

**A RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF
HADDONFIELD GRANTING VARIANCE APPROVAL TO
AM REALTY ADVISERS, LLC
ZBA #2020-22**

A public hearing on this matter was conducted by the Board on October 20, 2020

APPLICATION NUMBER: ZBA#2020-22

PROPERTY ADDRESS: 6 Kings Highway East
Block 35, Lot 2 on the Tax Map

NAME OF APPLICANT: AM REALTY ADVISERS, LLC

OWNER OF PROPERTY: STAC, Inc.

DATE OF HEARING: October 20, 2020
Held via Zoom® Video

BOARD MEMBERS PRESENT
AND VOTING: Kevin Burns, Vice-Chairperson
Wayne Partenheimer, Vice-Chairperson
Brian Mulholland
Steve Sweet
Frank Troy
William Shanahan (Alternate I)
Richard Wells (Alternate III)

APPEARANCES: Edmund J. Campbell, Jr., Esquire, Applicant's Attorney
Joseph Rocco, Principle of Applicant
Lee Biteman, Principle of Property Owner
Tim Kernan, Applicant's Planner
Travis Greiman, Borough Engineer
Tavis A. Karrow, Zoning Officer & Board Secretary
Francis X. Ryan, Esquire, Board Solicitor

PROPERTY DESCRIPTION

ZONING DISTRICT: D-4A

STRUCTURES LOCATED
ON LOT: Three-Story Commercial Building

DEVELOPMENT PROPOSAL

1. Use of first floor of premises as a real estate office.

RELIEF/VARIANCES REQUESTED

1. Use variance relief from Section 135-38D(4)(b)(1), Attachment 3, to allow office use on first floor.

SUBMISSIONS

Application and supporting documents.

A-1 Photo Array

SUMMARY OF TESTIMONY AND EVIDENCE

Counsel for the Applicant presented an overview of the application. The application is for a use variance so as to allow office use on the first floor of a commercial building in the D-4A Zone which only allows retail on the first floor and office only on the second floor. He acknowledged that although some of the characteristics of a real estate office are similar to a retail use, it does not meet the definition under the ordinance of retail use. He noted that the property is very close to the Office Zone (two properties away) which would permit this use. He also noted for the Board that the Applicant is proposing to expand its current use from the second floor of the building to the first floor into recently vacated space.

Lee Biteman then testified. He identified himself as the "Landlord and Co-Owner" of the building for over fifty (50) years. It is a three-story brick building with two store fronts on the ground floor and offices and residential units upstairs on the second and third floors. For many years, perhaps as long as the last fifteen (15), a computer services business operated out of the space in question. A dress shop operates out of the other storefront. The dress store moved in approximately three (3) years ago. Before that the space had been used as a real estate office by Bellevue Homes. The principals of Bellevue Homes retired several years ago and closed the business. Over the years the two (2) storefronts have been used for the computer repair shop, the dress shop, a real estate office and a travel agency. The building is the next to last building on the block which ends at the Speed Line. The property immediately adjacent to the west is a law office which has a street façade of an office building whereas the property in question has picture windows more consistent with a retail use. It was also noted that the property has approximately thirty (30) parking spaces in the rear and that all of the rental spaces within the building are allocated a certain number of spaces and then there are unassigned spaces for customers and the like.

Joseph Rocco the Principal of the Applicant then testified. He identified himself as an attorney practicing commercial real estate since 2003. In 2008 he obtained a real estate

license and in 2014 he obtained a broker's license. He operates a second office in King of Prussia, PA for essentially the practice of real estate law. Over the last few years the real estate sales portion of his business activity has increased and sees this as an opportunity to further develop that real estate sales practice. He touts his real estate business as a "Haddonfield Family Boutique" in that its focus is on residential properties in Haddonfield. He then identified various photos that were displayed to the Board. He pointed out the dress shop that Mr. Biteman had referred to as well as the storefront and the arrangement of the doors. He does not intend to make any changes to the façade of the building. With regard to his display windows he intends to provide some displays that will mimic that of a retail store. For example, he and his wife who works with him intend to obtain and license various goods that would be "branded" for Haddonfield and could be sold out of their location. He felt that that type of display, together with professional displays of properties for sale, would give the property the look and appearance of a retail shop rather than an office.

