

BOROUGH OF MOUNT ARLINGTON LAND USE BOARD
RESOLUTION OF ALAN TUORINSKY USE AND BULK VARIANCE
RELIEF FOR LOT 5, BLOCK 10

Approved: January 24, 2018
Memorialized: February 28, 2018

WHEREAS, Alan Tuorinsky (“Applicant”) filed an Application for Development dated May 10, 2017, seeking to demolish an existing dwelling and garage on Lot 5 in Block 10 (“lot” or “property”) and construct a new single family residential structure and detached garage; and

WHEREAS, the Applicant requested site plan and bulk variance relief, although it was subsequently determined that he would not need site plan approval, but would require a use variance as per N.J.S.A. 40:55D-70(d)(4); and

WHEREAS, the Applicant included with his Application plans entitled “Lot Redevelopment Plan” prepared by Dykstra Walker Design Group, P.A. dated March 15, 2017, consisting of two (2) pages and architectural plans prepared by Signature Building Systems, consisting of thirteen (13) sheets dated October 11, 2016; and

WHEREAS, the Applicant submitted with his Application the appropriate fees and escrow deposits; and

WHEREAS, the Application was deemed complete and a public hearing scheduled; and

WHEREAS, the public hearing was held by the Board on January 24, 2018, notice being required and lawfully provided; and

WHEREAS, the Applicant was represented by Bernd Hefele, Esq.; and

WHEREAS, at the conclusion of the public hearing on January 24, 2018, the Board rendered a decision on the Application in accordance with the requirements of N.J.S.A. 40:55D-10(g); and

WHEREAS, the Board received as part of the hearing process the following testimony and documentary evidence:

Thomas F. Graham, P.E. is Professional Engineer employed by Dykstra Walker Design Group, P.A.. Mr. Graham is a licensed Civil Engineer and was accepted by the Board as an expert in that field. He began his presentation by offering a color rendering

of the Lot Redevelopment Plan which was marked as Exhibit "A-1".

Mr. Graham described the property as a small rectangular lot fronting along McGregor Avenue and zoned RA-15. He explained that the lot sloped downward from the street to Lake Hopatcong which abutted the Property to the rear. Mr. Graham informed the Board that a single-family 723 square foot dwelling and a 283 square foot detached garage currently exist on the lot. He said that the Applicant intended to raze both structures and redevelop the Property with a single-family home and a detached garage that would be the same size as the current one. He stated that the proposed dwelling would be located more centrally on the Property and would consist of three stories although its overall height would be below the maximum height permitted in the RA-15 zone, which is 32 feet.

Mr. Graham stated that the proposal would generate the need for a use variance and several bulk variances. Specifically, he testified that the Applicant needed a variance from the RA-15 bulk standards regarding minimum lot area and minimum lot width. As he noted, the zoning district required a minimum lot area of 15,000 square feet and a minimum lot width of 100 feet. The lot in question was a lawful pre-existing undersized lot consisting of 4,730 square feet with a minimum lot width of 24.8 feet. Mr. Graham also indicated that the zone district required a minimum side yard of 12 feet and a combined side yard of at least 25 feet. Currently, the Property had a minimum side yard setback of 1.4 feet and a combined minimum side yard setback of 8.3 feet. He explained that the Applicant intended to improve upon this condition, by increasing the minimum side yard to 4.5 feet and the combined side yard to 9 feet.

Similarly, Mr. Graham testified that the Applicant was improving the current non-conforming maximum lot coverage which stood at 58.7%. The Applicant's proposal would reduce the maximum lot coverage to 53.4%, which would still be less than the current condition, but still more than 35% maximum lot coverage allowed. He also explained that the Applicant's proposal would require a variance from the Borough's minimum height requirement in the RA-15 zone which limited structures to 2.5 stories and 32 feet. Mr. Graham explained that while the height of the building would only be 27.4 feet, it would consist of three stories due to the grade of the Property.

Mr. Graham said that the proposed detached garage would also generate several bulk variances. For instance, he explained that the minimum front yard setback in the zone was 35 feet while the new garage would only have a setback of 16 feet, which would be identical to the current situation. In addition, the proposed garage would not satisfy the minimum side yard setback of 12 feet or the combined side yard setbacks of 25 feet. Instead, the new structure would be consistent with the current setbacks which include a minimum side yard of 1.2 feet and a combined side yard of 13.2 feet. Mr. Graham stated that the Applicant had originally sought a variance for the height of the garage was designed to be no more than 12 feet, the maximum height permitted in the zone. However, by setting the roof ridge to run north to south rather than east to west, Mr. Graham stated the Applicant would eliminate the need for this variance. However, he agreed that a variance would still be required for having an accessory structure in the front yard.

