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September 16, 2020

Zoning Board of Adjustment
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922

**Re: Planning Review #1
Application #17-20
Site Plan with D Variances
Block 208, Lot 20
389-391 Springfield Avenue
391 Springfield Avenue, LLC
DD Downtown Development Zone**

Dear Chairman Sullivan and Members of the Board:

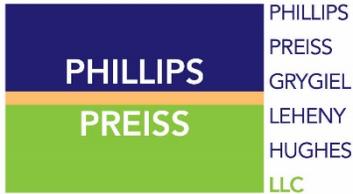
Our office is in receipt of the above referenced application, including the following documents submitted by the applicant:

- Application to Zoning Board of Adjustment, including Checklist and attachments entitled "Written Use Plan" and "List of Variances," dated July 28, 2020.
- Site Plan entitled "Lot 20 Block 208 389-391 Springfield Avenue Township of Berkeley Heights Union County New Jersey," prepared by Murphy & Hollows Associates LLC, dated June 23, 2020.
- Architectural Plan entitled "391 Springfield Avenue Berkeley Heights, NJ 07922," prepared by Studio 1200, LLC, dated June 5, 2020.

The subject application concerns the existing "Berkeley Heights Office Center" building at 391 Springfield Avenue in the DD Downtown Development Zone. In February 2020 the applicant obtained approval from the Township Planning Board to convert the vacant office spaces on the second and third floors of the building into 8 multifamily units. No changes were proposed to the ground floor of the building, the building footprint and elevations, or the site design at the time. The applicant has now submitted an application to this Board in order to convert the ground floor commercial space into 3 affordable multifamily units, and further construct additions to the existing parking deck to accommodate 8 more units.

Site and Location

The subject property is identified as Block 208, Lot 20 on the official tax maps of the Township of Berkeley Heights. The property is 24,314 square feet in area and has 100 feet of frontage along Springfield Avenue. 50-foot-wide right-of-way of Washington



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Street extends from the southwest and terminates at the southern lot line of the property. The property is located in the downtown area and is surrounded by a variety of commercial uses, including retail, pharmacies, medical offices, restaurants, and cafes. Most notably, it is across the street from the Berkeley Heights Shopping Center and is adjacent to several other multi-tenant commercial strips. To the west of the property are single-family residential neighborhoods.

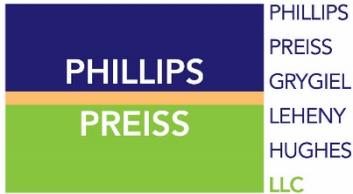
The property is currently developed with a 3-story brick clocktower building totaling ±11,400 square feet in floor area. The building was previously occupied by office tenants on all three floors but is now vacant. To the rear of the building, there is a two-level parking deck with 37 spaces constructed of what appears to be pink stucco. The lower level is partially enclosed via supporting pillars and the base of the upper level, while the upper level is open and installed with metal railings along the edges. An elevated walkway connects the second level of the parking deck to a rear entrance on the second floor of the front building. There is a driveway adjacent to the southern façade of the building, which serves both this property and the adjacent Lot 19, that provide access from Springfield Avenue to the parking deck. It should be noted that the rear parking deck is presently in poor condition, and was previously condemned by the Building Department in January 2018 when the property was owned by another entity.

Trees align the perimeter of the site and wood fences are installed along the rear and southern side property lines. There is also a landscaped area and pavers walk along the front building façade. The pavers walk leads to a stairway at the southern corner of the façade, which provides pedestrian entrance to the building. Three lamp posts are located along Springfield Avenue, one at the northern edge of the site, one near the pedestrian entrance, and one near the center of the lot line. A dumpster area enclosed by block wall is located adjacent to the driveway in the rear yard.

Development History

1989 Planning Board Approval

The office building and rear parking deck as described above were originally granted approval via Planning Board Resolution No. SP-8-88, dated August 3, 1989. To note, the resolution describes the parking deck as constructed of brick and having 40 parking spaces, which differ from present conditions. According to the resolution, the proposed users of the building at the time were State Farm on the ground floor, an employment agency on the second floor, and a real estate developer’s office on the third floor. As part of site plan approval, the Planning Board also granted variance/waiver relief for deficient easterly side yard setback from the clocktower building; deficient rear yard setback from the trash enclosure; deficient sidewalk width along the Springfield Avenue frontage; and the use of a single driveway to serve 2 adjacent lots in lieu of providing a driveway setback at least 10 feet from the property line.



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1995 Zoning Board Approval

In 1995, the property was subject to Case #3-95 before this Board that sought a use variance for the conversion of the ground floor to an office use, which was prohibited in the DD zone. According to the resolution of approval dated May 11, 1995, the property owner at the time was granted the variance, with the condition that there shall be no free-standing signs on site.

