

## MEMORANDUM

**TO:** City of Orange Township Zoning Board of Adjustment  
**FROM:** Gerard M. Haizel, PP, AICP, Board Planner  
**RE:** MW24-003 - 574 White Street (Block 2401, Lot 3)  
**DATE:** May 28, 2024

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**The following is prepared on behalf of the City of Orange, Zoning Board of Adjustment. The information provided herein is for advisory purposes only and is intended to assist the Board's decision-making process. Below are descriptions of the project based on the supplied plans and documentation as well as commentary on issues evident from them.**

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### Items Reviewed

In preparation of this report, I have reviewed the following documents:

- ✓ City of Orange Township Board of Adjustment Application dated December 6, 2023.
- ✓ Denied Zoning Permit dated November 2, 2023.
- ✓ Site Variance Plan, Proposed Two-Family Residential Dwelling, 574 White Street, Block 2401, Lot 3, City of Orange Township, Essex County, New Jersey, consisting of one (1) sheet, dated 5-15-2024, prepared by Anthony Marucci, PE, PLS, PP of Marucci Engineering Associates, LLC.
- ✓ Hand drawn (unsigned and unsealed) drawing depicting the layout of the interior of the subject property, located at 574 White Street, Block 2401, Lot 3.
- ✓ Survey of Tax Lot 3, Block 2401, 574 White Street, City of Orange Township, Essex County, New Jersey, consisting of one (1) sheet, dated 2-19-2024, prepared by Richard T. Watson, PLS of Borrie, McDonald & Watson land Surveyors.
- ✓ Correspondence dated April 5, 2024 from Michael H. Stieber, Esq. to the applicant, Issac Moradi.
- ✓ Completeness and Technical Review #1, dated January 29, 2024, prepared by David A. Clark, PE, CME, Zoning Board Engineer of CP Engineers, Architecture & Environmental Services

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## **Project Summary**

On property located within the Township's ***MX-2 (Mixed-Use Medium Density Residential and Community Commercial Zone)***, the applicant ***Daniel Moradi***, proposes to convert an existing single-family dwelling to a two-family dwelling. Although currently being used as a single-family, the structure as it now exists is internally configured as a two-family dwelling, with separate entrances to each dwelling unit, and a kitchen in each proposed dwelling unit. However, the property is currently recognized by the City as a single family and there is only a single electric meter.

Both the existing single-family dwelling and the proposed two-family dwelling are **not permitted** in the MX-2 zone. Additionally, the proposed two-family use does not meet all the bulk and design standards for that building type and use. Site plan approval is not required for this application.

## **Required Variances/Waivers**

- Pursuant to the City of Orange Development Regulations ***§210-14 – MX-2 (Mixed-Use Medium Density Residential and Community Commercial Zone)***, the existing single-family dwelling is not a permitted use in the MX-2 zone. The proposed conversion to a two-family dwelling is also **not permitted**. **A D(1) variance is required to permit the two-family use in the MX-2 zone.**
- Pursuant to the City of Orange Development Regulations ***§210-24.2 – Table 1: Permitted Building Typologies***, Two-Family dwellings are not permitted in the MX-2 zone, and the applicant proposes the conversion of an existing one-family dwelling to a two-family dwelling. **A C-variance is required to permit a two-family dwelling structure in the MX-2 zone.**
- Pursuant to the City of Orange Development Regulations ***§210-24.3 Two-Family Dwelling***, a minimum lot area of 5,000-SF is required, and the applicant proposes a lot area of 2,828.7-SF. **A C-variance is required to permit a lesser lot area than required. This is an existing non-conforming condition.**
- Pursuant to the City of Orange Development Regulations ***§210-24.3 – Two-Family Dwelling***, a minimum lot width of 40-feet is required, and the applicant proposes a lot width of 34.5-feet. **A C-variance is required to permit a lesser lot width than required. This is an existing non-conforming condition.**
- Pursuant to the City of Orange Development Regulations ***§210-24.3 – Two-Family Dwelling***, a minimum front yard setback of 20-feet is required, and the applicant

proposes a front yard setback of 8.24-feet. **A C-variance is required to permit a lesser front yard setback than required. This is an existing non-conforming condition.**

- Pursuant to the City of Orange Development Regulations **§210-24.3 – Two-Family Dwelling**, a minimum side yard setback of 8-feet (on each side) is required, and the applicant proposes side yard setbacks of 4.99-feet on the western side and 7.63-feet on the eastern side. **C-variances are required to permit lesser side yard setbacks than required. This is an existing non-conforming condition.**

### **Project Description**

The subject site is a 2,828.7-SF irregular-shaped lot, which is improved with an existing 3-story single-family dwelling. The applicant proposes to convert the property to a legal two-family dwelling. The existing structure is currently configured as a two-family dwelling with a dwelling unit occupying the 1<sup>st</sup> floor and a second dwelling unit occupying the 2<sup>nd</sup> and 3<sup>rd</sup> floors. Each of these units have separate entries on the front façade. The applicant proposes no alteration or other physical changes to the property as part of this application.

