

**ZONING HEARING BOARD  
BOROUGH OF NORTH CATASAUQUA  
NORTHAMPTON COUNTY, PENNSYLVANIA**

APPEAL NO.: 2022-2A

APPLICANTS: New Image Enterprises, LLC and Neel Shail, LLC

PROPERTY LOCATION: 1021 Fifth Street, North Catasauqua, Pennsylvania 18032  
R-2 Single – Two-Family Residential District

OWNER: New Image Enterprises, LLC and Neel Shail, LCC

SUBJECT MATTER: Applicants request a special exception under Section 402(1.3) of the Borough Zoning Ordinance, permitting use of a property as a Multiplex upon approval of the Zoning Hearing Board.

Attendant with their request for special exception relief, applicants also request variance relief under the Zoning Ordinance as follows:

Article 4, Section 402(2), Bulk and Area Requirements, requiring a minimum lot width of 50 feet for an R-1 Use and a Minimum of 80 feet for an R-5 Use

Article 4, Section 402(2), Bulk and Area Requirements, requiring minimum side yard widths of 6 feet for one side or a total of 16 feet for two sides for an R-1 Use, and 10 feet for one side or a total of 20 feet for two sides for an R-5 Use

Article 4, Section 402(2), Bulk Area Requirements, requiring a minimum lot area of 10,000 square feet for an R-5 Use

Article 4, Section 402(2), Bulk Area Requirements, limiting building coverage to a maximum of 35% of a lot

Article 5, Section 502(R)(R-5)(1)(1.2), Minimum Lot Area, requiring a lot of not less than 10,000 square feet for Multiplex Buildings.

Article 5, Section 502(R)(R-5)(1)(1.3), Open Space and Community Use Area, requiring that a minimum area equivalent of ten (10) percent of the lot area be designed, designated, and used for open space and/or community use purposes for residents, and improved with activity and seating areas.

Article 5, Section 502(R)(R-5)(1)(1.4)(a), Set Backs, requiring that apartment buildings shall be a minimum of twenty (20) feet from any property line.

Article 5, Section 502(R)(R-5)(1)(1.4)(c), Set Backs, requiring that the minimum open space shall be 10% of the lot area.

Article 6, Section 601(3)R-2, Accessory Structures, requiring 3 feet of distance from any side or rear lot line for any structure erected in a rear yard.

Article 7, Section 704(6)(6.2), Parking Requirements, requiring generally that all access drives, aisles and parking spaces shall be at least ten (10) feet from any property line.

Article 7, Section 704(6)(6.3), Parking Requirements, requiring that all parking areas shall be physically separated from any public street by a concrete curb and by a planting strip which shall be not less than five (5) feet in depth followed by a five (5) foot concrete sidewalk built to Borough specifications, and further requiring that concrete tire bumpers be installed as to prevent vehicle overhang on the sidewalk area, and that the five (5) foot planting strip be parallel to the street line and measured from any future right-of-way.

## **DECISION AND OPINION OF THE ZONING HEARING BOARD**

The matter before the Zoning Hearing Board is an Application by New Image, LLC and Neel Shail, LLC (hereinafter referred to as "New Image" or "Applicants"). Applicants request a special exception to use their property at 1021 Fifth Street as a multiplex under North Catasauqua Zoning Ordinance, Article 4, Section 402(1.3)(A-5). As defined under the Zoning Ordinance, a multiplex is "an attached multi-family dwelling with a minimum of three (3) dwelling units per building." A multiplex is permitted by right as a special exception use in the R-2 Zoning District. A special exception use is permitted by right upon approval of the Zoning Hearing Board where all applicable standards and criteria are met, and any reasonable conditions attached by the Board are likewise met.

Attendant with this request, Applicants have also requested variances under the Zoning Ordinance as follows:

Article 4, Section 402(2), Bulk and Area Requirements, requiring a minimum lot width of 50 feet for an R-1 Use and a Minimum of 80 feet for an R-5 Use

Article 4, Section 402(2), Bulk and Area Requirements, requiring minimum side yard widths of 6 feet for one side or a total of 16 feet for two sides for an R-1 Use, and 10 feet for one side or a total of 20 feet for two sides for an R-5 Use

Article 4, Section 402(2), Bulk Area Requirements, requiring a minimum lot area of 10,000 square feet for an R-5 Use

Article 4, Section 402(2), Bulk Area Requirements, limiting building coverage to a maximum of 35% of a lot

Article 5, Section 502(R)(R-5)(1)(1.2), Minimum Lot Area, requiring a lot of not less than 10,000 square feet for Multiplex Buildings.

Article 5, Section 502(R)(R-5)(1)(1.3), Open Space and Community Use Area, requiring that a minimum area equivalent of ten (10)

percent of the lot area be designed, designated, and used for open space and/or community use purposes for residents, and improved with activity and seating areas.

Article 5, Section 502(R)(R-5)(1)(1.4)(a), Set Backs, requiring that apartment buildings shall be a minimum of twenty (20) feet from any property line.

Article 5, Section 502(R)(R-5)(1)(1.4)(c), Set Backs, requiring that the minimum open space shall be 10% of the lot area.

Article 6, Section 601(3)R-2, Accessory Structures, requiring 3 feet of distance from any side or rear lot line for any structure erected in a rear yard.

