



MEMORANDUM

Clarke Caton Hintz

Architecture
Planning
Landscape Architecture

100 Barrack Street
Trenton NJ 08608
clarkecatonhintz.com
Tel: 609 883 8383
Fax: 609 883 4044

Philip Caton, FAICP
John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP

Emeriti
John Clarke, FAIA
Carl Hintz, AICP, ASLA

To: Asbury Park Zoning Board of Adjustment
From: Michael Sullivan, ASLA, AICP *Michael*
Donna Miller, AICP, PP, CFM *Donna*
Re: **1302 Mattison, LLC**
Certificate of Non-conformance or Use Variance
1302 Mattison Avenue
Block 1101, Lot 23
R1A Attached Single Family Residential District
Date: June 5, 2020

1.0 Project & Site Description

1.1 Project Summary: The applicant amended its proposal at the public hearing on March 3, 2020 to eliminate the aspects of the original proposal involving adjoining Lot 25 (conversion of an existing single-family dwelling to a two family dwelling and construction of a parking lot). Testimony was provided to substantiate the existing building at 1302 Mattison Avenue is a legal two-family dwelling. This report evaluates supplemental information provided since that hearing and amends the nature of approval required.

1.2 Property Description: Lot 23 is an undersized lot containing approximately 2,850 sq. ft., located on the south side of Mattison Avenue, fifty feet west of the intersection with Borden Avenue. The property is developed with a three-story residential building which is set very close to the front and east side property lines, with a portion of the existing front porch extending over the east side property line.

1.3 Applicant's Proposal: The applicant asserts that the existing dwelling contains two dwelling units and seeks to maintain those units. Exhibits provided during the hearing on March 3, 2020 indicated there is one apartment on the first floor and a second apartment on the second and third floors. Currently, each unit has a separate entrance within the first floor of the building.

1.4 Neighborhood Context: The surrounding properties are two-family dwellings with the properties on Borden Avenue typically containing 7,500 sq. ft. and properties on Mattison Avenue containing approximately 2,850 sq. ft. Barack Obama Elementary School is located on the north side of Mattison Avenue.



Clarke Caton Hintz



2.0 Zoning Compliance

2.1 **Legal Pre-Existing Nonconforming Use:** A nonconforming use is considered legally pre-existing if it was permitted by the zoning ordinance in place at the time the use began. If the zoning changes to prohibit that use at that location, the property owner may obtain a certificate of nonconformance from the zoning officer within the first year of a zoning change, in order to document the legal non-conformity. After that point, the Zoning Board of Adjustment has the responsibility to hear and determine the validity of the non-conformity. *If the use was not permitted by zoning when it was occupied in the current manner, or if a variance was never granted to permit the use, the Board cannot issue the certificate and the applicant must apply for a d(1) use variance or occupy the building with a conforming use.* In order to prove the pre-existing non-conforming status, the applicant should address the following items:

- a. **History of Zoning:** Establish the zoning of the property at the time the two-family use began, including the name of the zoning district and the uses permitted in that zone at that time. *We note the property has been*