The survey provided by the applicant indicates that there is a “deed overlap” with the property located to the immediate east, identified as 564 White Street (Block 2401 Lot4). The area of the overlap is a 318-SF area on the eastern side of the existing structure, which appears to be the driveway associated with the subject (574 White Street) property. The applicant proposes to establish an access agreement with the adjoining property and proposes to utilize the area for parking for three (3) vehicles.

The existing structure is setback 8.24-feet from the front (northern) property line, 42.8-feet (approx.) from the rear property line and 4.99-feet and 7.63-feet from the western and eastern side property lines respectively.

There are two (2) existing doors on the front façade. The door on the right will access the upper dwelling unit located on the 2<sup>nd</sup> and 3<sup>rd</sup> floors, while the door on the left will access the lower unit, located on the 1<sup>st</sup> floor.

The door on the left will open to an internal hallway, which will extend to the rear of the building, where there is an existing kitchen. On the left (eastern) side of the hallway are two (2) existing bedrooms, an existing living room and an existing bathroom.

The upper dwelling unit is accessible from the existing entry door on the right. Inside the door is a staircase, which will extend up to the 2<sup>nd</sup> floor. The 2<sup>nd</sup> floor of the dwelling does not extend the full length of the 1<sup>st</sup> floor. At the top of the staircase is a kitchen, with a living room located to the left (north) and a bathroom directly ahead. An existing staircase extends

up to an existing 3<sup>rd</sup> floor where there are three (3) additional offices and a room identified as an office.

### Site & Area Description

**Street Address:** 574 White Street  
**Block & Lot:** Block 2401, Lot 3  
**Zoning District:** MX-2 (Mixed-Use Medium Density Residential and Community Commercial)  
**Total Site Area:** 2,828.7-Square Feet

### Location Map



**Location Map** – The property in question is outlined in red on the Google aerial map above. The subject site is located on the southern side of White Street, between Renna Plaza and North Jefferson Street. To the east of the subject site is a commercial/industrial establishment. To the west is a low-rise multifamily dwelling. To the north, across White Street from the subject site is a mix of industrial and commercial properties.

## Photo Survey



**Photo #1:** View of the subject property located at 574 White Street. The applicant proposes to convert this single-family dwelling to a two-family dwelling.



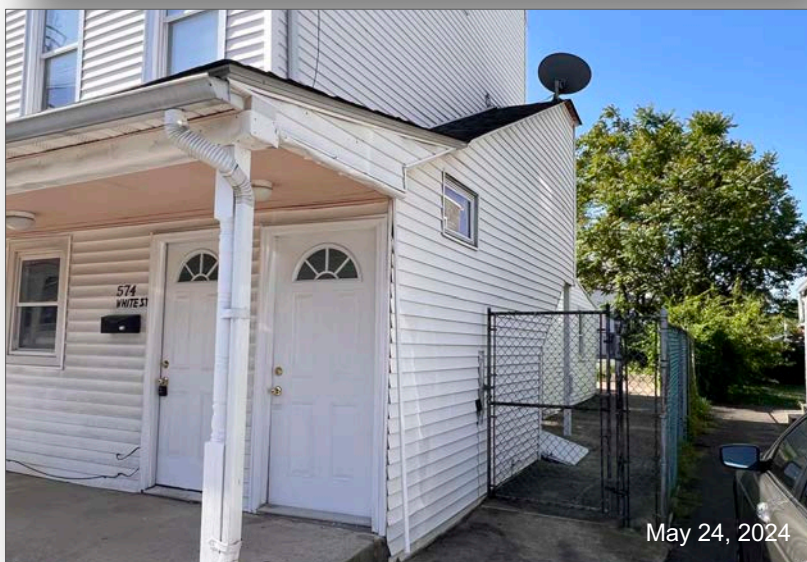
**Photo #2:** View of the subject property from the west on White Street. Note the two entry doors on the street frontage.



