

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK
VARIANCE RELIEF TO ASHDYL PROPERTIES, LLC TO PERMIT THE
CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE ON LOT 36 IN
BLOCK 10**

**Approved: June 26, 2019
Memorialized: July 24, 2019**

WHEREAS, Ashdyl Properties, LLC (“Applicant”) is the owner of Lot 36 in Block 10 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 113 McGregor Avenue;

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about February 8, 2019, seeking bulk variance relief to construct a single-family dwelling on the Property; and

WHEREAS, the Applicant requires bulk variance relief from the zoning limitations set forth in the RA-15 zone district relating to minimum front yard setback; minimum side yard (one) setback; and minimum total side yard setbacks. In addition, the Applicant requires a use variance since the proposed development will exceed the Floor Area Ratio of 28%;

WHEREAS, the Applicant included with its Application engineering plans entitled “Variance Map For 113 McGregor Avenue Lot 36, Block 10” prepared by Stewart Surveying & Engineering, LLC, dated May 15, 2019, last revised June 3, 2019, consisting of two (2) sheets; a Survey of the property prepared by Greenaway Surveying, dated May 14, 2018, last revised April 24, 2019, consisting of one (1) sheet; and architectural plans entitled “New Residence for: Ashdyl Properties LLC, 113 McGregor Avenue Mt Arlington, NJ”, prepared by Charles Schaffer Associates LLC, dated August 16, 2018, last revised June 5, 2019, consisting of two (2) sheets;

WHEREAS, the Applicant submitted with its Application the appropriate fees and escrow deposit;

WHEREAS, the Application was deemed administratively complete by the Board’s Engineer on or about May 24, 2019, and a public hearing was subsequently scheduled and held on June 26, 2019, notice being required and lawfully provided;

WHEREAS, the Board Engineer, Thomas R. Lemanowicz, P.E., issued several reports regarding the Application prior to the public hearing, the most recent dated June 21, 2019;

WHEREAS, the Board's Planner, Jessica P. Caldwell, P.P., also issued a Report, dated June 11, 2019; and

WHEREAS, the Applicant was represented by Richard Oller, Esq.;

WHEREAS, at the conclusion of the public hearing on June 26, 2019, the Board rendered a decision on the Application in accordance with the requirements set forth in N.J.S.A. 40:55D-10(g);

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

Jerry Lesch testified as the authorized representative for the Applicant. Mr. Lesch explained that the Applicant was a builder that had purchased the Property for purposes of renovating it. After taking title, Mr. Lesch told the Board that the dwelling had originally been built as a seasonal use. He said that the Applicant had hoped to merely renovate it to make it a more desirable year-round home, but soon discovered that the interior of the structure was in such disrepair that it needed more than a renovation. He stated that the Applicant decided to demolish the structure and build a new single-family residence. Mr. Lesch described the proposed home to be built will have 2 and ½ stories, with a footprint of 3,189 square feet with an attached 2 car garage. The home would have a partial basement, 4 bedrooms, and 4 bathrooms. Mr. Lemanowicz did question whether the home could have 4 bedrooms due to permitted sanitary flows.

Mr. Lesch did acknowledge that the Applicant had begun making some improvements to the Property. As noted in Mr. Lemanowicz report, the Property had a lakeside dock that was in disrepair. Mr. Lesch testified that the Applicant had obtained permits from the Department of Environmental Protection and the Borough to repair the dock. In response to another comment from Mr. Lemanowicz about the proposed parking layout, Mr. Lesch explained that some of the area dedicated for parking would be available for neighbors to use which he thought might improve the parking situation on that portion of McGregor Avenue.

Fred Stewart, P.E. testified next as the Applicant's professional engineer. Mr. Stewart confirmed that he had prepared the plans and began his testimony by describing current conditions on the Property. He explained that the Property was undersized for the R-15 zone district and sloped downward from the road to Lake Hopatcong. Mr. Stewart noted that the current structure was essentially centered in the middle of the lot and the proposed structure would be similarly situated.

Mr. Stewart said that the Applicant wanted to build the garage in the front yard and have it connected to the home. He explained that there would be drainage trench installed along the front of the garage to capture stormwater runoff. He noted that there would be underground roof leaders that would connect to a roof leader system. There would also be swales installed that would channel the stormwater runoff. Mr. Stewart stated that there would be no direct discharge into the lake given the proposed design.

He did opine that the Applicant would need 4 variances in order to build the dwelling. He identified them as including a use variance for the floor area ratio and 3 bulk variances for minimum front yard setback; minimum side yard setback for one side yard; and minimum side yard setback for both side yards.

