

20-001

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE
RELIEF TO FRANCIS M. AND DEBRA A. TAYLOR TO PERMIT THE
CONSTRUCTION OF AN ADDITION TO AN EXISTING SINGLE-FAMILY
RESIDENCE AND NEW BOAT HOUSE ON LOT 35 IN BLOCK 39**

**Approved: January 22, 2020
Memorialized: January 22, 2020**

WHEREAS, Francis M. and Debra A. Taylor (“Applicants”) are the owners of Lot 35 in Block 39 (“Property”) as noted on the Tax Map for the Borough of Mt. Arlington and having an address of 113 North Bertrand Road; and

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”) on or about June 7, 2019, seeking use and bulk variance relief to construct an addition to a single-family dwelling on the Property, along with other related improvements; and

WHEREAS, the Applicants required bulk variance relief from the zoning standards in the RA-7.5 zone for insufficient minimum front yard setback whereas 25 feet is required and none was provided; insufficient minimum single side yard setback whereas 10 feet is required and 2.8 feet is proposed; insufficient minimum combined side yards setbacks whereas 20 feet is required and 12.5 feet is proposed; and insufficient minimum rear yard setback whereas 20 feet is required and 19.6 feet was proposed. In addition, the Applicants needed a use variance since the proposed development would exceed the maximum Floor Area Ratio of 30% with being 64% proposed. In addition, the Applicants required design waivers from the Borough’s standards regulating docks and piers whereas the minimum width for a dock is 4 feet and 2 feet was proposed; and the maximum number of permitted docks is 1 and 3 were proposed. Finally, the Applicants required design waivers from the standards governing boat houses, because the proposed boat house did not satisfy the minimum side yard setback; the minimum distance to a neighboring boat house; the maximum area of a boat house within the pier headline; and the maximum number of boat houses, whereas 1 was allowed and 3 were proposed; and

WHEREAS, the Applicants submitted with their application engineering plans entitled “Lot Redevelopment and Variance Plan” prepared by Dykstra Walker Design Group, P.A. dated May 24, 2019, last revised November 4, 2019, consisting of 4 sheets; the architectural plans entitled “Addition Residence for Frank M. and Debbie A. Taylor, 113 North Bertrand Road, Mount Arlington, NJ,” prepared by Charles Schaffer Associates, LLC, dated June 4, 2019, last revised August 29, 2019, consisting of 4 sheets; and a survey entitled “Topographic Survey Plan, Block 39, Lot 35, #113 North Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey,” prepared by Dykstra Walker Design Group, P.A. dated May 23, 2019, consisting of 1 sheet; and

WHEREAS, the Applicants submitted with their application the appropriate fees and escrow deposits; and

WHEREAS, the application was deemed administratively complete by the Board's engineer on or about October 7, 2019; and

WHEREAS, public hearings were subsequently scheduled and held on November 20 and December 18, 2019 and January 22, 2020, notice being required lawfully provided; and

WHEREAS, the Applicants were represented by Anthony Sposaro, Esq.;

WHEREAS, the Board's engineer David A. Clark, P.E. issued Technical Review Reports on October 23 and November 19, 2019, and the Board's planner Jessica Caldwell, P.P. issued a report dated November 13, 2019; and

WHEREAS, at the conclusion of the public hearing on January 22, 2020, the Board rendered a decision on the Application in accordance with the requirements set forth in 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 submitted:

The Applicants' engineer, Thomas Graham, P.E. testified on behalf of the Applicants. He presented Exhibit A-1 which was a colored Lot Development Plan. Mr. Graham explained that the Property was pie-shaped and located in the RA-7.5 zone district. The Property currently includes a 4-bedroom, 2800 square foot single-family dwelling with outdoor concrete patios and a roofed deck. The Property abuts Lake Hopatcong to the rear. He noted that along the lakeside portion of the Property was a small dock, an older boat house, an "L" shaped dock and a gazebo which extended into the water. Mr. Graham also stated that the Property did not front on a public street but had access to Catamaran Court by way of an asphalt driveway shared with Lots 33 and 34 in Block 39.