1302 MATTISON LLC |
CERTIFICATE OF NON-CONFORMANCE / USE VARIANCE

Clarke Caton Hintz

- zoned R1A, which has never permitted two-family dwellings, for the past 30 years.*
- b. **History of Use:** The applicant should provide evidence of the use on the site since at least 1987, or as far back as possible, including whether the site was ever occupied as another use, or consisted of fewer dwelling units. *Tax records indicate the property was a single-family dwelling in May 2000. In 2002 an “apartment conversion” and “2nd kitchen” are noted in the assessment records. In 2013 and 2014 the records indicate access to the property was refused and the number of dwelling units were noted to be “one”. During this time the property was owned by the same individual. In 2017, the records indicate a new owner, 1302 Mattison, LLC, and the number of dwelling units had become “two”. There are not records indicating a variance was granted to convert the premises between 2000 and the present.*
 - c. **History of Tenancy:** The applicant should demonstrate the pattern of tenancy, including noting any long vacancies and the reasons for those vacancies based on leases or certificates of occupancy. Lack of habitability due to neglect or abandonment or a change from dwelling to storage or another type of use could preclude the continuance of the nonconformity.
 - d. **History of Violations and Permits:** The applicant should provide a history and documentation of any violations, permits, and certificates of occupancy relating to the subject property.
 - e. **Marketing of the Property:** The applicant should describe the manner in which it came to acquire the property, including real estate listings, advertisements or communications with brokers or property management company.
- 2.2 **Non-permitted Use:** Two-family dwellings are not permitted in the R1A District. *In order to permit a two-family use of the premises, the applicant seek a use variance pursuant to N.J.S.A. 40:55D-70.d(1)).*
- 2.3 **Density Variance:** The density for a residential use in the R1A District shall not exceed 10 du/ac. If the applicant cannot prove the pre-existing non-conformity, the new two-family use would result in a density of approximately 30 du/ac. *A ‘c’ variance would be required pursuant to NJSA 40:55D-70.c(2).*
- 2.4 **Existing Non-conformities:** The property is deficient for minimum lot width and lot area and the existing building is non-conforming for all bulk requirements. *If these deficiencies were not lawfully created, and if the applicant fails to prove it pre-*



existing non-conformity, variances pursuant to NJSA 40:55D-70.c(2).would be required.

- 2.5 **Bulk Requirements:** The table below illustrates the existing deficiencies for the bulk requirements for the property. If a use variance is determined to be required, the bulk deficiencies are presumed to be included or absorbed, into the use variance. The Board can use these criteria in evaluating the appropriateness of the proposed use.

R1A District Bulk Standards (§30-67, Schedule 1)			
	Required	Existing	Compliance
Min. Lot Size	5,000 s.f.	2,858 s.f.	No
Min. Lot Width	50 ft.	25 ft.	No
Min. Front Yard	25 ft.	0.4 ft.	No
Min. Side Yard / Aggregate	6 ft. / 14 ft.	0 ft*. / 5 ft.	No
Min. Rear Yard	25	52 ft.	Yes
Max. FAR	0.5	0.65	No
Max. Building Coverage	25%	42.1%	No
Max. Height	30 ft. / 2 1/2 Stories	31.56 ft. (to roof peak) / 2 1/2 stories	Yes

**Existing building extends over the east side lot line more than 2 ft.*

- 2.6 **Off-Street Parking:** The property does not contain a driveway, nor is there room to provide one in order to accommodate off-street parking. There is an existing deficiency for two spaces for a single-family dwelling. If the applicant requires a d(1) use variance to permit a new two-family use, this deficiency will be exacerbated. The City’s off-street parking requirement for two-family dwellings is three spaces, which is the same amount required under the Residential Site Improvement Standards (RSIS) for this property. ***An exception is required from §30-59.5- as well as from N.J.A.C. 5:21-4.14(b) for insufficient number of parking spaces.***

3.0 **Relevant Land Use Policy**

- 3.1 **Master Plan Goals:** The City’s 2017 *Master Plan Reexamination Report* restates, expands upon, and adds to goals and objectives stated in its 2006 Master Plan that are relevant to this application. The following provides policies aimed at maintaining and/or enhancing the character, aesthetics and function of the City’s residential neighborhoods.



Planning Goals

5.1.2.1. *Protect and enhance the quality and enjoyment of the City's residential neighborhoods through policy and regulation that promotes quality of life and minimizes negative impacts from the City's tourism and other economic development activities.*

Land Use Objectives

5.2.1.18 *Maintain and enhance the character of single-family neighborhoods with regulations that support and reinforce these uses.*

Urban Design Plan Objectives

5.3.1.2 *Encourage new and repurposed buildings to add richness and sense of creativity to Asbury Park's built environment.*

5.3.1.3 *Ensure infill development compliments the context and qualities of adjacent neighborhoods with appropriate scale, massing and character.*

Housing Objectives

5.5.1.1 *Protect and preserve established residential character through zoning enforcement, design guidelines, inspections of multi-family dwellings and rehabilitation, where necessary.*

- 3.2 **Master Plan Recommendations:** The 2017 Reexamination Report recommends the replacement of the R1A District in favor of the R1 Single Family Residential District, "The R1A district neighborhoods are predominantly single family homes in conformance with the R1 district". The Master Plan objectives encourage new and repurposed buildings to add richness to the built environment and for infill development to compliment the context and quality of neighborhoods with appropriate scale, massing and character.

