed for construction with trees that are on the Township's native species list.
  3. As represented during the hearing, Applicant will work with the Board's Planner/Zoning Officer to eliminate the existing encroachments upon Moody Park. Should the Board's Planner/Zoning Officer determine that there is an impasse and the encroachments have not been sufficiently addressed, Applicant shall return to the Board for all appropriate relief or amendments to the approvals granted herein, or both.
  4. Applicant shall submit a stormwater and grading plan to the Board's Planner/Zoning Officer and Board engineer for review and approval prior to the start of construction.
  5. Applicant shall amend its site plan to incorporate the conditions of approval and submit same to the Board's Planner/Zoning Officer and Board engineer for review and approval prior to the start of construction.
  6. Applicant shall comply with all comments and conditions set forth on the record and in the Board's professionals' reports, except as may be specifically modified by the provisions of this Resolution.
  7. Applicant shall obtain all necessary approval(s) (or letters of no interest) from any and all other outside agencies having jurisdiction over the subject of this application.
  8. Evidence of the attainment of the outstanding conditions set forth in this resolution shall be in writing by the professional or entity having jurisdiction over same and placed in the Applicant's file with the Township.
- A. The approvals granted by this Resolution, and development pursuant thereto, are subject to compliance at all times with all applicable Federal, State, County and Municipal law(s) and regulation(s) including, without limitation, all environmental, building and property maintenance codes. The project effectuated pursuant to these approvals, including demolition, construction, alteration, landscaping, and buffering shall be maintained in good condition and kept in compliance with this approval and applicable law in perpetuity, except as may be permitted by the Township.

B. The date of the decision shall be October 15, 2020, except that the date of the adoption of this memorializing resolution, November 19, 2020, is the date of the decision for the purposes of one (1) mailing a copy of the decision to Applicant within ten (10) days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of 15 this decision. The date of the publication of the notice shall be the date for the commencement of lawful vesting protection.

ROLL CALL VOTE ON THE MOTION TO  
APPROVE THE APPLICATION – October 15, 2020

Moved by: Mr. Byrd

Seconded by: Dr. Conway

Those in Favor: Chairman Maloney, Vice Chairman Clash, Mr. Benedetti, Mr. Byrd, Dr. Conway, Mr. Greenberg, and Ms. Owens

Those Opposed: None

Those Abstaining: None

Those Not Voting: None

Those Absent: Ms. Corrigan and Ms. Harvey-Talbert

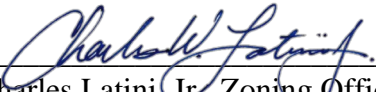
[REMAINDER INTENTIONALLY LEFT BLANK]

ROLL CALL VOTE ON THE RESOLUTION  
OF MEMORIALIZATION – November 19, 2020

Moved by: Vice Chairman Clash  
Seconded by: Ms. Owens  
Those in Favor: Chairman Maloney, Vice Chairman Clash, and Ms. Owens  
Those Opposed: None  
Those Abstaining: Ms. Corrigan and Ms. Harvey-Talbert  
Those Absent: Mr. Benedetti, Mr. Byrd, Dr. Conway, Mr. Greenberg

**CERTIFICATION**

I hereby CERTIFY that the foregoing is a true copy of a Resolution adopted by the Ewing Township Zoning Board at a duly advertised and regular meeting of the Board held on November 19, 2020, at which a quorum was present and the vote was three (3) in favor, zero (0) against, with two (2) abstention, and four (4) absent.

  
\_\_\_\_\_  
Charles Latini, Jr., Zoning Officer