

**RESOLUTION  
LAND USE BOARD  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: August 18, 2021

RESOLUTION# LUB 21-15

Land Use Board	Motion	Second	Yes	No	Abstain	Absent
Bergen					✓	
Daloisio						✓
Davis						✓
Kistner					✓	
Lovisolo						✓
Councilman Sasso					✓	
Sirico	✓		✓			
Mayor Bernstein					✓	
Chairman Quinn					✓	
Yaccarino – Alt. #1					✓	
Forbes – Alt. #2		✓	✓			

Carried  Defeated  Tabled

**LAND USE BOARD OF THE BOROUGH OF ALLENDALE  
RESOLUTION DENYING APPLICATION FOR VARIANCE RELIEF AND  
SITE PLAN APPROVAL FOR PARK & IVY PROPERTIES, LLC  
BLOCK 1709, LOT 7  
(a/k/a 54 PARK AVENUE)**

WHEREAS, the applicant, Park & Ivy Properties, LLC, the owner of the property located at 54 Park Avenue, known as Block 1709, Lot 7 on the Tax Map, in the Borough of Allendale, County of Bergen and State of New Jersey, applied to the Land Use Board of the Borough of Allendale in an application dated January 26, 2021, seeking preliminary and final site plan as well as “d” variance approval to construct a 6-unit, 3-story townhouse building, later reduced to 5-unit, 3-story townhouse, residential building in place of what is currently two single-story commercial buildings used as automotive and mechanical facilities, and

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**WHEREAS**, the site is located in the C-1 Commercial Zone District. The application is seeking a use and height variance to permit the development of the site for multifamily residential use with parking and associated amenities, which is not currently permitted in the C-1 District, as well as ancillary bulk variances.

**WHEREAS**, the Land Use Board considered the matter at the March 17, 2021, June 17, 2021 and July 21, 2021 regular public meetings of the Land Use Board at which the applicant was represented by counsel, and at which the applicant's various professionals personally appeared and testified;

**NOW THEREFORE BE IT RESOLVED** by the Borough of Allendale Land Use Board that it hereby makes the following findings of fact and conclusions:

1. Notice of the public hearing was given by the applicant in accordance with applicable law.

2. The subject site is identified as Block 1709, Lot 7, and is located at 54 Park Avenue. The 0.42-acre site is developed with two existing one-story structures serving as automotive and mechanical related businesses. The buildings are surrounded by surface parking with ingress and egress provided via a driveway to and from Park Avenue. The existing impervious coverage on the lot is 14,235 s.f. (0.327 acres) consisting of gravel, macadam as well as concrete pads and the two structures. Surrounding uses include residential development as well as the train station, commercial uses and fire department to the north. The property is located in the "C-1" Central Business Zone. The application was in evidence, as well as various plans and associated exhibits, inclusive of revisions.

3. The proposed application sought to demolish the existing commercial buildings on the property and to construct a 5-unit townhouse structure on the site consisting of three stories. The development would include associated improvements such as parking, landscaping and drainage. The applicant had proposed to provide one affordable housing unit as part of the plan.

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4. The proposed application sought a use and height variance to construct a 3-story multifamily residential building within the C-1 Central Business Zone wherein multifamily residential is not a permitted use. Specifically, the application sought variance relief for the following:

a. 'd' (1) Use Variance. Proposing a 5-unit townhouse residential building within the C-1 Central Business Zone wherein multifamily residential is not a permitted use.

b. 'd' (6) Height. The new revised building is noted on the site plan and application forms as having a building height of 32 feet 10 inches when 28 feet is the maximum allowable height in the C-1 Zone. Further, the zone permits a maximum of 2 stories whereas 3 stories are proposed.

5. In connection with the application, the applicant presented testimony from Daniel LaMothe, P.E., who was accepted by the Board as an expert in the field of Engineering. Mr. LaMothe testified as to the existing conditions of the property and the townhouse units proposed for the site. Mr. LaMothe generally testified that the setback requirements were met for the zone; that the applicant was seeking a waiver for 9 foot X 18 foot parking stalls (consistent with RSIS standards); that 12 parking spaces were required under current zoning and that 16 parking spaces were proposed; and that the applicant was seeking a six foot fence around the site. Mr. LaMothe also testified that all of the requirements and comments in the Borough Engineer's letter could and would be met and satisfied by the applicant. Mr. LaMothe also testified that there would be significant drainage improvements made on site, and that the streetscape and aesthetics of the development would be consistent with the surrounding area and downtown Allendale. Mr. LaMothe also testified about the significant landscape and buffering improvements that would be made as part of the redevelopment of the site, and the willingness of the applicant to accommodate concerns of the Board and neighbors relative to the same. The applicant would also conform to all signage requirements, and ingress/egress to the site would be appropriate and consistent with all requirements and safety standards.