4.0 **Consideration of the Variances**

- 4.1 While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review.

- 4.2 **D(1) Variance, Non-permitted Use:** Regarding the variance for a non-permitted use, there must be a demonstration that the proposed development advances the purposes of zoning, as enumerated in *N.J.S.A. 40:55D-2*, or that there is a substantial practical hardship to the development of a conforming use or structure on the property. These are known as "special reasons" or the positive criterion.



- a. **Positive Criteria:** In *Medici v. BPR Co.*, 107 N.J. 1 (1987), special reasons for granting a d(1) variance should show the proposed use will promote the general welfare and that the property in question is particularly suited for the proposed, non-permitted use. In *Price v. Himeji*, 214 N.J. 263, 292-293 (2013), the Court ruled that proof of special reasons need not include a demonstration that other sites would be better suited for the use, but rather, that unless the project is erected at the particular site for which the variance is sought, the benefit that is presumed to promote the general welfare will not be attained.
- b. **Negative Criteria:** Should the applicant satisfy the positive criteria, it must also be demonstrated that that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.

4.3 **Exceptions:** The Board may also grant deviations from site plan standards, often referred to as “design exceptions”. These criteria are distinguished from variances, as they are not deviations from requirements related to use or other zoning criteria, but rather from the ordinance requirements for site plans (and subdivisions). These deviations are generally evaluated pursuant to N.J.S.A. 40:55D-51.b, which states:

“The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.”

This standard is similar to a ‘c(1)’ variance, except that the applicant is not required to demonstrate that there will be no substantial detriment to the public good or impairment of the intent and purpose of the zone plan (negative criteria). The applicant should identify the degree to which the requirements are impracticable/cause hardship and also what the peculiar site conditions are that prevent compliance.

6.0 Materials Reviewed

6.1 *Application for Site Plan* and supporting documentation, dated September 5, 2019.



1302 MATTISON LLC |
CERTIFICATE OF NON-CONFORMANCE / USE VARIANCE

Clarke Caton Hintz

- 6.2 *Site Plan*, prepared by Marc A. Remo, PE, PP, CME, Remo Engineering, LLC, dated April 1, 2019 and last revised January 27, 2020, consisting of four sheets.
- 6.3 *First, Second and Third Floor Plan*, prepared by Wayne Lerman, AIA, W. Lerman Architecture, dated July 12, 2019, consisting of one sheet.

7.0 Applicant / Owner / Professionals

- 7.1 **Applicant / Owner:** 215 Borden Properties, LLC and 1302 Mattison, LLC, 700 Emory Street, Asbury Park, NJ 07712. Telephone: 732-742-8783. Email: msigman@sigmanrealestate.com.
- 7.2 **Attorney:** Mark L. Breitman, Esq., 684 Holmdel Road, Hazlet, NJ 07730. Telephone: 732-970-7814. Email: mlb1229law@gmail.com.
- 7.3 **Engineer:** Marc A. Remo, PE, PP, CME, Remo Engineering, LLC, 205 Route 9 North, Freehold, NJ 07728. Telephone: 732-303-7992. Email: marcremo@remoengineering.com.

8.0 Summary

The applicant requires a certificate of non-conformance or, if it cannot establish that the existing property contains a legal, pre-existing non-conforming use, a d(1) use variance to permit a two-family dwelling. A design exception for off-street parking under RSIS and §30-59.5 are also required.

- C. Irina Gasparyan, Board Secretary
Jack Serpico, Board Attorney
Jason Fichter, Board Engineer
Mark L. Breitman, Esq., Applicant's Attorney
Marc A. Remo, PE, PP, CME, Applicant's Engineer

W:\5000's\Asbury Park\5557_Zoning Board\5557.52 215 Borden LLC 215 Borden 1302 Mattison\200605_1302 attison LLC_1302 Mattison_CCH.docx