2020 Planning Board Approval

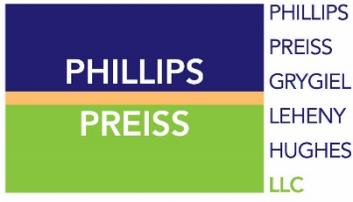
Earlier this year, the present applicant was granted approval for Application No SP-1-20 to convert the 2nd and 3rd stories of the building from office use to 8 multifamily residential apartments. There will be 4 units (2 studio units and 2 two-bedroom units) on each floor, and 15% or 2 units would be set-aside as affordable. No change to the clocktower building exterior, building footprint, or other site improvements were proposed. As noted in the resolution of approval dated February 19, 2020, the residential use was conditioned upon the first floor having retail/service business floor area that is no less than 20% of the gross floor area of the largest floor of the building on any level.

Present Application

At the present time, the applicant is proposing to construct 11 more multifamily units on-site, including 3 affordable units converted from the ground-floor space and 8 units newly constructed through an addition over the existing rear parking deck. The total unit count would be 19, including 5 studio units, 3 one-bedroom units, 10 two-bedroom units, and 1 three-bedroom units. The affordable units would constitute a 15% set-aside, and include 1 one-bedroom unit, 1 two-bedroom unit, and 1 three-bedroom unit.

No change to the building footprint or exteriors of the existing 3-story building is proposed. The interior of the ground floor will be renovated and partitioned to provide the three affordable units, a 177 square foot storage room, and utility rooms. The existing stairs, corridors, and elevator will continue to be utilized for access to the upper floors.

The parking deck to the rear of the building will be constructed with an additional floor above for residential use. There will also be a new stairway and elevator attached to the northeast corner of the structure, and another set of stairs will be installed by the entrance ramp to the upper level parking area. The 3rd story addition will cover the existing elevated walkway connecting the front building to the rear parking deck, which will be repurposed as an interior corridor. The new roof of the structure will contain a 2,000 square foot roof deck, and additionally utilized to store mechanical equipment and stair and elevator bulkheads. The existing 2-level parking deck below will be restriped to provide 34 spaces total.



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There will be extensive renovations to the exterior of the rear structure. The rear portion will be installed with new stucco and brick that match the façade of the front 3-story building, and additionally provided with concrete and aluminum railing where there are currently openings in the facade. The roofline will feature a combination of aluminum railing and coping to enclose the roof deck and mechanical equipment.

The applicant additionally proposes improvements to the existing driveway and curb ramp, including pavement repair and installation of new flush curbs. The southwestern corner of the property by the end of the curb ramp is proposed to be improved as a grass crete area for snow removal. The area will be enclosed by a reinforced concrete wall. The existing dumpster area will continue to be maintained, while new landscaping surrounding the area have been provided in response to the condition of the February 2020 Planning Board approval.

Summary of Zoning Use Changes

The table below additionally provides a comparison matrix of zoning uses proposed under the current application versus uses permitted under the current DD zone regulations, the 1989 Planning Board approval, the 1995 Zoning Board approval, and the 2020 Planning Board approval.

	Current DD Zone	1989 PB	1995 ZBA	2020 PB	2020 Proposed
Ground Floor	<ol style="list-style-type: none"> Retail Sales Walk-in Customer Services Municipal Theaters General and Professional Offices 	Walk-in Customer Services (State Farm)	General and Professional Offices (Use Variance Approved)	<ol style="list-style-type: none"> Retail/Service Business Use with floor area no less than 20% of the gross floor area of the largest floor on any level. General and Professional Offices (no change for remainder of ground floor space) 	3 Affordable Multifamily Dwelling Units in existing clocktower building
Upper Floors	<ol style="list-style-type: none"> All of the above Residential (only within mixed-use buildings with ground-floor retail/services) Dance Studios, Educational, Fraternal 	Professional Offices (Employment Agency + Real Estate Developer)	General and Professional Offices (No change from previous approval)	8 Multifamily Dwelling Units (Conditioned upon the ground floor having a compliant retail/service business use as specified above)	<ol style="list-style-type: none"> 8 Multifamily Dwelling Units in existing clocktower building 8 Multifamily Dwelling Units on 3rd story addition to rear parking deck

Zoning Compliance

D Variances

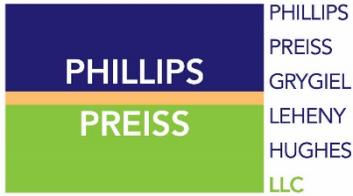
The present application requires the following “d” variances as set forth in N.J.S.A. 40:55D-70d:

- “d(1)” use variance: the DD zone only permits residential use on the upper stories of a mixed-use building with retail/service business on the ground floor. By converting the ground floor to residential use, which is explicitly prohibited in Section 6.3.2.A.4, the present application triggers a “d(1)” use variance.
- “d(5)” density variance: Pursuant to Section 6.3.2.F.2, the maximum density for residential uses in the DD zone is 20 units per acre. The proposed 19 dwelling units on the ±0.558 acre property translates to a density of approximately 34 units per acre, thus triggering a “d(5)” density variance.

