

**RESOLUTION OF THE
TOWNSHIP OF BLOOMFIELD
ZONING BOARD OF ADJUSTMENT**

RESOLUTION IN THE MATTER OF THE APPLICATION OF 223 BROAD STREET, LLC, AS APPLICANT, AND DANZACH REALTY, INC., AS OWNER, FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL, A USE VARIANCE PURSUANT TO N.J.S.A. 40:55D-70(d)(1), A FLOOR AREA RATIO VARIANCE PURSUANT TO N.J.S.A. 40:55D-70(d)(4), A HEIGHT VARIANCE PURSUANT TO N.J.S.A. 40:55D-70(d)(6), VARIANCES PURSUANT TO N.J.S.A. 40:55D-70(c) FOR THE NUMBER OF PARKING SPACES, LOT AND BUILDING COVERAGES, FRONT AND REAR YARD SETBACKS AND FENCE HEIGHT, AND A *DE MINIMIS* EXCEPTION FROM THE RESIDENTIAL SITE IMPROVEMENT STANDARDS GOVERNING NUMBER OF PARKING SPACES, PERMITTING THE CONSTRUCTION OF A RESIDENTIAL APARTMENT BUILDING WITH TWENTY-ONE RESIDENTIAL UNITS AT PROPERTY LOCATED AT 223-227 BROAD STREET, BLOCK 516, LOT 1.

WHEREAS, 223 Broad Street, LLC, as Applicant, and Danzach Realty, Inc., as owner, filed an application with the Township of Bloomfield Zoning Board of Adjustment with respect to premises located at 223-227 Broad Street in the Township of Bloomfield, Block 516, Lot 1, to permit the construction of four-story apartment building with 21 residential dwelling units; and

WHEREAS, the building would consist of three residential floors over ground floor parking;

WHEREAS, a (d)(1) use variance was necessary because the subject property is located in the PO/R, Professional Office/Residential District, where apartment buildings are not permitted uses, although garden apartments are permitted; and

WHEREAS, a (d)(4) floor area ratio variance was also necessary because the proposed FAR of 1.1 would exceed the permitted ratio of 0.6; and

WHEREAS, a (d)(6) height variance was required because at 44 feet in height, the apartment building would exceed the permitted height of 40 feet by 10%; and

WHEREAS, (c) variances were required for the number of proposed parking spaces, front and rear yard setbacks, building and lot coverages and fence height; and

WHEREAS, a *de minimis* exception from RSIS was also required due to insufficient on-site parking; and

WHEREAS, hearings on this application were held before the Bloomfield Zoning Board of Adjustment on April 20, 2017, September 7, 2017 and October 19, 2017; and

WHEREAS, Board Member Balnicki recused himself from hearing this application; and

WHEREAS, the Applicant filed an affidavit with this Board showing compliance with the statutory requirements concerning notice to the affected property owners and of making proper and timely publication of the application in the official newspaper of the Township of Bloomfield.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bloomfield as follows:

This was an application for preliminary and final site plan approval, variances pursuant to N.J.S.A. 40:55D-70(d)(1), N.J.S.A. 40:55D-70(d)(4), N.J.S.A. 40:55D-70(d)(6) and N.J.S.A. 40:55D-70(c), and a *de minimis* exception from RSIS to permit the construction of a 21-unit, four-story apartment building at 223-227 Broad Street in the Township of Bloomfield, Block 516, Lot 1. The subject property is located in the PO/R Zone, which does not permit apartment buildings, thus necessitating the (d)(1) use variance. The ground floor of the building would contain the lobby and parking, with three residential floors above. A (d)(4) FAR variance was required because the floor area ratio of 1.1 would exceed the permitted FAR of 0.6. A (d)(6) height variance was required because the proposed height of 44 feet would exceed the permitted height of 40 feet by 10%. Multiple (c) variance were required for an insufficient number of on-site parking spaces, for front and rear yard setback encroachments, for excessive lot and building coverages and for fence height. The parking deficiency also implicated a *de minimis* exception from the Residential Site Improvement Standards ("RSIS"), which are incorporated into the Township's Land Development Ordinance by reference.

Following each of the first two hearings, Applicant revised its plans, which ultimately resulted in a decrease in the number of units from 27 to 21, an increase the height of the entrance to

the ground floor parking garage so that emergency vehicles and other oversized vehicles could access the garage, an increase the front yard setback, although still deficient, and a redesign of the exterior of the building.