6. Jacob Solomon, AIA, also testified on behalf of the applicant, and Mr. Solomon was accepted as an expert in the field of Architecture. Mr. Solomon testified as to the proposed layout of the townhouse units and exterior design. He further testified that the façade would be consistent with the colonial aspect of Allendale, as well as surrounding residential dwellings. There would be no distinction between the four market rate units and the one affordable unit comprising the development.

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7. Richard Preiss, P.P., testified on behalf of the applicant, and was accepted by the Land Use Board as an expert in the field of Planning. Mr. Preiss testified as to the present zoning conditions and properties in the surrounding area. He testified as to the variances requested and the rationales for the requested variances. He specifically testified that the property was close to downtown Allendale and existing transit, and was in a transitional area because the commercial district, a multi-family developments and single-family residential uses were all in close proximity to the site. Mr. Preiss set forth the criteria for D(1) and D(6) variance relief. In connection with the D(1) variance relief sought by the applicant, Mr. Preiss stated that the positive criteria was that the application would bring a non-conforming site into greater conformity with the area, especially since the car repair use could be revived at any time since it was pre-existing non-conforming, and that the existing buildings are non-conforming and unattractive. He testified that the application was an opportunity to remove a poor use and improve the use and property. He testified that the site was particularly suited to the proposed townhouse use, in light of the mix of residential uses in the area, and that it was a transit-orientated development, which is favored by the State. In addressing the negative criteria, Mr. Preiss testified that there would be no negative impact on the surrounding zone and it would diminish the disturbances of the existing use and be less intense. It would also reduce impervious coverage, attract long-term residents, have no impact on municipal services and/or taxes, and have less environmental hazards. The purposes of the MLUL would also be advanced by the application, since it would promote appropriate light and space uses; was transit-orientated, was replacing an outdated auto-body use with an aesthetically pleasing structure, was replacing a potential nuisance with a use that promotes health and safety of the neighborhood, and provided for affordable housing. He further testified that the development would advance the goals of the MLUL and Borough's Master Plan.

In connection with the requested D(6) variance, he testified that the site could accommodate any issues with the extra height, it was residential in nature which permits 35 foot height; it was consistent with the Orchard Park multi-family development across the street which is three stores, and the setbacks and buffers were adequate for the proposed height and neighborhood.

8. In connection with the interpretation of the existing use and the variance application, Borough Planner, Edward Snieckus, P.P., L.L.A., A.S.L.A. reviewed the submissions by the applicant, listened to the testimony of the applicant's professional and prepared a Memorandum dated March 12, 2021 and June 14, 2021 (revised in light of the applicant's changes to their plans). The Memorandum was in evidence and reviewed and examined by the members of the Land Use Board. Mr. Snieckus also asked questions of the applicant's professionals.

Mr. Snieckus stated that the according to the Borough zoning ordinance, the C-1 zone serves "as the principal retail and service area of the Borough, accommodating shopping and business needs customary in a residential community. The zone is intended to serve the following functions: to provide convenience goods and services to the Borough and its residents; to provide

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consumer goods and services usually attendant to the needs of a residential community; and to provide office uses which complement and support the business uses and which are customarily attendant to the needs of a residential community.” He concluded in his report that the proposed change in use would be inconsistent with this underlying purpose.

In connection with permitted uses in the zone, he stated that permitted uses within the C-1 zone include: “Any use permitted in the A, AA, AAA or B Zone Districts; provided, however, that no residential use shall be permitted below the level of the second floor in any structure. Banks, savings and loan associations, real estate or insurance agents or brokers, travel agents or professional service offices, such as doctor, lawyer, accountant, architect, artist, schools of dance or music or government offices.” He concluded that the proposed change in use would deviate from these uses although it is noted that residential is permitted on the upper floor of structures although not exceeding the one- or two-family concentration or height as noted in the zone.

Mr. Snieckus also reviewed the Borough Master Plan, and stated that one of the goals of the Master Plan was to maintain and enhance the viability of the central business district through proper planning, and that an associated goal of the Master Plan was to preserve and enhance the suburban character of the existing one and two family residential neighborhoods through establishing and maintaining buffer requirements between more intensive uses and one and two-family uses and zones.

9. The Borough’s Engineer, Michael Vreeland, P.E., reviewed the submissions by the applicant, asked questions of the applicant’s professionals, and prepared a Memorandum dated June 14, 2021. The Memorandum was in evidence and reviewed and examined by the members of the Land Use Board.

10. The Allendale Police Department and the Allendale Fire Prevention Bureau issued reports in connection with the application and made various recommendations to improve public health and safety.

11. Land Use Board members asked questions of the applicants’ Engineer, Architect and Planner, the applicant’s counsel, and the Borough professionals relative to the merits of the application. Particular concerns were raised as to the size and scope of the proposed development, the appropriateness of the multi-family use in the C-1 zone, buffering and landscaping, and the height of the proposed structure which would be larger and higher than surrounding residences immediately surrounding the site which are single-family and two-family structures.