Mr. Graham testified that the Applicants were hoping to expand the dwelling by building over the outdoor concrete patio areas. He told the Board that they also intended to rehabilitate the dilapidated boat house; construct another dock; relocate the gazebo and expand and cover the other larger dock. Mr. Graham said that the proposal will include the installation of rain gardens to help reduce stormwater run-off into Lake Hopatcong. He introduced Exhibit A-2 which were plans showing the rain garden design. He agreed that the Applicants would record a deed restriction against the Property ensuring that future owners would have notice of the maintenance obligations for the proposed rain gardens. In addition, Mr. Graham stated that the Applicants would use silt fencing during the construction to prevent soil erosion into the lake.

Mr. Graham advised the Board that DEP permits would be required for the construction of the improvements along the lake which the Applicants intended to secure. He also informed the Board that the Applicants would comply with the recommendations set forth by the Lake Hopatcong Commission in its November 20, 2019 report.

When Mr. Graham concluded, Mr. Taylor addressed the Board. He told members that he spent his youth in the Borough, met his wife on Bertrand's Island and continues to have strong ties to the community. He indicated that he was hoping to upgrade the home and the Property. He stated that the existing boat house was less than 8 feet wide and was built into the land. It was extremely shallow and was virtually unusable. He also indicated that one of the existing smaller docks was maintained for friends who visited. After concluding his testimony, Mr. Taylor was asked by Board members why he was even considering rehabilitating the boat house.

John McDonough, P.P. was presented by the Applicants as their professional planner. After being qualified, Mr. McDonough advised the Board that the Applicants were agreeing to eliminate the small dock at the Property's northerly shoreline. The elimination of this dock, according to Mr. McDonough, would also eliminate the need for any use variance related to the creation of a marina. However, Mr. McDonough did remind the Board that the Applicants still required use variance relief because their proposal exceeded the permitted Floor Area Ratio of .30. He explained that the FAR for the Property is .60. If all approvals are obtained, Mr. McDonough said that the proposed FAR would increase to .64.

Mr. McDonough introduced Exhibit A-3 which was a 6-part exhibit consisting of a series of maps and photos of the Property, as well as Exhibit A-4 which were the architectural drawings. Relying on these exhibits, he testified that the Applicants intended to enclose the open-area concrete patios which would provide additional interior living space. He also noted that they wanted to rehabilitate the existing boat house and construct a new dock near it. Mr. McDonough added that the existing waterfront gazebo would be relocated while the existing "L" shaped dock was to be removed and replaced with a new covered dock structure.

Mr. McDonough further testified that the Applicants would require a planning variance since the Property does not front along a public street. He opined that the Property had long been accessed by a shared common driveway which he believe would continue to be adequate for emergency personnel after the proposed work was completed. Nonetheless, Mr. McDonough agreed that the Applicants would secure an approval from the Borough's emergency services personnel confirming that they approved of the continued use of the driveway.

Mr. McDonough stated that the Applicants' proposal gave rise to several bulk variances and design waivers. He identified the need for bulk variance relief from the Borough's ordinance regulating the side yard setback for a principal building, whereas 10 feet is required for one side and 20 feet is required for combined sides. He advised that the Applicants proposed one side yard setback being only 2.8 feet and a combined side yard being 12.54 whereas 10 and 20 feet respectively were required. He apprised the Board that the Applicants required a bulk variance for the rear yard setback whereas 20 feet is required and only 19.6 feet was proposed. Finally, Mr. McDonough indicated that the Applicants' proposal called for 54.1% of lot coverage whereas only 50% is permitted.

Mr. McDonough stated that the proposed docks and boat houses generated the need for design waivers. Specifically, he stated that Borough Ordinance Sec. 17-47.a. required a setback of 10 feet for a dock but no setback would be provided; a maximum water lot coverage of 15% for any dock while 4.8% was proposed; a dock width of 4 feet whereas only 3 feet was proposed;

and a limitation of only 1 dock per property whereas 4 were proposed. Similarly, Mr. McDonough stated that Borough Ordinance Sec. 17-48.a. set forth regulations pertaining to boat houses. He revealed that the Applicants would require design waivers from the boat house side yard setback whereas 14 feet was required and only 3.3 feet is provided; the minimum distance to a neighboring boat house whereas 28 feet is required and only 4.2 feet is provided; the area of a boat house within the pier headline whereas 10% is allowed and 15.9% is proposed; and the limit on the member of boat houses from whereas only 1 is permitted and 3 are proposed.