Article 7, Section 704(6)(6.2), Parking Requirements, requiring generally that all access drives, aisles and parking spaces shall be at least ten (10) feet from any property line.

Article 7, Section 704(6)(6.3), Parking Requirements, requiring that all parking areas shall be physically separated from any public street by a concrete curb and by a planting strip which shall be not less than five (5) feet in depth followed by a five (5) foot concrete sidewalk built to Borough specifications, and further requiring that concrete tire bumpers be installed as to prevent vehicle overhang on the sidewalk area, and that the five (5) foot planting strip be parallel to the street line and measured from any future right-of-way.

Applicants propose subdividing an existing 14,400 square foot lot into two (2) parcels. The property is located at the intersection of Fifth and Liberty Streets, with an address of 1021 Fifth Street. The site contains a former church and rectory building. Applicants propose to convert Lot 1, where the church is presently situated, into a multiplex containing four (4) one-bedroom apartments and six (6) on-site parking spaces. Applicants propose to convert Lot 2, where the rectory is presently situated, into a single-family dwelling. The lot is rectangular in shape, with eighty (80) feet of frontage and one hundred and eighty (180) feet of depth. The church was built in 1899 and the rectory was

built in 1950. The rectory lot contains a two-car garage and another small outbuilding. As the structures pre-exist the Zoning Ordinance, they are non-conforming. Hence, Applicants likewise seek several variances under the North Catasauqua Zoning Ordinance.

### **PROCEDURAL BACKGROUND**

1. The subject property is located at 1021 Fifth Street, North Catasauqua, Pennsylvania, 18032 ("Subject Property").
2. The Subject Property has a Northampton County Tax Parcel ID No. of M4SE4C-3-7-0923.
3. The Property is located in the R-2 Two Family Residential District and is comprised of .3306 acres of land.
4. The Applicants seek to subdivide the property into two lots, and to use the first lot as a four-unit multiplex with six (6) off-street parking spaces, and use the second lot as a single-family home.
5. Attendant with these plans, on or about September 1, 2021, the Applicants applied for a special exception use and several variances.
6. On or about September 15, 2021, the Zoning Officer submitted a review letter to the Planning Commission, noting the denial of permits attendant with the need for special exception and variance relief, and setting forth several comments with regard to the proposal.
7. On December 10, 2021, the Applicants submitted an amended appeal to address the items noted by the Zoning Officer.

8. On or about February 4, 2022, The Applicants revised their plan to reduce unit density of the multiplex and therefore, remove the necessity of variances regarding the number of parking spaces and total square footage required.
9. The application for hearing was proper and proper notice of said hearing was made in accordance with the Municipalities Planning Code and the Borough's Zoning Ordinance. (Notes of Testimony from Hearing before Zoning Hearing Board on March 22, 2022, herein after referred to as "N.T.", at 5, 6).
10. The advertised hearing was held on March 22, 2022 at 5:30 p.m. at the Borough of North Catasauqua Building, located at 1066 Fourth Street, North Catasauqua, Pennsylvania, 18032.
11. Present at the hearing, wherein all pertinent testimony was provided, were the following members of the Zoning Hearing Board:
  - a. James Englert, Chairperson
  - b. John Pammer
  - c. Ernie Keller
12. Also present at the hearing were Zoning Officer David Kutzor of Keystone Consulting Engineers, Zoning Officer for Borough of North Catasauqua, Tasha Jandrisovits, Borough Secretary for North Catasauqua, and Syzane Arifaj, Esq., Solicitor for the Zoning Hearing Board, Law Office of Syzane Arifaj, 318 Spring Garden Street, Easton, Pennsylvania, 18042.
13. The following individuals participated in person on behalf of Applicants:
  - a. Brian Gasda, Lehigh Engineering Associates, Inc., and

b. Mark Zaffrano

14. During the hearing the following exhibits were entered into evidence:

- a. Street view photo of the property including the church and rectory labeled as "A-1"
- b. The zoning plan labeled as "A-2".

15. Several Borough residents were present at the hearing. They were provided the opportunity to ask questions, and they were provided the opportunity to offer their testimony.

16. Two residents, Martin and Patty Hacker, were represented by John P. ("J.P.") Karoly, Esq.<sup>1</sup>, who entered his appearance on the record at the time of the hearing.

#### **FINDINGS OF FACT**

1. Pursuant to Section 402(1.3)(A-5) of the Zoning Ordinance, Applicants' request to use a portion of the property as a multiplex may be granted as a special exception use in the R-2 Zoning District. A special exception use is one permitted by right upon approval of the North Catasauqua Zoning Hearing Board ("the Board"), where all applicable standards and criteria are met, and any reasonable conditions attached by the Board are likewise met. (N.T. 7).
2. Applicants have also requested several variances as the buildings on the property pre-existed and are largely non-conforming with the Zoning Ordinance. (N.T. 7-11).
3. The church building was built in 1899 and the rectory was built in 1950. (N.T. 11).