12. Members of the public appeared in connection with the application and asked questions of the applicant’s Planner, Engineer, Architect and Planner, the applicant’s counsel, and the Borough professionals relative to the merits of the application, and provided testimony related to the merits of the application. Particular concerns were raised as to the size and scope of the

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proposed development, the appropriateness of the multi-family use in the C-1 zone, drainage issues to adjacent properties, buffering and landscaping, the height of the proposed fencing, parking for residents and visitors, garbage collection, traffic, and the height of the proposed structure which would be larger and higher than surrounding residences immediately surrounding the site which are single-family and two-family structures.

**NOW THEREFORE, BE IT RESOLVED**, based upon the factual and legal evidence, testimony and contentions set forth herein, that the Allendale Land Use Board hereby denies the applicant's request for a D(1) use variance and D(6) height variance to permit the development of the site for multifamily residential use with parking and associated amenities, as well as ancillary bulk variances for fence height and waivers. In connection thereto, the preliminary and final site plan approval is also denied.

**BE IT FURTHER RESOLVED** that the Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for '(d)' or use variance relief. It permits a Land Use Board to grant a 'd' variance, as with a 'c' variance, "in particular cases and for special reasons." The Courts have determined that special reasons include a showing by the applicant that the granting of the variance will effectuate the intent and purpose of the MLUL and advance the goals and objectives of the local master plan. This is the "positive criteria" of the statute. To address the "negative criteria" of variance relief, the applicant must demonstrate that the proposed variance can be granted "without substantial detriment to the public good" nor will the granting of the variance "substantially impair the intent and the purpose of the zone plan and zoning ordinance" of the municipality.

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board hereby specifically determines that the applicant has not met its burden of proof and it has not shown that the proposed

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development and requested variances for use and height can be granted without substantial detriment to the public good, and has determined that an approval would substantially impair the intent and the purpose of the zone plan and zoning ordinance, since the proposed use is prohibited in the C-1 Central Business Zone; and

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board specially rejects the testimony of the applicant's Professional Planner, Richard Priess, P.P. that the proposed development would be particularly well-suited for the zone and site, and the testimony that the development would fit within the residential zone adjacent to it.

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board specially rejects the testimony of the applicant's Professional Planner, Richard Priess, P.P., and concludes that the site is not suitable for the proposed use, as the proposed use does not promote the health, safety and welfare of the community, does not promote a desirable visual environment, and does not promote the provision of sufficient light, air and space in appropriate locations.

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board specially adopts and accepts the testimony of the Borough Planner, Edward Snieckus, P.P., L.L.A., A.S.L.A., in connection with his testimony and written report that the proposed use is prohibited in the C-1 zone. It further adopts his testimony that the Master Plan discourages such uses in the C-1 zone. In addition, a stated goal of the Master Plan is to enhance the suburban character of one and two family residential neighborhoods with appropriate buffering requirements and developments between uses, and this application does not advance that goal of the Master Plan; and

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**BE IT FURTHER RESOLVED** that the Allendale Land Use Board finds and concludes that no “special reasons” exist for the granting of the variance, and that the grant of the variance would not advance the purposes of the Municipal Land Use Law. The Board further finds that approval of the variance would result in a substantial detriment to the public good, and that the benefits of the proposed deviation do not substantially outweigh the various detriments, including the excess height of the structure, the scale of the proposed development relative to the residences immediately surrounding the site which are single-family and two-family structures, the insertion of a multi-family use in this zone, the removal of existing trees and landscaping, the impact on light, air and space in the zone, and the density of the proposed development. The Board also concludes that the grant of the variance will substantially impair the intent and purpose of the Allendale zone plan and zoning Ordinances since the proposed buffer and setbacks for the use and building height proposed were not sufficient to adequately support the goals of the Master Plan. It is determined that there is not sufficient zoning benefit to the proposed use variance since it would allow a use in this district which is specifically not permitted by the Ordinance.

**BE IT FURTHER RESOLVED**, for the foregoing reasons, that the Allendale Land Use Board hereby denies the application and determines that the evidence presented in support of the requested variance relief does not meet the factual or legal criteria for a use variance under N.J.S.A. 40:55D-70(d)(1) or a height variance under N.J.S.A. 40:55D-70(d)(6); and

**BE IT FURTHER RESOLVED** that the Land Use Board Secretary shall mail a copy of this Resolution within ten days from the date of adoption thereof to the applicant or to their attorney, if any, without charge; and to all other persons who request the same and pay the required



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fee therefore. The Secretary shall also file a copy of this Resolution in the offices of the Borough Clerk, Building Inspector, Construction Code Official, Tax Assessor and the Borough Attorney and shall publish a brief notice of the decision in the official newspaper, the cost of which shall be paid for by the applicant.


Approved:

ALLENDALE LAND USE BOARD



\_\_\_\_\_  
KEVIN QUINN, Chairman

Attest:

  
\_\_\_\_\_  
JOSEPH DALOISIO, SECRETARY



  
Vice Chairman

Adopted: August 18, 2021