C Variances

The proposed development deviates from bulk standards of the DD zone as follows:

- Section 6.1.1.B(d): Minimum side yard setback required for residential façade with window is 15 feet whereas 4.9 feet existing and 3.9 feet provided to the northeasterly lot line. It should be noted that the 1989 approval previously granted a variance for the same condition. However, the additions to the rear parking deck will exacerbate the deviation by 1 foot.
- Section 6.1.1.B(e): Minimum rear yard setback required is 20 feet whereas 13.8 feet proposed.
- Section 6.1.1.B: Maximum building height allowed is 3 stories and 36 feet. While the height of the new rear portion following the vertical additions has not been provided, it appears from the elevation drawings that the highest point of the roof line is 2 feet above the maximum 36 feet. The applicant shall provide the actual building height measurement of the new rear portion and seek appropriate relief if required.
- Section 6.1.1.B(cc): All buildings and structures shall not exceed 3 stories, with the 3rd story being built into the roof of the building or structure to give the appearance of a 2.5-story building or structure at the street level. The new rear portion will feature a flat roof design and will give the appearance of a 3-story building.
- Section 6.1.1.B: Maximum building coverage allowed is 50%, whereas 38.6% existing and 51.9% proposed.



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- Section 6.3.2.E.5: A minimum building step-back of 5 feet shall apply to any building elevation above the 2nd floor. The proposed third story addition above the rear parking deck does not feature such setbacks.
- In addition to the above, the proposed development requires both a “c” variance and a de minimis exception from the NJ Residential Site Improvement Standards (RSIS) for deficient number of parking spaces – 35 required whereas 34 provided in the restriped garage.

It should be noted that there is an existing nonconformity in respect to the deficient front yard setback (12 feet required whereas 11.9 feet existing) that does not require a new variance because no change affecting this condition is being proposed.

Other Deviations

Pursuant to Section 18.4.A.4, the required bedroom mix of affordable units in each project is as follows:

- No more than 20% shall be efficiency and one bedroom units.
- At least 20% shall be three-bedroom units.
- The balance may be two- or three-bedroom units, at the discretion of the developer.

The proposed affordable housing bedroom mix of 1 one-bedroom, 1 two-bedroom, and 1 three-bedroom results in distribution of approximately 33% each. In other words, the proposed 1 one-bedroom unit is in excess of the maximum permitted 20%. As such, the proposed bedroom mix is not in compliance with the affordable housing regulations of the Municipal Land Use Procedures Ordinance, nor the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.

Planning Comments

1. Pursuant to the MLUL at N.J.S.A. 40:55D-70d(1), the Board may grant a “d(1)” use variance to allow a non-permitted use “in particular case for special reasons.” These “special reasons” for a use variance may include that the site is “particularly suited” for the use (as set forth in Medici v. BPR Co., 107 NJ 1 [1987]), that the use is inherently beneficial, or that the property owner would suffer undue hardship if compelled to use the property in conformity with the permitted uses in the zone.

In addition, the applicant must address the “negative criteria” and affirmatively demonstrate that the use variance can be granted without substantial

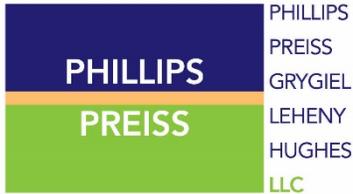
detriment to the public good, zoning ordinance, or master plan. In the case of non inherently beneficial uses, the Medici court set forth an “enhanced quality of proof” that the applicant must reconcile the proposed use with the fact that the ordinance explicitly omits the use from those permitted in the zone.

In accordance with the positive and negative criteria described above, the applicant shall provide testimony to justify the proposed conversion of the ground floor for residential use. The Board should noted that the DD zone is the primary commercial zone within Downtown Berkeley Heights, and does not allow standalone residential uses of any kind or density. Historically, the zone has only allowed residential use in the context of a mixed-use development with retail/service business on the ground floor to ensure that the commercial nature of the corridor can be maintained, particularly along Springfield Avenue. Per Medici standards, the applicant shall specifically address the “particular suitability” of the site and satisfy the “enhanced quality of proof” by reconciling the use with its prohibition in the DD zone.