Tim Kernan the Applicant's Planner and Engineer then testified. He was the one that took the photographs that were displayed. When he took the photographs it was his intention to show the uses adjoining the property in question. When the photo array was first assembled he did not realize that some of the properties depicted in the photographs were actually in the office zone rather than the D(4)(A) zone. In arriving at his opinion he reviewed the application, the zoning map, the local ordinance, and the Downtown Element of the Master Plan which had been drafted by Brown and Keener. In fact, he alluded to the fact that he may have provided some assistance to Brown and Keener during their development of the downtown element of the new master plan. He also reviewed two (2) prior resolutions of the Board, the first of which related to another real estate office, Keller Williams at the other end of Kings Highway and more recently a resolution granting a variance for a local dance studio which moved across Kings Highway from this property.

In providing his analysis he noted that under the statute in order to obtain a "(d)" variance the applicant needs to show that the location is particularly suited for the use that the proposed use will advance the purposes of the zoning law and that there will be no substantial detriment to the zoning plan and ordinance.

In support of the so-called positive criteria he opined that the site was particularly well suited for a real estate office. He noted that part of the space in the building had been used for a real estate office for a number of years. There is also adequate parking which makes this site suitable for this particular type of use which could generate traffic; he also noted that there was professional office space immediately adjacent to the building. He noted that this property was the next to last property located in the D(4)(A) zone which means that it is not in the core area of the downtown area.

Accordingly, he was of the opinion that this particular use would advance various purposes of the M.L.U.L. including N.J.S.A. 40:55D-2(a) because it encourages the appropriate use of the property in the manner that promotes public health safety, morals and general welfare; subsection (g) in that it provides sufficient space and an appropriate location for a variety of commercial uses and subsection (l) it represents an opportunity to promote a

desirable visual environment through creative design and decorating techniques as described by the Applicant. He could not find any negative impact flowing from the grant of this variance. He noted that the downtown element of the master plan as developed by Brown and Keener defines certain goals and objectives including the concentration of retail activity into the core downtown area. In that regard he believes that Zone D-4 is the real downtown core whereas D(4)(A) is more transitional zone so that a business such as a real estate office which takes on some characteristics of office and retail is a good fit for the location. Another objective for the downtown zone was to permit a mix of various uses in the zone with admittedly an emphasis on retail. He also noted that the D(4)(A) zone was added by a specific amendment in 2012 and the reasons for that amendment were not that clear from the ordinance. In any event, it was noted that this Board had previously approved another real estate office albeit at the other end of the downtown zone. That property is located at 224 Kings Highway East which is across Haddon Avenue from the downtown zone. That use did not appear to run afoul of the goals and purposes of the ordinance to create a pleasant downtown area with mixed uses. In summary he expressed the opinion that a real estate office does differ from a typical professional office in that it does generate more traffic and does have certain retail aspects to its operation by way of displays of houses and other properties for sale. In this case the sale of Haddonfield "branded" items will also add to the appearance of a retail shop.

No member of the public appeared or testified.

FINDINGS OF FACT AND CONCLUSIONS

1. The property in question is located in the D (4)(A) zone.
2. Because the application seeks a use variance, the burden is on the Applicant to establish both the "positive" and "negative" criteria. The Applicant offered both lay and expert testimony in support of the application. See, N.J.S.A. 40:55D-70(d)
3. A critical element of a use variance is whether the use is particularly suited to the location in which it is proposed. See, e.g., Fobe Associates v. Mayor and Council of Demarest, 74 N.J. 519 (1977). Here, a real estate office, especially one which emphasizes local properties, takes on some of the nature of a retail use and is particularly suited to this location. The location in question is immediately adjacent to the dividing line between zones and thereby serves as a transitional use between zones.
4. This proposed use, as an expansion of the use in the upstairs space, does include an element of display of products to the public somewhat akin to a retail use. The Applicant proposes the sale of Haddonfield "branded" products that will be displayed in the store front along Kings Highway. The application also manifests organic growth of an existing business, which further supports the finding that this use is suited to the location.
5. With regard to the negative impact, there does not appear to be any negative impact whatsoever. A realtor had previously operated in the building for a number of years

with no evidence of complaints or negative impact which the use had upon the adjoining properties.

6. Accordingly, strict applications of the provisions of the Land Development Ordinance would result in peculiar and exceptional difficulties which justify the granting of the requested variance under N.J.S.A. 40:55D-70(d).

7. The relief requested can be granted without violating the spirit and intent of the zoning ordinance, the zone plan and the Master Plan.

8. The relief requested can be granted without substantial detriment to the public good.

9. Due notice has been given in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et. seq.) and the rules of the Board of Adjustment.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Haddonfield, that subject to the conditions noted below, a variance be granted, pursuant to N.J.S. 40:55D-70(d) to allow the proposed use.