**Photo #3:** View of the subject property showing the area on the eastern side of the building, which is identified as an area of “deed overlap.”



**Photo #4:** Closer view of the “deed overlap” area. The applicant proposes to attain an access easement from the neighboring property and utilize this area for three (3) parking spaces.



**Photo #5:** View of the western side of the subject property.



**Photo #6:** View at the multifamily dwelling on the property located to the immediate west of the subject property.



**Photo #7:** View at the commercial property located to the immediate east of the subject property. The "deed overlap" is with this property.



**Photo #8:** View of the industrial property located to the north, across White Street from the subject site.

## Planning Considerations

The subject property is located within the Township's ***MX-2 (Mixed-Use Medium Density Residential and Community Commercial) Zone***. This zone is intended for community shopping and merchandising needs, while allowing medium density multi-family residential. Among the permitted residential uses in this zone are, low and mid-rise multifamily dwellings and low-rise mixed-use structures with residential and other permitted uses.

Pursuant to the City of Orange Development Regulations **§210-14**, the existing one-family dwelling on the site is **not permitted** in the MX-2 zone, nor is the proposed two-family dwelling use.

The table below has been created to identify bulk deficiencies.

Standard	Permitted/ Required	Proposed	Variance Required
Use	Low & Mid-Rise Apartments	Two-Family Dwelling	Yes
Building Type	Mid & High-Rise Apartments and Mixed-Use (Residential/Commercial)	Two-Family	Yes*
Min. Lot Area	5,000-SF	2,828.7-SF	Yes*
Min. Lot Width	40-Feet	25-Feet	Yes*
Maximum Height	3-Stories / 40-Feet	3-Stories / <40-feet	No / No
Minimum Front Yard Setback	20-Feet	8.24-Feet	Yes*
Minimum Side Yard Setback (Each Side)	8-Feet	West: 4.99-Feet East: 7.63-Feet	Yes* Yes*
Minimum Rear Yard Setback	25-Feet	42.8-Feet (Approx.)	No
Parking	3-Space <i>[1 Space Per 1BR or 2BR Unit] [2 Space Per 3BR Unit]</i>	3-Spaces	No

**Note:** \* - Existing Non-conforming Condition



### **Standards for Granting Variance Relief**

#### **D – (Use) Variances**

The MLUL (Municipal Land Use Law) at **N.J.S.A. §40:55D-70d** sets forth the standards for variances from the regulations pursuant to Article 8 of this act. A D-Variance is warranted to permit:

- 1) a use or principal structure in a district restricted against such use or principle structure,
- 2) the expansion of a nonconforming use,
- 3) deviation from a specification or standard pertaining solely to a conditional use,
- 4) an increase in the permitted floor area ratio,
- 5) an increase in the permitted density (*except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots either isolated undersized lot or lots resulting from minor subdivision*) or
- 6) a height of a principal structure which exceeds by 10 feet or 10%, the maximum height in the district for a principal structure.

A D-variance may be granted where the applicant shows to the satisfaction of the Board, that “*special reasons*” exist to warrant the granting of the variance. *Special reasons* may include that the use is inherently beneficial, that the property owner would suffer undue hardship if required to use the property in accordance with the permitted uses and standards for the zone, or that the site is particularly suited for the proposed use **and** thereby promotes the general welfare.

The applicant must **also** demonstrate that the requested relief will not result in any substantial detriment to the public good, nor substantial impairment to the zoning ordinance or zone plan. A variance under this subsection is granted only by **affirmative votes of at least five members**.

#### **C - (Bulk) Variances**

The Municipal Land Use Law (MLUL) at **N.J.S.A. 40:55D-70c** sets forth the standards for variances from the bulk regulations of a zoning ordinance.

**C(1) Variance** - The Board must find that there is either undue hardship or practical hardship with the strict application of the zoning requirements as stipulated in the Zoning & Land Use Regulations, as a result of:

- a) exceptional narrowness, shallowness or shape of a specific property, or
- b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or
- c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

**C(2) Variance** – The Board must find that the proposed deviation from the Zoning & Land Use Regulations will advance the purposes of the MLUL and that the variance can be granted without substantial detriment to the public good, that the benefits of the deviation would substantially outweigh any detriment and that the variance will not substantially impair the intent an purpose of the zone plan and zoning ordinance. The benefits identified in granting a C(2) variance must include benefits to the community as a whole, not only the applicant of the property owner.