Mr. Graham acknowledged that the proposal would require relief from the Borough's Floor Area Ratio requirement of .28. The Applicant proposed a development that would result in a Floor Area Ratio of .66. Mr. Graham explained that the installation of a larger and functioning basement with a ceiling more than six-feet high triggered this result. He noted from the front the dwelling would only appear to be two-stories since the basement would be constructed below grade.

In response to questions from the Board, Mr. Graham agreed to work with the Board's engineer to implement storm water techniques that would collect run off from the detached garage and upper portion of the Property and prevent it from sheet flowing into Lake Hopatcong. He also consented to the preparation of an as-built plan as a condition to the issuance of final Certificate of Occupancy.

Following Mr. Graham's testimony, the Applicant called David Karlbach, P.P. to testify. After being accepted as a Professional Planner, Mr. Karlbach introduced Exhibit "A-2", which consisted of two sheets, one of which included a bird's eye view of the Property and the other which included photographs from the street.

Mr. Karlbach noted that the lot in question was in a "transition" area. He observed that many of the nearby properties had or were undergoing renovations of the existing dwellings and accessory buildings. He relied on several photographs to show the dramatic improvements in the quality of the structures and the visual enhancement of the streetscape. He opined that the Applicant's proposal would be consistent with this overall effort.

Built in 1904, Mr. Karlbach found that the home was rundown. Although the residential use was permitted in the RA-15 zone, the dimensions of the lot could not comply with the bulk standards. He agreed with the list of bulk and use variances noted by Mr. Graham and testified that the undersized lot contributed mostly to the need for the relief sought. Despite the undersized dimensions of the Lot, Mr. Karlbach believed that the Applicant's proposal could be appropriately accommodated on the Property.

For example, he said that the use variance needed for the FAR standard was warranted. Although the proposed FAR of .66 exceeded the .28 ratio in the Borough's Ordinances, the Applicant's proposal advanced several purposes of zoning as set forth in the New Jersey Municipal Land Use Law. Specifically, Mr. Karlbach opined that the project would encourage municipal action in a manner that will promote the public health, safety, morals and general welfare (purpose a); promote a desirable visual environment (purpose i); promote the conservation of open space and natural resources and prevent the degradation of the environment (purpose j); and would advance a more efficient use of land (purpose m). Mr. Karlbach advised the Board that the Applicant's plan satisfied these purposes, because the Applicant proposed the construction of a modest home. He believed that the three-bedroom dwelling was of reasonable proportions and represented a reasonable accommodation on this long and narrow lot. Mr. Karlbach further noted that the Applicant improved upon certain setback conditions and was in compliance with the zone district's height requirements.

Mr. Karlbach further testified that he did not believe that the Applicant's proposal was contrary to the negative criteria. He opined that the development proposal was consistent with other renovations in the neighborhood and with the use permitted in the RA-15 zone. Although the lot was unusually small and narrow, he indicated that the proposed structures were modest. The plan also would be consistent with the Borough's Master Plan which sought to improve the condition of lakeside properties. Moreover, he explained the Applicant was barred from acquiring additional property to better accommodate his development given the location of the structures on the adjoining lots, as well as Lake Hopatcong being located to the rear of the Property.

With respect to the required bulk variance relief, Mr. Karlbach indicated that those variances would be justified under either N.J.S.A. 40:55D-70(c)(1) or (2). With respect to the c (1) analysis, Mr. Karlbach explained that the exceptional narrowness of the property, as well as the sloping nature of the land to the abutting lake created a hardship which prevented the Applicant from building a conforming dwelling. Indeed, Mr. Karlbach observed that the Lot did not have a building envelope.

With respect to the c (2) standard, Mr. Karlbach believed that the bulk variances would allow for a development that represented a better planning option for the Property. He contended that the Applicant's proposal promoted the same aforesaid purposes he outlined for the FAR variance and, as such, justified a deviation from the Borough's applicable bulk requirements. He added that benefits from the Applicant's proposal outweighed any detriments and was consistent with the Master Plan's goal of seeing more lakeside redevelopment. He concluded by informing the Board that the testimony he offered with respect to the negative criteria regarding the FAR use variance was equally applicable to the Board's evaluation of the negative criteria for the bulk variances.

After Mr. Karlbach finished, the Applicant himself testified that the Property had been owned by his family for decades. He also indicated that he had spoken to his adjoining neighbors who were happy with his proposal.

Thereafter, the matter was open to the public. Several residents appeared to speak in support of the Applicant's development plan. Thereafter, the Board closed the public portion of the meeting.

WHEREAS, the Board after reviewing the testimony and evidence submitted by the Applicant, has made the following findings of fact and conclusions of law:

1. The Applicant is seeking use variance relief pursuant to N.J.S.A. 40:55D-70(d)(4) to authorize a deviation from the Borough's FAR requirements, as well as bulk variance relief pursuant to N.J.S.A. 40:55D-70(c) from the bulk requirements set forth in the Borough's RA-15 zone district. The relief is sought in connection with the Applicant's redevelopment proposal to raze an existing dwelling and detached garage on Lot 5 in Block 10 and replace both structures.