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<sup>1</sup> Karoly Law Firm, LLC, 527 Hamilton Street, Allentown, Pennsylvania, 18101

4. The Applicants, New Image, LLC and Neel Shail, LLC, were represented before the Zoning Hearing Board by Daniel Dougherty, Esquire<sup>2</sup>.
5. The testimony of Mark Zaffrano, the owner of Applicant New Image Enterprises, which was deemed credible by the Board, set forth the following facts concerning the property and the neighborhood.
  - a. Mr. Zaffrano is a general contractor who buys, subdivides, and renovates homes. (N.T. 18).
  - b. The current lot contains a church and rectory building, both of which are currently not in use. (N.T. 19).
  - c. Mr. Zaffrano bought the property from a church group. (N.T. 18).
  - d. He pursued several uses of the property including as a church, youth group center, and hydroponics education center prior to pursuing the current proposed use. (N.T. 22-23, 29).
  - e. Ultimately, none of those options were feasible and Mr. Zaffrano now seeks to subdivide the property into two lots for residential use. (N.T. 21, 23).
  - f. Proposed Lot 1, which currently contains the church would be developed in four (4) one (1) bedroom apartments with six (6) off-street parking spaces. (N.T. 19-20).
  - g. The parking area would contain six (6) spaces in the back of the property and would be screened and grassed. (N.T. 20-21).

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<sup>2</sup> Daniel G. Dougherty, P.C., 881 3<sup>rd</sup> Street, Suite B-3, Whitehall, PA 18052



- h. Mr. Zaffrano testified to his understanding that parking is a concern to the neighbors and, as such, he proposes a lower unit density than initially planned, in order to provide appropriate off-street parking. (N.T. 23-24).
- i. Lot 2 currently contains the rectory, a two-car garage, and another small outbuilding. Applicant proposes to maintain these structures and convert the rectory into a single-family home. (N.T. 19, 22).
- j. Mr. Zaffrano does not intend on modifying the exterior of the buildings except as may be required by the Planning Commission for safety purposes, such as including fire escapes, exits, and things of that nature. (N.T. 20).
- k. The buildings are pre-existing and therefore, do not meet many of the required building and parking setbacks, lot dimensions, ground cover, and open space requirements of the Zoning Ordinance. (N.T. 21).
- l. The apartment building will have little impact to the surrounding community, as the outside structure will not be modified and off-street parking will be provided. (N.T. 24, 26).
  - a. Through Mr. Zaffrano's testimony, Applicant introduced and authenticated Exhibit A-1, a street view photograph of the current property showing both the church and the rectory buildings (N.T. 19, 53).
  - b. Mr. Zaffrano testified on cross-examination that he lives approximately half-an-hour away from the subject property, he lived in the Borough decades ago, and has other projects he is working on locally. (N.T. 25).

6. The testimony of Brian Gasda, which was deemed credible by the Board, set forth the following facts concerning the property and the neighborhood.
- a. Brian Gasda is an engineer at Lehigh Engineering. (N.T. 31).
  - b. Mr. Gasda has been an engineer for approximately twenty (20) years. (N.T. 31).
  - c. Mr. Gasda has a Bachelor's in engineering from Lehigh University and is professionally licensed in Pennsylvania. (N.T. 31).
  - d. The Board recognized Mr. Gasda as an expert in civil engineering. (N.T. 32).
  - e. Through Mr. Gasda's testimony, the applicant introduced and authenticated Exhibit A-2, a site plan. (N.T. 32, 53).
  - f. Referencing the site plan, Mr. Gasda testified to the proposed subdivision of the property into two parcels in such a manner as to preserve the existing structures. (N.T. 32).
  - g. Mr. Gasda testified that Proposed Lot 2 contains the existing rectory and includes a two-car garage and another outbuilding. (N.T. 33).
  - h. Mr. Gasda testified that pursuant to Code requirements, there must be six (6) off-street parking spaces, as there are four (4) proposed one-bedroom apartments. (N.T. 33-34).
  - i. Mr. Gasda then provided testimony regarding Applicant's variance requests.
  - j. Mr. Gasda explained that the buildings are pre-existing and the structures cannot be modified in size, and the variance requests arise from the unique

physical characteristics of the property, given how it was developed prior to the enactment of the Zoning Ordinance. (N.T. 35).

- k. Mr. Gasda testified that the minimum lot width required under the Ordinance is fifty (50) feet of street frontage. (N.T. 34).
- l. Mr. Gasda explained that the plan would allow for the 50-foot frontage on Lot 1 and the remaining 30-foot of frontage would be utilized for Lot 2, requiring a variance of 20 feet on Lot 2. (N.T. 34).
- m. Mr. Gasda testified that because no changes would be made to the exterior of the existing structures, the subdivision of the property would not be apparent to the public. He further testified that the grant of the requested the building would not appear different to the neighborhood, would not substantially impact the use of any adjacent properties, and would not be detrimental to the public welfare. (N.T. 35-36).
- n. Mr. Gasda testified that the Ordinance requires side-yard setbacks of six (6) feet for Lot 2 and ten (10) feet for Lot 1. (N.T. 37).
- o. Mr. Gasda further testified that the pre-existing non-conforming buildings do not and cannot meet these setbacks. (N.T. 37-38).
- p. Mr. Gasda testified that the granting of setback variances would not alter the neighborhood, the adjacent properties, or be detrimental to the public welfare. (N.T. 38).