CONDITIONS OF APPROVAL

1. The permitted use is that of a real estate sales office only and no other type of office.
2. The Applicant must maintain the existing display windows as well as the physical structure of the front façade with a picture window open to the interior. Applicant is not to block or close up the existing picture window in any manner that would change its character from a typical shop front or display window.

Motion by: Burns; seconded by Mulholland

Board members voting to grant the requested variances: Burns, Partenheimer, Mulholland, Sweet, Troy, Shanahan and Wells

Board members voting to deny the requested variances: None

CERTIFICATION

I hereby certify that the foregoing is a true, accurate, and complete copy of the resolution of memorialization adopted by the Zoning Board at its regular monthly meeting on November 17, 2020, memorializing action taken by the Zoning Board on October 20, 2020.

Tavis A. Karrow, Board Secretary

**A RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF
HADDONFIELD GRANTING VARIANCE APPROVAL TO
WINCHRIS DEVELOPERS, LLC
ZBA #2020-20**

A public hearing on this matter was conducted by the Board on October 20, 2020

APPLICATION NUMBER: ZBA#2020-20

PROPERTY ADDRESS: 18 Pennbrook Drive
Block 64.23, Lot 1 on the Tax Map

NAME OF APPLICANT: Winchris Developers, LLC.

OWNER OF PROPERTY: Winchris Developers, LLC.

DATE OF HEARING: October 20, 2020
Held via Zoom® Video

**BOARD MEMBERS PRESENT
AND VOTING:**

Kevin Burns, Chairperson
Wayne Partenheimer, Vice-Chairperson
Brian Mulholland
Steve Sweet
Frank Troy
William Shanahan (Alternate I)
Richard Wells (Alternate III)

APPEARANCES:

Laura M. D'Allesandro, Esquire, Applicant's Attorney
Chris S. Ryan, Applicant's Principal
Travis Greiman, Borough Engineer
Tavis A. Karrow, Zoning Officer & Board Secretary
Francis X. Ryan, Esquire, Board Solicitor

PROPERTY DESCRIPTION

ZONING DISTRICT: R-6

LOT DIMENSIONS: 60' x 125'

LOT AREA: 7,500 square feet

STREET FRONTAGE: 60' (Concord)
125' (Pennbrook)

STRUCTURES LOCATED
ON LOT: One-Story Single-family residence

DEVELOPMENT PROPOSAL

1. Construction of second floor over existing house.

VARIANCES REQUESTED

1. A variance from Section 135-31D(3)(a) which requires a front yard setback as determined by the analysis set forth in Attachment 7 to Chapter 135 and 19.98' feet is proposed (and existing).

SUBMISSIONS

Application and supporting documents.

- Survey
- Floor Plans
- Elevations
- Photo Array

SUMMARY OF TESTIMONY AND EVIDENCE

The Applicant provided an overview of the Application. Essentially, the Applicant plans to build a second floor over the living area of the house. The garage area will not be disturbed. The proposed second floor will follow the footprint of the first floor and will not extend any closer to the property lines than does the existing house. In addition to that new construction the Applicant will be removing impervious coverage consisting of a concrete pad and other paving. That will reduce the total impervious coverage from 34.34% to 31.91%.

The Applicant's Principal then confirmed the proposed development. He indicated that he was removing concrete and part of the driveway because it was not necessary for the functionality of the property and believed that it was an improvement to reduce the impervious coverage. Applicant's assumption in this matter was that the required setback was 30 feet. However, under the revised ordinance, the formula set forth in Attachment 7 needs to be applied in order to calculate the required front yard setback. It was acknowledged by the Applicant that the adjoining properties that would have been included in the calculation are setback more than this house but that such was a pre-existing nonconforming condition.

Brian Lanza of 24 Pennbrook Drive, the next-door neighbor appeared and testified. He had no objection to the proposed development. His only concern was that with the construction of a second-floor could cause trees located on his property to disturb or brush up against the Applicant's property. He offered to allow the Applicant to cut down those trees to avoid any possible future damage to the expanded house. He also provided the Applicant with a suggestion to check the condition of the cedar shake singles on the house because they may not have been properly maintained in the past.

