

Memorandum

To: Chatham Township Zoning Board of Adjustment
From: Frank Banisch, PP/AICP
Date: February 13, 2024
Re: NNG Real Property 1, LLC
39 Susan Drive
Block 20, Lot 16
R-3 Residential District

We have reviewed the following information submitted by the applicant:

- a. Application for Board of Adjustment with attachments
- b. Land Use Ordinance Checklist
- c. *Site Plan 39 Susan Drive*, prepared by Adnan A. Khan, P.E., C.M.E., dated December 22, 2022, revised through June 6, 2023, consisting of four sheets.
- d. Topographical Survey prepared by Andrew B. Clarke, PLS, PE, dated April 1, 2019.
- e. *New Single Family House, 39 Susan Drive*, prepared by Ayman Sedra, AIA, dated November 22, 2022, revised through May 11, 2023, consisting of seven (7) sheets.

1. BACKGROUND

- a. The parcel is located at 39 Susan Drive, Block 20, Lot 19, consisting of 21,322 square feet. The property is one of two remaining undeveloped parcels along this portion of Susan Drive.
- b. The site is wooded and steeply sloping away from Susan Drive, with the front of the lot having less grade than the middle to rear of the lot which is steeply sloped.
- c. The applicant is proposing to construct a new single-family dwelling on the site. The rear of the dwelling will be cut into the grade.



2. ZONING

- a. The property is in the R-3 Residential District. The applicant is requesting a d(6) variance for the maximum height of a structure:
 - Maximum height of Principal Structure where 35 feet permitted, and 48.11 feet is proposed (§30-75.2.)
- b. In addition, the following bulk (c) variances are requested:
 - Maximum Number of Stories where 2.5 stories are permitted, and 3 stories are proposed (§30-75.2)
 - Minimum Front Yard Setback to Principal Structure where 50 feet is permitted, and 36.93 feet is proposed (§30-75.2)
 - Maximum Area of Disturbance of Steep Slopes Greater than 25% where 500 square feet is permitted, and 8,650 square feet is proposed (§30-96.24)
 - Maximum Height of Structural Retaining Wall where 6 feet is permitted and 14.26 feet is proposed for the Side Stairs, 9.2 feet is proposed for the driveway (§30-96.15.d.2(d)(1))
 - Minimum Setback Distance to Structural Retaining Wall from Principal Structure where 20 feet is required and 6 feet is proposed for the Side Steps (§30-96.15.d.2(e)(1))
 - Minimum Setback Distance to Structural Retaining Wall from Property Line where 28.52 feet is required and 10.18 feet is proposed to the Side Steps (§30-96.15.d.2(e)(3))
 - Proposed Grading includes change in existing grade that raises the elevation of the lot within five feet of the east and west property lines which is not permitted (§30-96.20.g.2)
 - Proposed Grading does not provide positive slope away from the foundation for a minimum distance of ten feet on the driveway and rear west portion of the dwelling, as required under §30-96.20.g.4

3. HEIGHT VARIANCE DISCUSSION

- a. The applicant is seeking a d(6) variance to exceed the permitted height of a principal structure by 10 feet or 10%. The permitted height is 35 feet and the applicant proposes 48.11 feet, 13.11 feet or 37% over the permitted height.
- b. In reference to the "non-use" variances, the applicant should provide testimony as to how the proposed development will not negatively impact the adjoining area and how the request to exceed the zone requirements will be mitigated. Here, the Board again may consider the properties surrounding the site and how the requested relief may impact the area. The southern side of Susan Drive includes single family homes that are generally 1 to 1 ½ stories with a walk out basement level. The applicant is seeking a full 3 stories, including the livable basement area.

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Positive Criteria/ Special Reasons

Applicant's expert must provide testimony to support the use variance in accordance with the requirements of the Municipal Land Use Law which provides for a d-type variance "*In particular cases and for special reasons...*"

Generally, there are three categories of "special reasons" that can be used to justify the grant of a d variance: 1) when the refusal to allow the project would impose on the applicant an undue hardship, 2) when a proposed project carries out a purpose of zoning, and 3) when the use is inherently beneficial.

Accordingly, the testimony should identify one or more of the purposes of zoning and explain why such purposes would be advanced by this application. The purposes of zoning are set forth in the Municipal Land Use Law, N.J.S. 40:55D-2.

Negative Criteria

The negative criteria consist of two parts, or "prongs". The first prong focuses on the ability to grant the variance without substantial detriment to the public good while the second prong must establish that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.

COMMENTS

1. The applicant should provide testimony regarding the height variance and if alternative designs have been considered to reduce or alleviate the requested variance.
2. The proposed dwelling will utilize the front portion of the site, which has less grade than the central and rear portion of the site, similar to other houses located along Susan Drive. The applicant should provide testimony regarding the proposed dwelling and how the siting of the house minimizes impacts to the slopes.
3. The applicant proposes to remove 35 trees as part of the construction process. Given the steep slope disturbance and increase in impervious coverage, this may result in substantial erosion during construction. Replacement trees and other mitigating vegetation should be proposed to offset the negative impacts, if the Board approves this request.
4. We defer to the Board Engineer on the impact of grading, retaining walls, and stormwater management requirements and any potential detriment to adjoining neighbors. However the



applicant should provide testimony on the positive and negative criteria for the requested variances and how any detriment to the neighbors will be mitigated.

5. Any approval by the Zoning Board should be conditioned upon approval by any other agency having jurisdiction.

cc: Kali Tsimboukis, Zoning Board of Adjustment Manager
Zoning Board of Adjustment members
Amanda Wolfe, Esq.
John Ruschke, PE
Andan Khan, PE
Ayman Sedra, AIA
NNG Property 1 LLC, applicant