- q. Mr. Gasda provided testimony regarding off-street parking spaces for Lot 1, which the Ordinance requires to be ten (10) feet from the property line. (N.T. 38).
- r. Due to the unique circumstance of the pre-existing, non-conforming structure, the parking lot setbacks cannot be met, unless the number of spots is reduced below what the Ordinance requires. (N.T. 38, 39).
- s. The proposed parking lot would be three (3) feet from the Liberty Street property line and five (5) feet from the property line of Lot 2. (N.T. 38-39).
- t. Mr. Gasda proposed that the parking lot be screened by shrubbery to block the view from the street. (N.T. 39).
- u. Mr. Gasda testified that allowing the parking lot as proposed would not be detrimental to the community, as the access to it comes from Currant Street, as opposed to the busier Fifth Street. (N.T. 39-40).
- v. Mr. Gasda next testified regarding the concrete curbing and planting strip requirements of the Ordinance, as relates to the off-street parking. (N.T. 40).
- w. Mr. Gasda noted that there is not room to meet that requirement, but proposed that in the alternative, curb stops be installed, and the area be screened with shrubbery. He further testified that these alternatives would allow for the flow of stormwater. (N.T. 40, 41).
- x. Fencing and shrubbery would shield the parking area. (N.T. 41).

- y. Mr. Gasda testified regarding the required setback for a multiplex of twenty (20) feet from the property line. (N.T. 42).
- z. The church structure sits 3.28 feet from Liberty Street and would be .82 feet from the property line between Lot 1 and Lot 2. (N.T. 42).
- aa. As the buildings are pre-existing, Mr. Gasda testified that the property cannot meet the required setback. (N.T. 42).
- bb. Mr. Gasda also testified that the Zoning Ordinance requires a lot of not less than 10,000 square feet under Sections 402 and 502 of the Zoning Ordinance. (N.T. 42, 44).
- cc. Proposed Lot 1 would contain 8,609.46 square feet, requiring a variance of 1390.54 square feet. (N.T. 42).
- dd. Mr. Gasda testified that the total area of the existing lot is 14,400 square feet and, therefore, it cannot be subdivided and meet the minimum area requirements. (N.T. 43).
- ee. Mr. Gasda again testified that a variance of the lot size requirement would not affect or be detrimental to the neighborhood or to the development of any adjacent property. (N.T. 43).
- ff. Mr. Gasda next testified as to the Zoning Ordinance's building coverage requirement, which allows a maximum of 35%. (N.T. 43).
- gg. The variance requested is 2.8%, which Mr. Gasda explained as di minimis. (N.T. 43-44).

- hh. Mr. Gasda testified that the coverage requirement cannot be met, given the existence of the buildings pre-dating the Zoning Ordinance. (N.T. 43, 44).
- ii. Mr. Gasda then addressed the variance requests relating to the requirement for 10% open space for multiplex property. (N.T. 45).
- jj. Mr. Gasda noted that given the buildings as they exist and the parking requirements, there is no additional space available for community use. (N.T. 45).
- kk. As an alternative, Mr. Gasda proposed that the Applicant could pay a recreation fee to the Borough to be used for parks. (N.T. 45-46).
- ll. With regard to all of the requested variances, Mr. Gasda testified that the hardships necessitating the requests were not created by the applicants, but due to the existing structures pre-dating the Zoning Ordinance. (N.T. 44).
- mm. As to the last variance request relating to accessory structures needing to be no less than three (3) feet from the property line, he noted that if the property is subdivided, it is not possible to meet the setback, as the garage is 2.24 feet from the proposed property line. (N.T. 46).
- nn. Mr. Gasda further noted that the entrance to the garage does not face the property line and there would be enough room to cut grass or perform similar tasks. (N.T. 46, 47).
- oo. Mr. Gasda testified that due to the pre-existing buildings and the size and shape of the lot, the variances requested are the minimum necessary to develop the property with the least modification to the property. (N.T. 48).

7. Lynn Altrichter, resident, 1016 Fifth Street, North Catasauqua, testified as follows:
- a. Ms. Altrichter testified that she has resided at her address for just over thirty years. (N.T. 55, 57).
  - b. Her home is located directly across the street from the church building. (N.T. 55).
  - c. Ms. Altrichter testified that there were parking issues when the church was operating, but it was a minor inconvenience on Sundays. (N.T. 56).
  - d. Ms. Altrichter testified that parking is now a daily problem after 5 p.m. and on the weekends. (N.T. 56).
  - e. Ms. Altrichter testified to frustration regarding parking due to the presence other renters on the same block of Fifth Street. (N.T. 56, 58).
  - f. Ms. Altrichter testified that she was also concerned about property values. (N.T. 57, 60).
  - g. Ms. Altrichter testified regarding being concerned about the “quality” of her newer neighbors. (N.T. 59).
  - h. She also testified regarding the access to the off-street parking off of Currant Street, noting that it is an alleyway, and stating that in her opinion, it is not meant to handle traffic. (N.T. 60).
  - i. Ms. Altrichter testified that she wanted the area to stay residential but she did not want apartments there. (N.T. 61).