Mr. McDonough believed that why the Applicants were entitled to use variance relief as per N.J.S.A. 40:55D-70(d)(4). This standard, as he explained, requires the Applicants to demonstrate that the Property can accommodate the additional floor area. In support of his argument, he produced Exhibit A-5 which showed the elevations of the proposed dwelling. He opined that since the increase in the Floor Area Ratio was the result of the closure of already-existing outdoor concrete patios, the Property was able to accommodate the small increase in the FAR. He asserted that the additions were not intrusive and blended in with the rest of the existing dwelling. Moreover, he indicated that the proposed additions did not trigger any bulk variance relief and preserved adequate light and air for both the Property and the surrounding dwellings. Consequently, Mr. McDonough concluded that he believed the Applicants satisfied the legal standard under Randolph Town Center v. Randolph Twp., 324 N.J. Super. 412 (App. Div. 1999).

Similarly, the bulk variances sought were justified, in his opinion, as per N.J.S.A. 40:55(D)-70(c). He stated that the unique shape of the Property coupled with the existing structures on it created a hardship for the Applicants. Additionally, he noted that the existing non-conforming setback deviations were not changing and the lot coverage was only slightly increasing from 53.4% to 54.1%.

With respect to both the use and bulk variance relief sought, Mr. McDonough testified that the relief would not be contrary to the negative criteria. He believed that the improvement to the home and the Property would advance the public good. Moreover, the use of the Property, including the dwelling and the docks, were permitted under the Borough's master plan and did not represent a substantial impairment to it. In addition, he opined that the Applicants' use of rain gardens and the silt fencing during construction would protect the lake and the surrounding community.

In justifying the design standards under N.J.S.A. 44:55(D)-51, Mr. McDonough said that each waiver was reasonable. He believed that the deviations from the ordinance requirements represented a better arrangement of the structures that were already on the Property and were more conducive to the residential use of the Property. Moreover, he concluded that a strict adherence to the requirements was impractical and served no purpose.

After Mr. McDonough concluded, questions were posed by Board members. Many of the questions focused on what was perceived to be an over intensification of the use of the Property. In response, the Applicants agreed to revise the plans to remove the existing boat house, the docks and the gazebo. As Mr. Graham explained, the Applicants were instead proposing to build a new covered dock with a viewing deck over it. Based upon the Borough's definitions, this covered dock was to be treated as a boat house. The revisions, according to Mr. Graham,

eliminated many of the design waivers previously sought with respect to the docks and boat houses. Specifically, Mr. Graham said that there would no design waivers needed with respect to a dock or pier since none were proposed. He asserted that the only design waiver related to the proposed boat house would be in connection with the minimum distance required to a neighboring boat house which is 28 feet, while only 21.3 feet is proposed. The Applicants would also require a design waiver for the new boat house since 11.8% of it would lie within the pier headline whereas a maximum of 10% was permitted.

WHEREAS, the Board after hearing the testimony and viewing the documentary evidence provided made the following findings of fact and conclusions of law:

1. The Applicants are seeking to increase the size of their existing single-family home on the Property located at 113 North Bertrand Road. The Applicants are also seeking to remove an existing gazebo, an existing boat house, and 2 existing docks and replace them with a larger boat house. Both the single-family dwelling and the boat house are permitted in the Borough's RA-7.5 zone.

2. The Applicants' proposal exceeds the zone district's FAR requirement of 30%. However, the Applicants' current home already has a floor area of 60%. When the proposed additions are constructed, the FAR shall increase to 64%. Accordingly, the Applicants would require relief pursuant to N.J.S.A. 40:55D-70(d)(4). The Board finds that this relief is justified, because the Property is particularly situated for the additional development. The Board agrees with the Applicants that the larger home can be accommodated on the Property and will be compatible with the dwellings within the surrounding neighborhood. The Board finds that the design of the home works well with the topography of the Property and is simply a creative reuse of the already existing outdoor patios. Moreover, the Board finds that the proposed design of the home will be consistent with the lakefront development in the area. Therefore, the Board believes that the proposal will advance purposes (g) and (i) of the Municipal Land Use Law. In addition, the Board believes the Applicants have satisfied the negative criteria, because the home will be consistent with the existing neighborhood scheme and is not a substantial detriment to the public good. The Borough's master plan seeks to promote the rehabilitation and improvement of properties abutting relief Lake Hopatcong while minimizing the environmental degradation of the lake. The implementation of rain gardens and other stormwater management controls will advance both goals.