2. The applicant shall also provide testimony to justify the non-compliant residential density of the project resulting from the addition of 11 more units than previously approved. Pursuant to N.J.S.A. 40:55D-70d(5), the applicant shall similarly demonstrate that the granting of the density variance can satisfy both “special reasons” and “negative criteria.” Pursuant to Grubbs v. Slothower, 389 N.J. Super. 377, 386-388 (App. Div. 2007), the Board’s focus should be on whether the site can accommodate the problems associated with the proposed density that is higher than permitted by the zoning ordinance.
3. Pursuant to the MLUL at N.J.S.A. 40:55D-70c, the Board may grant a “c” variance on two basis: (1) by reason of exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary and exceptional situation uniquely affecting a specific piece of property, the strict application of the regulation would result in practical difficulties or undue hardship upon the developer; or (2) the purposes of zoning would be advanced by the deviation and the benefits of deviating from the ordinance requirements outweigh any detriments. The Board must also be satisfied that the grating of the variance would not cause substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.

The applicant shall provide testimony regarding the requested “c” variances for the deficient northeastern side yard and rear yard setbacks, excess building coverage, non-compliant building height and 3rd story design, and deficient number of parking spaces.

4. In regards to roof design of the addition over the parking deck, while 3-story buildings are required to build the 3rd story into the roof to give the appearance of 2.5 stories, Section 19.5.4.B.4.c permits a flat roof with an articulated cornice such as the one proposed for downtown buildings over 2 stories in height. The building materials and overall façade design of the new rear portion are also consistent with standards and recommendations in Section 19.5.4 Urban Design of the downtown design standards.
5. The applicant should provide more details on the proposed windows and overall façade color scheme of the rear structure. Additionally, while the list of building materials on the elevations includes composite trim, it is unclear where this material will be used. We recommend that the applicant provide material samples and/or colored renderings at the time of the public hearing.
6. The applicant should provide more detail on the proposed rooftop terrace and rooftop mechanical equipment storage. Will the rooftop terrace be furnished? What kind of amenities, plantings, or other design elements are envisioned? What percentage of the roof will be covered by mechanical equipment and how much setback would be provided from the wall edges? What are the heights of the aluminum coping and railing from the surface of the roof? Particularly in light of deficient building setbacks and lack of required stepbacks, the applicant should discuss and the Board should consider the adequacy of the proposed coping and railing in respect to rooftop terrace safety and screening of the terrace and mechanical equipment from neighboring properties.
7. The applicant shall provide testimony or alternative plans to bring the proposed development into compliance with the Affordable Housing Regulations at Part 18 of the Municipal Land Use Procedures Ordinance. In addition the bedroom mix, the applicant should confirm and the Board should stipulate that the affordable units will further comply with income distribution, deed restriction, affirmative marketing, and other applicable requirements as set forth in Part 18 and UHAC regulations.
8. The Board should note that the 2020 Planning Board Resolution of Approval included conditions that the applicant install compliant landscaping and screening along the perimeter of the dumpster area. The site plan submitted for the present application appears to include such landscaping as previously required. However, no details on the plantings are provided. The applicant shall confirm that the proposed landscape buffer complies with Section 10.6.8.B.8, which requires minimum 4-foot high evergreen shrubs.



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9. The previous application to the Planning Board had included new life and fire safety devices and lighting fixtures on the ground floor. The applicant should discuss if these improvements will be integrated into the converted residential floor.
10. The applicant should indicate if any new signage will be proposed for the new residential use. If a sign is proposed, it must conform to Section 5.4.2.3, which limits wall signs in DD Zones to depth of not more than 12 inches projecting from the building and sign face size not exceeding 10% of the first story wall surface area including area of all windows and doors. Additionally, the sign must conform to design standards in Section 19.5.6., in particular that illumination may be gooseneck lighting or halo lit pin-mounted letters in soft white only.
11. The applicant should provide testimony on the size and capacity, access, and management of the proposed waste and recycling storage facility, as well as general logistics of waste and recycling collection, such as frequency of pickup and truck circulation. The applicant should discuss and the Board should consider if the existing facilities will be suitable to accommodate the change in use to 19 residential units. We defer to the Township engineer for any additional comments regarding this issue.
12. We additionally defer to the Township engineer for comments regarding the adequacy of lighting, traffic and circulation, paving and grading, drainage and stormwater management, and utilities on site and if any new improvements may be required to accommodate the change in use.

We trust that the above information is responsive to your needs.

Respectfully submitted,

Keenan Hughes, AICP, PP