FINDINGS OF FACT AND CONCLUSIONS

1. The property in question is located in the R-6 residential zone.
2. The proposal to add a second floor is not inconsistent with the type of housing found in the neighborhood.
3. To obtain a (c)(1) variance the Applicant must show the existence of peculiar and practical difficulties to, or exceptional undue hardship upon the Applicant arising out of (a) the exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon. In this case the placement of the existing home on the lot creates a situation that no development can be performed on the lot without obtaining variance relief.
5. To obtain a (c)(2) variance, the Applicant has the burden to show that an application relating to a specific property would advance the purposes of the zoning ordinance by a deviation from the ordinance requirements and that the benefits of the deviation would substantially outweigh any detriment. In other words, the Applicant has to show that (1) the variance pertains to the specific property; (2) that a variance would advance the purposes of the MLUL and the ordinance; (3) the variance does not cause "substantial detriment to the public good"; (4) its benefits substantially outweigh any detriments from the deviation; and (5) the variance does "not substantially impair the intent and purpose of" the Zoning Plan and the Zoning Ordinance. A continuing problem in the Borough is with surface water and rainwater runoff. With this proposed design this property will have less impervious coverage than currently exists. Although not a substantial decrease, it does represent an improvement over the existing condition and justifies relief under Section (c)(2)
6. The granting of the variance does not represent any detriment to the zone plan or ordinance.
7. The relief requested can be granted without violating the spirit and intent of the zoning ordinance, the zone plan and the Master Plan.

8. Due notice has been given in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et. seq.) and the rules of the Board of Adjustment.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Haddonfield, that subject to the conditions noted below, that the application for a variance be and is hereby granted, pursuant to N.J.S.A. 40:55D-70(c).

CONDITIONS OF APPROVAL

1. The development approved by this resolution must comply with the plans and specifications submitted with this application.
2. Applicant must comply with all other applicable ordinances and codes including but not limited to Shade Tree Ordinance, building codes, fire codes and all water management requirements.
3. Applicant is to file with the Zoning Officer a completed worksheet that should have accompanied the zoning application. Such must be submitted prior to the issuance of any permits.

Motion by: Shanahan; seconded by Troy

Board members voting to grant the requested variance: Burns, Partenheimer, Mulholland, Sweet, Troy, Shanahan and Wells

Board members voting to deny the requested variances: None

CERTIFICATION

I hereby certify that the foregoing is a true, accurate, and complete copy of the resolution of memorialization adopted by the Zoning Board at its regular monthly meeting on November 17, 2020, memorializing action taken by the Zoning Board on October 20, 2020.

Tavis Karrow, Board Secretary

**A RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF
HADDONFIELD GRANTING VARIANCE APPROVAL TO
JUAN AND AIME RODRIGUES
ZBA #2020-21**

A public hearing on this matter was conducted by the Board on October 20, 2020

APPLICATION NUMBER: ZBA#2020-21

PROPERTY ADDRESS: 8 Birchall Drive
Block 91.11, Lot 28 on the Tax Map

NAME OF APPLICANT: Juan and Aime Rodrigues

OWNER OF PROPERTY: Juan and Aime Rodrigues

DATE OF HEARING: October 20, 2020
Held via Zoom® Video

**BOARD MEMBERS PRESENT
AND VOTING:**

Kevin Burns, Chairperson
Wayne Partenheimer, Vice-Chairperson
Brian Mulholland
Steve Sweet
Frank Troy
William Shanahan (Alternate I)
Richard Wells (Alternate III)

APPEARANCES:

Laura M. D'Allesandro, Esquire, Applicant's Attorney
Juan Rodrigues, Applicant
Lisa C. Soulos, Architect
Travis Greiman, Borough Engineer
Tavis A. Karrow, Zoning Officer & Board Secretary
Francis X. Ryan, Esquire, Board Solicitor

PROPERTY DESCRIPTION

ZONING DISTRICT: R-6

LOT DIMENSIONS: 103' x 111.60' (irregular)

LOT AREA: 11,494.8 square feet
STREET FRONTAGE: 103'
STRUCTURES LOCATED ON LOT: Two-Story Single-family residence

DEVELOPMENT PROPOSAL

1. Construction of a new side porch and side entrance.
2. Construction of a "four-season room" addition to rear of existing home.

VARIANCES REQUESTED

1. A variance from Section 135-31D(2)(b) which requires a minimum side yard setback of ten (10') feet and 6.2' is proposed (13.2' existing).
2. A variance from Section 135-31D(2)(c) which requires a combined side yard setback of twenty-five (25') feet and 22.4 feet is proposed (29.4' existing).
3. A variance from Section 135-31D(2)(d) which requires a minimum rear yard setback of forty (40') feet and 35.31 feet is proposed (43.71' existing).

SUBMISSIONS

Application and supporting documents.