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## **Planning Comments**

The applicant proposes to convert an existing single-family dwelling to a two-family dwelling. Although currently being used as a single-family, the structure as it now exists is internally configured as a two-family dwelling, with separate entrances to each dwelling unit. However, the property is currently recognized by the City as a single family and there is only a single electric meter. Both the existing single-family dwelling and the proposed two-family dwelling are **not permitted** in the MX-2 zone. **As such, the proposed conversion to a two-family dwelling will require a D(1) variance.**

As an existing non-conforming use, the existing single-family dwelling on the subject property predates the adoption of the City's Development Ordinance (November 2020). As such the use has the right to legally exist on the site. However, the applicant proposes to convert the single-family to a two-family dwelling, which is also a use that is **not permitted**.

As indicated in the project description, the existing structure **is currently configured as a two-family dwelling**, with separate entries for each unit, as well as existing kitchens in each unit. **The applicant should provide testimony detailing any knowledge of the history of this property and whether it has ever been formally used as a two-family dwelling.**

As an existing non-conforming use, the intent is that over time non-conforming uses will be replaced by permitted uses that are more consistent with the uses permitted in the zone. In this instance, the subject property was previously zoned CDA (Mixed-Use District), where both single-family and two-family uses were permitted. With the new Master Plan and Zoning Ordinance, this area was rezoned to MX-2, which continues the mixed-use designation, but restricts it to higher density residential.

In addition to the D(1) variance to permit the conversion to a two-family use, the applicant will require several other variances related to the existing structure on the site. The most recent amendment to the City's Development Ordinance introduced a building typology classification to provide standards for structures throughout the City, based on the type of structure and not by the zone in which it is located. The applicant proposes to convert the existing structure to a **Two-Family** building type, and as such, the standards that govern this building type are applicable.

Based on the development standards for the *Two-Family* structure, there are several non-conforming conditions for which variances are required. **For the most part, these are all existing conditions, which would continue to exist whether the conversion was done or not.** These include the following:

- Non-Permitted Building Type: Whereas the Two-Family building type is not permitted in the MX-2 zone, the applicant proposes to convert the existing structure on the site to

a two-family building type. **As indicated above, the existing structure is currently configured as a two-family dwelling and the proposed conversion will not require any physical changes.**

- *Insufficient Lot Area and Width:* Whereas a minimum lot area of 5,000-SF and lot width of 40-feet are required for a Two-Family dwelling, the subject lot is 2,828.7-SF in area and 34.5-feet in width. **These are both existing non-conforming conditions. The subject lot is an existing undersized lot for this building type/use. However, the applicant does not propose any changes to the footprint of the building nor any internal modifications.**
- *Insufficient Front Yard Setback:* Whereas a minimum front yard setback of 20-feet is required for the Two-Family dwelling, the subject house has a front yard setback of 8.24-feet **This is an existing non-conforming condition.**
- *Insufficient Side Yard Setbacks:* Whereas a minimum side yard setback of 8-feet is required for the Two-Family dwelling, the existing house has side yard setbacks of 4.99-feet and 7.63-feet. **This is an existing non-conforming condition. As indicated earlier, the applicant does not propose to change the exiting footprint of the building in anyway, so the existing setbacks will remain as they currently are.**

Additionally, the applicant is required to provide a total of three (3) off-street parking spaces for the two-family use. The applicant proposes to provide the three required parking spaces in the paved area on the eastern side of the building. This will include two (2) spaces configured in tandem, with one space directly behind the other, and a single space to the east.

As indicated in the Project Description above, this area has been identified in the provided survey as an area of ***“deed overlap.”*** The applicant has provided communication from the property owner of the adjacent property, located at 564 White Street, with whose property the deed overlap has occurred. The adjacent property owner has indicated their willingness to execute an access agreement with the applicant to authorize continued use of the deed overlap area by the applicant. **To that end, the applicant should provide an executed access agreement covering this area.**

### **Recommended Conditions of Approval**

Should the Board be inclined to grant the requested variance relief in full or in part, or to approve the accompanying site plan, the following are recommended conditions that should be placed on the approvals.

1. The applicant shall comply with all conditions provided by the Board Engineering.

2. The applicant shall provide testimony detailing any knowledge of the history of the subject property and whether it has ever been formally used as a two-family dwelling.
3. The applicant shall provide an executed access agreement covering the area of the "deed overlap."