8. Mary Spieker, resident, 1020 Fifth Street, North Catasauqua, testified as follows:

- a. Ms. Spieker testified that she was concerned regarding parking regardless of how many off-street parking spots or garages were available, as individuals will still park on the street. (N.T. 63).
  - b. Ms. Spieker testified that parking is currently a problem, and it was her opinion that it affects the health, safety, and welfare of the community, given that individuals sometimes have to park down the street from their homes. (N.T. 63).
  - c. On cross examination, Mr. Karoly sought additional testimony from Ms. Spieker regarding the proposed apartment altering the essential character of the neighborhood and about her concerns regarding additional traffic. (N.T. 64).
  - d. Ms. Spieker also testified on cross that she was concerned about the renters being transient. (N.T. 65).
  - e. On further examination, Mr. Dougherty clarified that Ms. Spieker currently does not park on her property, but parks on the street. (N.T. 65).
9. Troy Pierce, resident, 1035 Currant Street, North Catasauqua, testified as follows:
- a. Mr. Pierce testified to his belief that the traffic on the street near his home will affect his property and that his property value will not increase. (N.T. 66-67).
  - b. On cross examination, Mr. Karoly sought additional testimony from Mr. Pierce regarding the proposed project changing the essential nature of the neighborhood, impact on public welfare and safety, and traffic. (N.T. 67).



- c. Mr. Pierce also testified on cross that he was concerned about the potential of lights shining into his home at night, as well as additional blacktop for the parking area affecting greenspace in the neighborhood. (N.T. 67-68).

10. Elizabeth Guiffrida, resident, 1035 Curren Street, North Catasauqua, testified as follows:

- a. Ms. Guiffrida testified that she was concerned about the turning radius from the parking lot onto Curren Street. (N.T. 68).
- b. Ms. Guiffrida testified that she was concerned about individuals running over her front yard. (N.T. 69).
- c. She was also concerned about additional traffic, as there is not a four-way stop in place now. (N.T. 69).
- d. Ms. Guiffrida also testified to her concerns regarding reduced property values and diminished resale values as a result of the proposed project. (N.T. 69).
- e. On cross examination, Mr. Karoly inquired regarding the same concerns about character of the neighborhood and health, safety, and welfare of the community, and Ms. Guiffrida stated that she agreed that these would be impacted. (N.T. 69).

11. Mildred Miller, resident, 1024 Fifth Street, North Catasauqua, testified as follows:

- a. Ms. Miller testified regarding the dwindling church population over the years. (N.T. 70).

- b. Ms. Miller testified that the prior summer the rectory was rented out to four (4) students and resulted in four (4) additional cars in the neighborhood. (N.T. 71).
- c. Ms. Miller testified that she was concerned that the apartments would result in additional cars. (N.T. 71).
- d. Ms. Miller testified that she has MS and has difficulty walking. (N.T. 71).
- e. Ms. Miller testified that she is concerned about the rectory becoming an apartment in the future. (N.T. 72).
- f. Ms. Miller preemptively stated she agreed with all of Mr. Karoly's anticipated inquiries. (N.T. 72).

12. Scott Pammer, resident, 533 Chapel Street, North Catasauqua, testified as follows:

- a. Mr. Pammer testified that people in the neighborhood do not want this project. (N.T. 73).
- b. Mr. Pammer testified that he is concerned with the project lowering property values. (N.T. 73).
- c. Mr. Pammer exited before any questions could be asked. (N.T. 73)

13. Joe Kaczmarek, 1036 Fifth Street, North Catasauqua, testified as follows:

- a. Mr. Kaczmarek testified that the community was opposed to the project. (N.T. 74).
- b. Mr. Kaczmarek testified that the number of variances should suggest this project is not suitable to the area. (N.T. 74).

- c. Mr. Kaczmarek testified that the project will alter the character of the neighborhood, as “transients” bring crime, noise, and litter. (N.T. 74).
- d. Mr. Kaczmarek also testified that he enjoys sleeping with the windows open and is concerned about increased noise. (N.T. 74-75).
- e. Mr. Kaczmarek testified regarding the project decreasing property values as a general matter. (N.T. 75).
- f. Mr. Kaczmarek testified that he agreed with the concerns that Mr. Karoly had inquired the other residents about after this testimony. (N.T. 75).

14. Randy Kibler, resident of 1017 Blackberry Street, North Catasauqua and property owner of 721 Fifth Street, North Catasauqua, testified as follows:

- a. Mr. Kibler testified that he cannot currently park in front of his house due to the presence of renters on Fifth Street. (N.T. 76).
- b. Mr. Kibler testified that there are already several renters on Fifth Street and he is opposed to more. (N.T. 76).
- c. On cross examination, Mr. Kibler responded affirmatively to Mr. Karoly’s questions regarding negative impact to the essential character of the community, as well as the public welfare and safety. (N.T. 77).

15. Kelly Decker, resident, 1012 Fifth Street, North Catasauqua, testified as follows:

- a. Ms. Decker testified that parking is currently a problem in the neighborhood. (N.T. 78).
- b. Ms. Decker testified that noise is currently a problem in the neighborhood due to existing apartment units in the area. (N.T. 78).

- c. Ms. Decker testified that homeowners are more invested in their properties, as opposed to young people moving into apartments. (N.T. 78).
- d. Ms. Decker testified that she believes that each apartment will have more than one and a half cars, so the apartment will put more cars on the street. (N.T. 79).
- e. Ms. Decker testified that she had concerns regarding the lack of open space after a trash dumpster is placed on the property. (N.T. 79).
- f. Ms. Decker testified to her anticipation that the proposed development would cause a lack of open space for grilling or for children to play. (N.T. 79).
- g. Ms. Decker also testified to her concern regarding where rainwater will go in the event of the proposed development. (N.T. 79-80).
- h. Ms. Decker responded affirmatively to Mr. Karoly's reference to questions he asked the prior residents who testified. (N.T. 80).