The granting of a d(1) use variance requires the Applicant to demonstrate "special reasons" for the granting of the application. "Special Reasons" may be demonstrated by proof that the use promotes the general welfare because the site is particularly suited for the proposed use, or by proof of undue hardship, i.e., that the property cannot be adapted to a conforming use. To obtain an FAR variance pursuant to N.J.S.A. 40:55D-70(d)(4), the Applicant must demonstrate that the site can accommodate the increase in floor area. A height variance pursuant to N.J.S.A. 40:55D-70(d)(6) requires the Applicant to demonstrate that either a conforming structure cannot be built on the lot, or that the excess height is consistent with the surrounding neighborhood. The granting of (c) variances requires that the Applicant demonstrates that due to unique circumstances affecting its property, it would suffer some hardship without the variance, or that the variance would benefit the community and advance the purposes of the Municipal Land Use Law. With respect to both (d) and (c) variances, the Applicant must additionally demonstrate that the granting of the application would not impose a substantial detriment to the public good or substantially

impair the intent and purpose of the municipal master plan or zoning ordinance. The granting of an RSIS exception requires the Applicant to demonstrate that it would be impractical to enforce the standards or that conformance with the standards would impose an undue hardship due to conditions of the property. Applicant must also demonstrate compliance with the requirements of the Township Land Development Ordinance governing review and approval of site plan applications.

Applicant was represented by John F. Chiaia, Esq., of the firm Chiaia & Associates, LLC, and Lisa A. John-Basta, Esq., of the firm Chiesa, Shahinian & Giantomasi. Counsel presented the testimony of Anthony Pisa, Jr., the sole member of the Applicant; James Guider, a New Jersey licensed professional engineer; Yogesh Mistry, a New Jersey licensed architect with the firm of Mistry Design; Matthew Welch, a New Jersey licenses professional engineer specializing in traffic engineering, with the firm Stonefield Engineering & Design; and John McDonough, a New Jersey licensed professional planner. Mr. Guider, Mr. Mistry, Mr. Welch and Mr. McDonough were accepted by the Board as experts in their respective fields. The Board also received reports and heard testimony from Anthony Marucci, the Board's consulting engineer, Joseph Fishinger, from the firm the NV5, the Board's consulting traffic engineers, and George Wheatle Williams of the Nishuane Group, the Board's consulting planners. Several members of the

public participated in the hearing, including Matthew Watkins, the Township Administrator.

Based on the evidence presented at the hearing, the Board made the following findings of fact and conclusions of law:

1. The subject property is an irregularly shaped, 21,579 square foot lot fronting on Broad Street to the west. It is currently improved with an automobile repair business occupying two buildings;

2. The Broad Street frontage measures 192.47 feet. The southerly side lot line extends 108.16 feet from Broad Street, where it jogs to the north for 33.47 feet, and then continues east for another 104.69 feet. The rear lot line measures only 25 feet, and the northerly side lot line measures 207.71 feet;

3. The property is bordered to the south by a single family home fronting on Broad Street and a one-story commercial building at the corner of Broad Street and New Street, and by single family homes fronting on New Street. An elevated railroad line borders the property to the east and north, with a trestle extending over Broad Street immediately to the north of the property;

4. Across Broad Street and slightly to the south are several mid-rise apartment buildings, which are permitted uses in the RG, Garden Apartment District, where those properties are located;

5. Applicant proposed to demolish the exiting buildings and construct a four story apartment building with three residential floors and a ground floor consisting of a lobby, utility rooms and parking;

6. The property is located in the PO/R, Professional Office Residential District, which does not permit multi-family dwellings except for garden apartments. Thus, Applicant needed a (d)(1) use variance. The existing auto repair use is also not permitted in the Zone;

7. The site cannot be developed with garden apartments due to its size and irregular shape;

8. Twenty parking stalls, including two ADA compliant stalls, would be located under the building, which will be located 12 feet from the Broad Street right of way. An additional 16 spaces will be located to the rear of the building;

9. Access to the ground floor parking area will be from a curb cut and driveway apron located approximately 18 feet from the northwest corner of the site. Applicant redesigned the building to raise the height of the garage entrance from 8.5 feet to 17.5 feet to provide access into the garage for garbage, moving, utility and delivery trucks. To accommodate the increase in the garage clearance, there would be only two floors of residential apartments above the garage entrance;

10. The 21 residential units would include 12 one-bedroom apartments and 9 two-bedroom apartments, with three one bedroom and three two-bedroom units on the first and third floors and six one-bedroom and three two-bedroom units on the second floor;

11. RSIS parking standards, which are incorporated by reference into the Township's Land Development Ordinance, are based on bedroom counts. Thus, the 12 one-bedroom apartments and 9 two-bedroom apartments equate with a parking demand of 40 spaces, which exceeds the 36 spaces proposed for the project, thus necessitating a (c) variance and a *de minimis* exception from RSIS;