3. The Applicants are seeking bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) from several of the bulk requirements in the Borough's RA-7.5 zone district. These includes deviations from the zone district's standards regulating minimum lot; minimum front yard setback; minimum rear yard setback; minimum single and combined side yard setbacks; and maximum impervious lot coverage. The Board agrees that this relief is justified, because the Property has a unique triangular shape which makes compliance with setback requirements extremely difficult. The shape of the lot and its lack of frontage on a public street impose significant hardships on any type of development proposed. Most of the conditions for which the Applicants are seeking bulk variance relief are already non-conforming.

4. The Board believes that the Applicants have satisfied the negative criteria associated with their bulk variance request. The relief will enable the Property to be maintained as an attractive residential dwelling that is consistent with the neighborhood. The inclusion of rain gardens and other stormwater management proposals will not negatively impact Lake Hopatcong or the neighboring properties. The proposal is consistent with the Borough's stated goals regarding lakefront development. For these reasons, the Board finds that the Applicants have satisfied the negative criteria and are entitled to the bulk variance relief sought. The Board also finds that the Applicants' willingness to eliminate the docks and demolish the existing boat house and gazebo and replace them with 1 larger boat house to be a much better proposal than the design originally introduced.

5. The revised proposal for the lakefront development eliminates many design waivers and reduces the clutter along the Property's shoreline. Although the Board notes that the Applicants will still need waivers from the ordinance requirements related to minimum distance between neighboring boat houses and the maximum area of a boat house within the pier headline, these deviations are reasonable and a rigid adherence to the requirements would serve no practical purpose. It also represents a substantial upgrade over the current condition of the Property.

6. The Board also believes the Applicants were entitled to the planning variance in accordance with N.J.S.A. 40:55D-36, subject to the Borough's emergency personnel agreeing that the driveway is satisfactory for their purposes. The Property has been long served by the common driveway which appears to be sufficiently wide to accommodate emergency vehicles.

NOW, THEREFORE, BE IT RESOLVED, that 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 and bulk variance and design waivers as requested by the Applicants, Francis M. and Debra A. Taylor, more particularly described in the engineering plans entitled "Lot Redevelopment and Variance Plan," prepared by Dykstra Walker Design Group, P.A. dated May 24, 2019, last revised November 4, 2019 and the architectural plans entitled "Addition to Residence for Frank and Debbie Taylor, 113 North Bertrand Road, Mt. Arlington, New Jersey," dated August 29, 2019, prepared by Charles Schaffer Architects, LLC, subject to the following conditions:

1. The Applicants shall comply with the technical comments set forth in the Technical Review Reports prepared by Board engineer, David A. Clark, P.E., dated October 23 and November 19, 2019.

2. The Applicants shall comply with the recommendations set forth in the November 20, 2019 report from the Lake Hopatcong Commission.

3. Prior to the issuance of a building permit, the Applicants shall secure written confirmation from the Borough's police, fire, and rescue squads that the continued use of the shared asphalt driveway will safely accommodate emergency vehicles.

4. Prior to the issuance of a building permit, the Applicants shall record a deed restriction that shall first be reviewed and approved by the Board's attorney and engineer

regarding the use and maintenance of any rain gardens, drywells or other stormwater management techniques to be constructed on the Property.

5. The Applicants shall secure the appropriate permits from the New Jersey Department of Environmental Protection allowing the construction of the proposed boat house.

6. The Applicants shall submit proof that all fees, escrow amounts, real estate taxes and assessments have been paid prior to the issuance of both the Building Permit and Certificate of Occupancy.

7. The Applicants shall comply with and adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development.

8. The Board's approval is conditional upon approvals required by the Application from all outside Governmental Agencies, exercising jurisdiction over the development of the property.

9. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be deemed necessary and appropriate.

ATTEST:

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

Kathy Appleby, Secretary

By: _____, Chairman

DATED:

THE VOTE:

IN FAVOR:

OPPOSED:

ABSTENTIONS:

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 _____, 2020.

Kathy Appleby, Board Secretary