16. Michele Kaczmarek, resident, 1036 Fifth Street, North Catasauqua, testified as follows:

- a. Ms. Kaczmarek's testimony echoing the concerns of her neighbors, and she testified to her concern about not having a property manager onsite to address issues that may occur. (N.T. 80).
- b. Ms. Kaczmarek also testified to her opinion that her concerns were addressed to common issues that come with "transient" apartment dwellings. (N.T. 81).

- c. Ms. Kaczmarek responded affirmatively to Mr. Karoly's reference to questions he asked the prior residents who testified.
- d. On further examination, Mr. Dougherty asked Ms. Kaczmarek what she does now if someone was having a keg party in the neighborhood, and she responded that she would call the police. (N.T. 81).

17. Martin Hacker, resident, 1041 Fifth Street, North Catasauqua, testified as follows:

- a. Mr. Hacker testified that he has resided at the address next door to the proposed subdivision since 1977. (N.T. 82).
- b. Mr. Hacker testified that given his experience in real estate, he believes that the apartment building will have an impact on the immediate neighborhood in terms of parking, noise, and other unspecified issues. (N.T. 83).
- c. Mr. Hacker testified as to his concerns about a homeowner's ability to have a barbecue or having friends over, in terms of parking. (N.T. 83).
- d. Mr. Hacker further testified that he shares the concerns of his neighbors regarding open space, grass, and trees. (N.T. 83).
- e. Mr. Hacker testified that he had concerns regarding six (6) or more cars entering and exiting onto the alleyway especially since the residence near the parking access does not have a curb in front of the house. He further suggested that there may be sight-line issues due to the existence of hedgerows. (N.T. 83-84).

- f. On cross-examination, Mr. Dougherty asked clarifying questions regarding his adjacent property, confirming that a garage, pool, and pool house face the property, rather than Mr. Hacker's home. (N.T. 85).

18. Mr. Dougherty concluded with argument.

- a. He first spoke to the role and the mandate of the Zoning Hearing Board, that the special exception use is provided for in the Zoning Ordinance, and that “not in my neighborhood” personal concerns are speculative and do not provide a sufficient basis upon which to deny a special exception. (N.T. 85-87).
- b. Mr. Dougherty argued that the variances requested were largely de minimis or minimum variances, and that all were due to the existence of structures on the land pre-dating the Zoning Ordinance. (N.T. 87).
- c. Mr. Dougherty then reviewed the availability of alternatives to address concerns, including the use of pavers and grass rather than blacktop in the parking area, and perhaps changing the access point of the parking area to Liberty Street. (N.T. 88).
- d. Mr. Dougherty argued that if a church was proposed for the property today, they would also require a special exception. (N.T. 89).
- e. Mr. Dougherty reiterated that the proposed parking would satisfy Code requirements. (N.T. 90-91).
- f. Mr. Dougherty concluded that the special exception should be granted,

in part because there are many multi-family residences in the area and the proposal would not change the character of the neighborhood. (N.T. 91-92).

19. During his argument, Mr. Karoly encouraged the Board to listen to the community's opposition to the project.

a. Mr. Karoly argued that the health, safety, and welfare of the residents would be negatively impacted by the proposed project, as evidenced by their testimony. (N.T. 93).

b. Mr. Karoly reiterated the concerns of the residents regarding parking and open space, and argued that the proposed project would increase the population density of the area. (N.T. 95).

20. The Board inquired regarding the shrubbery surrounding the parking area. (N.T. 97).

a. Mr. Gasda responded that the look of the landscaping would be addressed at planning. (N.T. 97, 99).

21. The Board also inquired regarding the turning radius onto Currant Street. (N.T. 98).

a. The Zoning Officer stated that it was adequate for a small, residential lot. (N.T. 98).

#### **APPLICABLE LAW**

"[A] special exception is . . . a conditionally permitted use, legislatively allowed if the standards are met." Bray v. Zoning Bd. of Adjustment, 410 A.2d 909, 911 (Pa. Commw. 1980).

[A] special exception applicant has the duty to present evidence and the burden of persuading the ZHB that its proposed use meets the ordinance's objective requirements . . . Once an applicant meets this burden, a presumption arises that the use is consistent with the health, safety and general welfare of the community. The burden then shifts to the objectors to present evidence and persuade the ZHB that the proposed use will have a generally detrimental effect.

Allegheny Tower Assocs., LLC v. City of Scranton Zoning Hearing Bd., 152 A.3d 1118, 1121 (Pa. Commw. 2017).

Despite its name, a special exception is not an exception to a zoning ordinance; rather, it is a use that is expressly permitted by the ordinance unless the board determines, according to standards set forth in the ordinance, that the proposed use would adversely affect the community. Because the use is contemplated by the ordinance, there is a presumption that the governing body considered the effect of the use when enacting the ordinance and determined that the use is consistent with the health, safety, and welfare of the community so long as it meets the objective requirements of the ordinance...It is important to appreciate that the burden placed on the objectors is a heavy one. They cannot meet their burden by merely speculating as to possible harm, but instead must show a degree of probability that the proposed use will substantially affect the health and safety of the community.