- A-1 survey
- A-2 Site Plan
- A-3 Photographs

SUMMARY OF TESTIMONY AND EVIDENCE

Counsel for the Applicant provided an overview of the plan. It was noted that the Applicants have undertaken a complete interior renovation of the property, none of which required zoning approval. What does require variance relief and zoning Board approval is the construction of a deck on the side of the existing structure and the construction of a "four-season room" in the rear of the property primarily over an existing brick patio.

Mr. Rodrigues confirmed the nature of the application and the reasons for the specific designs.

Applicant's Architect, Lisa Soulos, then testified. She described some of the current interior renovations that were being performed. As a result of those renovations she had designed a second means of ingress and egress to the home off the first-floor dining room. That opening consists of French doors opening on to a 7' x 9' deck which then has steps off the rear going into the rear yard. When asked why the deck could not be placed in the rear of the house in the area of a proposed bay window off the dining room she indicated that such would disrupt the flow of that room and would also reduce the natural light coming into the dining room. She believed that from an architectural standpoint it was the better placement for the deck and rear yard access. She noted that the area where the deck is proposed is completely surrounded by vegetation which blocks it from view and not only from the front of the house but more importantly from the side of the house where it does encroach on the side yard setback.

With regard to the four-season room, that will extend a few feet beyond the existing brick patio. To comply with the rear yard setback requirement the room could only be approximately eight (8) feet deep which would be impractical. The design of that room is such that the rear wall will consist primarily of folding glass doors which obviously will not have a very bulky appearance in terms of the view from adjoining properties. Likewise, because of the natural vegetation in the area and the size of the rear yard of the adjoining property to the rear the encroachment into the rear yard should not impact the neighbors.

One of the neighbors, Terry Smith, who lives next door at 2 Birchall Drive appeared and testified. He indicated his support for the application. He confirmed that the area of the proposed side deck is currently surrounded by vegetation so that it will not be obtrusive. He also confirmed the photographs of his property showing that his driveway was adjacent to the property line where the deck would be located. Thus, the area was open and there would be adequate room for emergency vehicles to get to the rear of either property.

FINDINGS OF FACT AND CONCLUSIONS

1. The property in question is located in the R-6 residential zone.
2. The proposed side entrance adds only a de minimus amount of square feet in terms of impacting on the side yard setback and significantly increases the functionality of the house and property.
3. To obtain a (c)(2) variance, the Applicant has the burden to show that an application relating to a specific property would advance the purposes of the zoning ordinance by a deviation from the ordinance requirements and that the benefits of the deviation would substantially outweigh any detriment. In other words, the Applicant has to show that (1) the variance pertains to the specific property; (2) that a variance would advance the purposes of the MLUL and the ordinance; (3) the variance does not cause "substantial detriment to the public good"; (4) its benefits substantially outweigh any detriments from the

deviation; and (5) the variance does “not substantially impair the intent and purpose of” the Zoning Plan and the Zoning Ordinance. In this instance the variance does advance the purposes of the M.L.U.L and the ordinance in that it supports proper growth and development of the property. The proposed variance does not cause any substantial detriment to the public good. The improvement of the property is a benefit that out ways any detriment from the deviation of the zone plan and expanding slightly into the side and rear yard does not “substantially impair” the intent and purpose of the zoning plan and the zoning ordinance. Although not in invoked by the Applicant, it should be noted that the placement of the existing structure on the property is much further back in the front then is required. If the structure was located to meet the front setback requirements there would be ample space in the rear yard to include the four seasons room.

4. The granting of the variance does not represent any detriment to the zone plan or ordinance.

5. The relief requested can be granted without violating the spirit and intent of the zoning ordinance, the zone plan and the Master Plan.

6. Due notice has been given in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et. seq.) and the rules of the Board of Adjustment.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Haddonfield, that subject to the conditions noted below, that the application for a variance be and is hereby granted, pursuant to N.J.S.A. 40:55D-70(c).

CONDITIONS OF APPROVAL

1. The development approved by this resolution must comply with the plans and specifications submitted with this application.
2. Applicant must comply with all other applicable ordinances and codes including but not limited to Shade Tree Ordinance, building codes, fire codes and all water management requirements.

Motion by: Burns; seconded by Partenheimer

Board members voting to grant the requested variance: Burns, Partenheimer, Mulholland, Sweet, Troy, Shanahan and Wells

Board members voting to deny the requested variances: None

CERTIFICATION

I hereby certify that the foregoing is a true, accurate, and complete copy of the resolution of memorialization adopted by the Zoning Board at its regular monthly meeting on November 17, 2020, memorializing action taken by the Zoning Board on October 20, 2020.

Tavis Karrow, Board Secretary