- The Applicant's proposal will enable the Property to continue to be used for residential purposes as permitted in the RA-15 zone district.
2. The Board finds that the Applicant will require the use variance relief since the Borough's FAR requirement is .28 and the Applicant proposes an FAR of .66. The Board also agrees that the Applicant will require bulk variance relief from the RA-15 zone standards regulating minimum lot area; minimum lot width; minimum side yard; maximum number of stories; maximum impervious coverage; minimum front and side yard requirements for accessory buildings; and location of accessory structure in front yard.
 3. The Board finds that the Applicant's request for use variance relief is permitted in accordance with N.J.S.A. 40:55D-70(d)(4). The Board concurs with the Applicant's professional planner that the proposal does promote purposes a, i, j, and m. In addition, the Applicant's proposal is not contrary to the negative criteria and meets the goals and objectives in the Borough's Master Plan, The proposed use will remain residential and the proposed structures are consistent with the neighborhood scheme currently existing along McGregor Avenue. Moreover, the Board agrees that the Applicant's proposal does improve upon certain preexisting non-conforming conditions to the greatest extent possible. The Board further agrees that the Applicant's proposal is modest and consistent with other lakeside homes that have been rehabilitated.
 4. The Board further finds that the proposal is entitled to bulk variance relief in accordance with N.J.S.A. 40:55D-70(c)(1) and (2). The Board agrees with the testimony offered by the Applicant's engineer and professional planner that the lot is under sized and extremely narrow. The shape and size of the Lot, along with Lake Hopatcong abutting the Property to the rear, impose a significant hardship on any effort to develop the Property in a conforming manner. The Board finds that the Applicant's proposal also is consistent with the (c)(2) analysis as the project represents an overall better development alternative than any attempt to build in a conforming manner. The Board further finds that the bulk variances satisfy the negative criteria in a manner similar to the Board's findings with respect to the use variance. In short, the Board agrees that the proposal would not create a situation on the Property that would be out of character with homes in this neighborhood nor would it substantially impair the intend and purposes of the Borough's Master Plan and zoning ordinances, both of which seek to promote a desirable visual impact in and around Lake Hopatcong while maintaining the residential character of the neighborhoods and the quality of life for Borough residents.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey does hereby approve the grant of the use variance and bulk variance relief to the Applicant, Alan Tuorinsky, as more particularly described on the "Lot Redevelopment Plan", prepared by Thomas F. Graham, P.E. from Dykstra Walker Design Group, P.A. dated March 15, 2017 last revised September 15, 2017 and as illustrated in the Architectural Drawings prepared by Signature Building Systems, dated October 6, 2016, last revised August 11, 2017, subject to the following terms and conditions:

1. The Applicant shall revise the engineering plans in accordance with the

recommendations from Board Engineer, Thomas R. Lemanowicz, P.E., which said revisions shall include the reorientation of the detached garage so as to eliminate the need for a bulk variance for height. In addition, the Applicant will install stormwater management techniques to help contain runoff from the property.

2. Prior to the issuance of a Certificate of Occupancy, the Applicant shall present to the Borough a vacation of easement discharging the existing easement that allows the Borough access to the Property's sanitary sewer facilities.
3. Prior to the issuance of Certificate of Occupancy, the Applicant shall present to the Board's Engineer for his review and approval an as-built plan for the Property.
4. All fees required by the Ordinance of Mount Arlington shall be paid in connection with this Application, including reimbursement for construction, escrow, and inspection costs.
5. The Applicant shall submit proof that all real estate taxes and assessments due on the Property have been paid in full.
6. The Applicant shall comply with and adhere to all rules, regulations and ordinances of the Borough of Mount Arlington applicable to this development Application.
7. The Secretary for the Board shall file a copy of this Resolution with all governmental bodies shall be necessary and appropriate.
8. This approval is conditional upon approvals required by the Applicant from all outside governmental agencies exercising jurisdiction over the development of the Property.

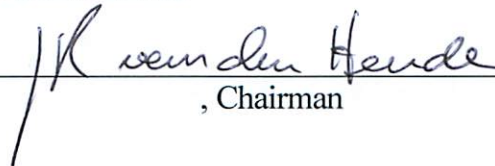
ATTEST:

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD



Kathy Appleby, Secretary

By:



, Chairman

DATED:

THE VOTE:

C1 and C2 VARIANCES:

IN FAVOR: 8

OPPOSED: 0

ABSTENTIONS: 0


D4 (FAR) VARIANCE:

IN FAVOR: 7

OPPOSED: 0

ABSTENTIONS: 1

I hereby certify that the above is a true copy of the Resolution adopted by the Borough of Mount Arlington Land Use Board at its meeting on February 28, 2018.


Kathy Appleby, Board Secretary