Marr Development Mifflinville v. Mifflin Township Zoning Hearing Board, 166 A.3d 479, 482-482 (Pa. Cmmw. 2017)

Traffic is generally not grounds for denial of a special exception unless there is a high probability that the proposed use will generate traffic not normally generated by that type of use and that the abnormal traffic threatens safety.

Accelerated Enterprises, Inc. v. The Hazle Township Zoning Hearing Board, 773 A.2d. 824, 827 (Pa. Commw. 2001) (citing Orthodox Miniyan v. Cheltenham Township Zoning Hearing Board, 552 A.2d 772 (Pa. Commw. 1989)).

A variance, like a special exception, is issued by a zoning hearing board; however, unlike a special exception, a variance is not provided for in the zoning ordinance, but is permission to deviate from the ordinance in either the dimensions of the improvements made to the land or in the use of the land. A variance is the proper relief where an unnecessary hardship attends the property; a variance cannot provide relief where a hardship afflicts the property holder's desired use of the land and not the land itself.



Nowicki v. Zoning Hearing Bd. of Borough of Monaca, 91 A.3d 287, 291 (Pa. Commw. 2014).

Section 910.2 of the Municipalities Planning Code, requires an applicant seeking a variance to show, where relevant:

(1) That there are unique physical conditions peculiar to the property and that the unnecessary hardship is due to those conditions;

(2) That because of the physical conditions, there is no possibility that the property can be developed in strict conformity with the zoning ordinance and \*292 that a variance is needed to enable reasonable use of the property;

(3) That unnecessary hardship has not been created by the applicant;

(4) That the variance is not detrimental to the public welfare; and

(5) That the variance is the minimum variance that will afford relief and is the least modification of the regulation at issue.

...

Whether an applicant is seeking a use or a dimensional variance, the applicant must, at a minimum, demonstrate that an unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to the public interest.

Id. at 291–92.

Further, as to dimensional variances,

[w]hen seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation.

Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998).

Where an applicant seeks a minor variance from a structural or area requirement, courts are willing to examine the impact of the variance on the neighborhood and consider the harm to the applicant, notwithstanding the fact that the applicant has failed to demonstrate that no reasonable use of the land is available to the applicant or that the problem is not self-created.

Pyzdrowski v. Board of Adjustment of City of Pittsburgh, 263 A.2d 426 (Pa. 1970).

De minimis variance doctrine is a narrow exception to heavy burden of proof involved in seeking variance, and applies only where: (1) minor deviation from dimensional requirements of zoning ordinance is sought, and (2) rigid compliance with zoning ordinance is not necessary to protect public policy concerns inherent in ordinance.

Dunn v. Middletown Tp. Zoning Hearing Bd., 143 A.3d 494 (Pa. Commw. 2016).

The grant of a de minimis variance is a matter of discretion with the local zoning board. Segal v. Zoning Hearing Bd. of Buckingham Tp., 771 A.2d 90, 95 (Pa. Commw. 2001). There are no set criteria for determining what will be considered de minimis. Instead, the grant of a de minimis variance depends upon the circumstances of each case. Bailey v. Zoning Board of Adjustment of the City of Philadelphia, 801 A.2d 492 (Pa. 2002).

### **CONCLUSIONS OF LAW**

1. The current lot contains a pre-existing church and rectory, which were constructed prior to the Zoning Ordinance being adopted.
2. Several members of the community testified to their personal concerns regarding the effect of the proposed project on parking, traffic, and property values in the neighborhood, and suggested that issues would result in a detriment to the health, welfare, and safety of the community.

3. The Board finds the concerns of community members purely speculative and not demonstrative of a high probability that the proposed plan would have a detrimental effect on the health, safety, and welfare of the community.
4. Notably, many of the concerns raised by the residents were current parking challenges, to which the proposed project would not contribute, and their feelings regarding issues presented by "transient" populations.
5. In fact, off-street parking is provided for both proposed lots.
6. All of the variances requested are dimensional variances, several of which are di minimis in nature, as they are slight deviations.
7. Given the existence of structures pre-dating the Zoning Ordinance, the proposed project cannot meet any of the setback requirements including street frontage, side yards, or building setbacks from property line.
8. There is insufficient space on the property to enable compliance with parking setbacks or open space requirements.
9. The building coverage variance requested is 2.8% (35% required, 37.8% requested), which is di minimis and pre-existing.
10. The minimum lot size cannot be met under the Zoning Ordinance, as the buildings are pre-existing.
11. Upon consideration of all the evidence presented by the Applicants, the Board finds that the Applicants have met all criteria for the grant of requested variances. Specifically, the Board finds that:

- a. The pre-existing structures on the property create unique physical conditions peculiar to the property and an unnecessary hardship on the Applicants;
- b. Due to the physical conditions of the property, there is no possibility that the property can be developed in strict conformity with the Zoning Ordinance, making a variance necessary to enable the reasonable use of the property;
- c. No hardship has been created by the Applicants, as the structures are pre-existing;
- d. The requested variances are not detrimental to the public welfare; and
- e. The requested variances are the minimum necessary to afford relief and they represent the least modification of the regulations at issue.