12. Spaces will be assigned one per unit, with extra spaces reserved for visitors or for residents who pay an extra fee;

13. Applicant originally proposed 27 units, but reduced the unit count by first raising the clearance height on the garage entrance and then by providing amenity space for the residents on the third floor, and by altering the unit mix;

14. The building would be set back 12 feet from the front lot line, which was increased from 9 feet following the redesign of the building by the Applicant. The northerly side yard setback would be 10.04 feet and the southerly side yard setback would be 10 feet. Due to the jog in the southerly side lot line, the rear yard setback would be 20.5 feet from the point where the southerly side lot line turns back to the east. The rear yard

setback was reduced by about 8 feet to reflect the redesign of the building;

15. The PO/R Zone requires a 25 foot front yard setback, 10 foot side yard setbacks and a 30 foot rear yard setback. Thus, (c) variances were required for the front, rear and side yard setback violations;

16. Building coverage and lot coverage violations also required (c) variances. Building coverage would be 41%, in excess of the permitted 35%, and lot coverage would be 80%, in excess of the 70% permitted. Lot coverage would be reduced from the existing 100%;

17. A (d) (4) variance for floor area ratio was required because the FAR, at 1.1, would exceed the permitted 0.6;

18. Revisions to the design of the building reduced the height from 49.5 feet to 44 feet. The building would have a mansard roof around the perimeter, with a flat roof in the middle for mechanical equipment. While the flat roof would be 42 feet high, the mansard roof would reach an elevation of 44 feet. The maximum permitted height is 40 feet. Since the height of the proposed building would exceed the permitted height by 10%, a (d) (6) height variance was necessary;

19. The redesign of the building included revised elevations to create a more residential appearance. Thus, the building would have bays to break up the massing, double hung

windows, and dormers on the third floor. Hardie board siding would cover the bays; the balance of the facade would be brick;

20. Two ground floor windows on the front facade would align with the columns of windows on the floors above. Applicant will add additional windows to the ground floor front facade for aesthetic purposes, which will also align with the windows on the floors above;

21. Following an environmental clean-up of the site conducted under the auspices of an LSRP, the site was deemed remediated to residential levels;

22. To provide an additional buffer from the residential property to the south, a six foot board-on-board fence will be installed along the southerly side lot line to separate the building from the adjacent single family dwelling. Six foot fences are prohibited in the side yards, so another (c) variance was necessary;

23. Landscaped areas would be located in the front, northwest corner of the site, in the southerly side yard and in the rear, northeast corner of the site. Applicant agreed to install a vegetative buffer along the southerly side lot line which will exceed the six foot height of the privacy fence along that lot line, and that the vegetative buffer would be planted on Lot 5, the adjacent lot to the south, at Applicant's expense;

24. Applicant will submit a landscape plan to the Township Forrester for his review and approval, with particular attention to the vegetative buffer proposed for the side yard on Lot 5 and the front streetscape;

25. A sidewalk originally proposed for the southerly side yard was removed at the suggestion of the Board's consulting engineer;

26. Applicant also included drainage and lighting plans with its submissions. The Board engineer had technical issues with both plans, and thus Applicant agreed to work with the Board engineer to improve both the lighting plan and the drainage plan;

27. The site is a 15 minute walk from a commuter rail station at Lackawanna Plaza, and commuter bus service runs along Broad Street;

28. Traffic generation from the proposed development would be nominal, with an expected volume of 12 trips during the morning weekday peak hour and 15 trips during the evening peak hour;

29. The development would reduce the number of curb cuts along the Broad Street frontage from three to one, thereby increasing the available on-street parking in front of the site;

30. The paved area in the southeast portion of the site, adjacent to parking spaces abutting the southerly lot line, will be striped for no parking;

31. The word "Stop" painted on the exit driveway near the stop bar will face drivers exiting the site; and

32. Applicant will replace the curbs and sidewalks along the property frontage on Broad Street.

On the basis of these findings of fact and the discussion of the Members of the Board present at the hearing, the Zoning Board of Adjustment of the Township of Bloomfield made the following conclusions of law:

1. The proposed multi-family use is more compatible with the intent of the PO/R Zone than the existing automobile repair use since the Zone permits multi-family dwellings if a two-story garden apartment rather than a mid-rise building;

2. The project will advance the purposes of the Municipal Land Use Law because it will eliminate a noxious use on Broad Street, a main commercial and residential thoroughfare, will provide needed housing, and will improve the aesthetics of the property;

3. The site is particularly suited to a multi-family use due to its size and irregular shape, and because it cannot be developed with a garden apartment complex;

4. The proximity of the subject property to the Lackawanna train station and to commuter bus routes justified the (c) variance and the RSIS *de minimis* exception for a deficiency of four parking stalls;

5. Additionally, the parking deficiency was the result of the irregular shape of the lot, which restricted the number of parking spaces which could fit on-site.

6. The bulk variances for front and rear yard setbacks and lot and building coverage are a function of a hardship caused by the irregular shape of the lot;

7. The height variance can be granted because the mansard roof will screen the rooftop mechanical equipment and because there are apartment buildings of similar height in the neighborhood;

8. The FAR variance is directly related to the use, and the additional floor area can be readily accommodated on site;

9. The variance for fence height along the southerly side yard benefits the adjacent single family dwelling by providing additional buffering;

10. Promotion of the State's smart-growth principals through construction of high density multi-family residential dwellings near mass transit is an appropriate use of the land and advances the goals of the Municipal Land Use Law;

11. Any negative impact of the proposed development on neighboring properties was minimal given the volume of traffic and the multi-family uses already on Broad Street;

12. The proposed development was not inconsistent with the Master plan or zoning ordinance because it would promote the goal of multi-family dwellings proximate to mass transit;

13. The benefits of granting the (c) variances outweighed any detriments; and

14. The proposed development complied with the requirements of the Township Land Development Ordinance governing site plan approval.

On the basis of these findings of fact and conclusions of law, and the discussion of the Members of the Board present at the hearing, the Zoning Board of the Township of Bloomfield, by a vote of seven (7) in favor and none opposed, determined that approval of the use, height, FAR and (c) variances and preliminary and final site plan approval were warranted. In support of its decision, the Board concluded that the multi-family use was particularly suited for the proposed site because the size and irregular shape limits other development options and a parking deficiency of four spaces was mitigated by the proximity to mass transit. Moreover, the aesthetic improvement alone justified approval of the proposed use. In addition, the Applicant had met the criteria in the Township's Site Plan Ordinance justifying preliminary and final site plan approval.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bloomfield that the application for preliminary and final site plan approval, (d)(1), (d)(4), (d)(6) and a (c) variances, to permit the construction of a four-story apartment building with 21 residential units and 36 parking spaces, at property located 223-227 Broad Street in the Township of Bloomfield, Block 516, Lot 1, be and hereby is GRANTED, subject to:

1. Conformance with the architectural plans prepared by Mistry Design submitted to the Board with a revision date of October 2, 2017, as modified hereby;

2. Submission of new engineering plans to reflect changes to the site plan since the latest revision date of May 25, 2017, including changes described herein;

3. Submission of a landscape plan to the Township Forrester for review and approval, including, without limitation, the streetscape and the southerly side yard buffering which will exceed six feet in height and be planted on Lot 5, the adjacent property to the south, at Applicant's expense;

4. Submission of a lighting plan and a drainage plan to the Board's consulting engineer for his review and approval;

5. Installing new curbing and sidewalks along the Broad Street frontage;

6. Adding additional windows to the ground floor front facade which will align with the columns of windows on the upper floors;

7. Elimination of a sidewalk in the southerly side yard of the property;

8. Striping the paved area in the southeast portion of the site adjacent to parking spaces abutting the southerly lot line for no parking;

9. The word "Stop" painted on the exit driveway near the stop bar will face drivers exiting the site;

10. Conformance with all building and fire code requirements;

11. Any other necessary governmental approvals;

12. Execution of a developer's agreement between the Township and the Applicant; and

13. Posting of performance and maintenance guarantees and inspection fees as required by law.

IN FAVOR OF GRANTING THE APPLICATION:

Ms. Alfreds	Yes
Mr. Debold	Yes
Chairman Michalski	Yes
Mr. Munson	Yes
Mr. Prince	Yes
Mr. Rockwell	Yes
Mr. Scurman	Yes

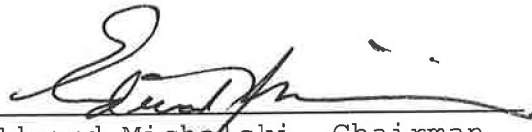
(7) Yes

OPPOSED TO GRANTING THE APPLICATION:

None

(0) No

The undersigned, a member of the Township of Bloomfield Zoning Board of Adjustment, certifies that the foregoing is a true copy of the Resolution adopted on the 30th day of November, 2017, to reflect the action taken by said Board on the 19th day of October, 2017.


Edward Michalski, Chairman