12. The Applicants having established the requirements for the requested variances, the Board likewise finds that the Applicants have established the requirements for the special exception under the Zoning Ordinance.

**ORDER**

ZONING HEARING BOARD  
BOROUGH OF NORTH CATASAUQUA  
NORTHAMPTON COUNTY, PENNSYLVANIA

APPEAL NO.: 2022-2A  
APPLICANTS: New Image Enterprises, LLC and Neel Shail, LLC  
PROPERTY LOCATION: 1021 Fifth Street, North Catasauqua, Pennsylvania 18032  
R-2 Single – Two-Family Residential District  
OWNER: New Image Enterprises, LLC and Neel Shail, LCC  
SUBJECT MATTER: Applicants requested a special exception under Section 402(1.3), R-5, to develop a portion of the property as a multiplex, which is permitted in the Zoning District as a special exception use, and attendant variance requests as set forth herein.

In consideration of the foregoing Findings of Fact and Conclusions of Law, the Borough of North Catasauqua Zoning Hearing Board hereby GRANTS the request of the Applicants, New Image, LLC and Neel Shail, LLC, for all variances as set forth above and unanimously GRANTS Applicants' request for a special exception use, without the imposition of reasonable conditions, based upon a finding that all standards and criteria for approval have been met. The Board's decisions on the variances are as follows:

Article 4, Section 402(2)R-1/R-5: Minimum Lot Width – R-1 – 50 feet; R-5 - 80 feet.

DECISION: All in favor.

Article 4, Section 402(2)R-2/R-5: Minimum Yards: R-2 - Side One/Both: 6/16 feet; R-5 - Side One/Both: 10/20 feet.

DECISION: Two (2) in favor, One (1) in opposition (Pammer)

Article 7, Section 704(6)(6.2): Parking Requirements - All access drives, aisles and parking spaces shall be at least ten (10) feet from any property line except for the additional requirements in buffer yards.

DECISION: Two (2) in favor with condition that shrubbery be included to mitigate light pollution to the street, One (1) in opposition (Pammer)

Article 7, Section 704(6)(6.3): Parking Requirements – All parking areas shall be physically separated from any public street by a concrete curb and by a planting strip which shall be not less than five (5) feet in depth followed by a five (5) foot concrete sidewalk built to Borough specifications. Concrete tire bumpers shall be installed as to prevent vehicle overhang on the sidewalk area. This five (5) foot planting strip shall be parallel to the street line and shall be measured from the future right-of-way.

DECISION: All in favor with condition that shrubbery to mitigate light pollution and curb stops be included

Article 5, Section 502(R)(R-5)(1)(1.4)(a): Apartment buildings shall be a minimum of twenty (20) feet from any property line.

DECISION: Two (2) in favor; One (1) in opposition (Pammer)

Article 4, Section 402(2)R-5: Minimum lot area – 10,000 square feet

DECISION: Two (2) in favor, One (1) in opposition (Pammer)

Article 4, Section 402(2)R-5: Building Coverage – 35% maximum

DECISION: Two (2) in favor, One (1) in opposition (Pammer)

Article 5, Section 502(R)(R-5)(1)(1.2): Minimum Lot Area. A lot of not less than ten thousand (10,000) square feet shall be provided for Multiplex Buildings.

DECISION: All in favor

Article 5, Section 502(R)(R-5)(1)(1.3): Open Space and Community Use Area. A minimum area equivalent of ten (10) percent of the lot area shall be designed, designated, and used for open space and/or community use purposes by the residence of the use. The area shall be improved with activity and sitting areas appropriate for the residents.

DECISION: All in favor with condition that the planning commission set a recreation fee to be paid per lot.

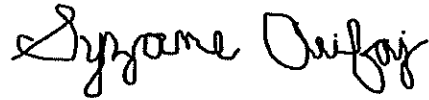
Article 5, Section 502(R)(R-5)(1)(1.4)(c): The minimum open space shall be ten (10) percent of the lot area.

DECISION: All in favor with condition that the planning commission set a recreation fee to be paid per lot.

Article 6, Section 601(3)R-2: Accessory structures erected in the rear yard shall be that distance from a side or rear lot line within which it is located in accordance with the following schedule: 3 feet

DECISION: All in favor

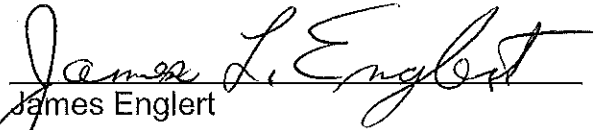
BOROUGH OF NORTH CATASAUQUA  
ZONING HEARING BOARD



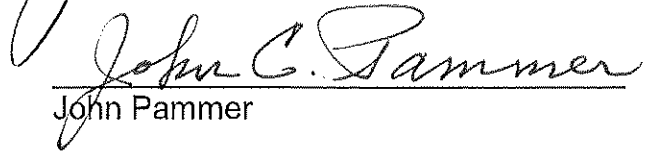
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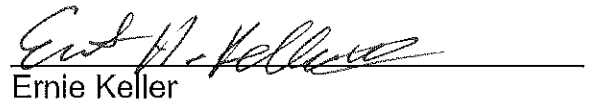
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James Englert

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