The Applicant also presented Kate Keller, P.P., as its professional planner to offer testimony to justify the variances sought. Ms. Kelleher said that she visited the Property and surrounding neighborhood and reviewed the Borough's Master Plan. She began by first attempting to justify the use variance needed to allow the Property to exceed the required FAR. She explained that a FAR requirement is intended to prevent overdevelopment of a lot. If an owner cannot satisfy the FAR requirement, Ms. Keller said that he must address the standards set forth in N.J.S.A. 40:55D-70(d)(4) which means that the Board must evaluate whether the site can still accommodate the structure.

She informed the Board that the zone district imposed an FAR of 28% and the proposed home would have a FAR of 37.7%. Despite this, she opined that the lot was still suitable for the proposed home. Ms. Kelleher stated that the lot was undersized and sloped away from the road towards Lake Hopatcong. In her estimation, the topographical conditions were an important consideration. She testified that most of the floor area of the home was in the rear of the Property and not visible from the street. She said this meant that the home did not appear to be too large for the Property.

Ms. Keller said that the proposal satisfied the positive and negative criteria needed to be evaluated when deciding whether to grant a use variance for FAR. Specifically, she testified that the proposal satisfied purposes (g) and (i) of the Municipal Land Use Law. In her opinion, the proposal provided an appropriate location for a residential use and promoted a desirable visual environment. Further, Ms. Keller stated that she did not believe the proposal would be a substantial detriment to the public good and would not impair the intent or purpose of the Borough's Master Plan. The Applicant designed the project to work with the lot's topography and to minimize runoff. Therefore, she concluded that there would be little if any impact to neighboring properties.

Ms. Keller also offered planning testimony in support of the both variances required by Applicant. She indicated that the Applicant needed both variance relief from the zone district's minimum front yard setback of 35 feet, whereas only 31 feet was being provided; the zone district's minimum for 1 side yard set back of 12 feet, whereas only 5.6 feet is being provided; and the zone district's minimum set back for both side yards whereas 25 feet is required and only 11.9 feet were provided. She testified that the lot's topography and narrow dimensions gave rise to these none conforming conditions. In addition, Ms. Keller opined that the variance relief was also justified because the Applicant's proposal would promote the general welfare and a desirable visual impact which are purposes (a) and (i) of the Municipal Land Use Law. In other words, she acknowledged that, in her opinion, the relief was justified in accordance with the provisions of the N.J.S.A. 40-55D-70(c)(1) or (2). She concluded her testimony by indicating the factors that satisfied the negative criteria for the d (4) for variance were also applicable with regards to the bulk variances.

WHEREAS, the Board after hearing the testimony delivered and the documentary evidence provided, made the following finds a fact and in conclusion of law:

1. The Applicant is seeking to demolish an existing seasonal, single-family residence located on Lot 26 in Block 10, having an address of 113 McGregor Avenue in the Borough of Mt. Arlington. In its place, the Applicant is proposing to construct a 2 and half story, 3189 square foot single-family residence with an attached 2-car garage. The property is located in the Borough's RA-15 Zone.
2. The Applicant's proposal exceeds the zone district's FAR requirement of 28%. The Applicant's proposed home shall have a floor area ratio of 37.7%. Accordingly, the Applicant will require relief pursuant to N.J.S.A. 40:55D-70(d)(4). The Board finds that the relief is justified, because the property is particularly suited for the more intense development. The Board agreed with the Applicant that the larger than permitted floor area of the proposed dwelling can be accommodated on the site and it will be compatible with the surrounding neighborhood. The Board finds that the design of the home works well with the topography of the Property which makes the home look less visible from the street and not incompatible with surrounding homes when viewed from Lake Hopatcong. The Board agrees with the Applicant that its proposal promotes purposes (g) and (i) of the Municipal Land Use Law. In addition, the Board believes that the Applicant satisfies the negative criteria. The design of the home is consistent with the neighborhood scheme and does not present a substantial detriment to the public good. Moreover, the Borough's master plan seeks to promote the rehabilitation and improvement of properties along Lake Hopatcong and also seeks to minimize the environmental degradation of the lake. The proposed home and the proposed drainage system associated with its construction will satisfy both goals.
3. The Applicant is seeking bulk variance relief pursuant to N.J.S.A. 40:55D-70(c) (1) and (2) from several of the bulk requirements in the Borough's RA-15 zone district. The relief is sought in connection with the Applicant's proposal to construct a 3189 square foot single-family having a foot print of 3,189 square feet. Specifically, the Board finds that the Applicant will require relief from the minimum front yard setback of 35 feet whereas only 31.0 feet is proposed; the minimum setback for one side yard requirement of twelve (12) feet whereas only 4.5 feet will be provided; and the minimum setback for both side yards of 25 feet whereas 11.9 feet is provided.
4. The Board finds that the bulk variance relief is warranted as per N.J.S.A. 40-55D-70(c)(1) and (2). The Board has determined that the Property is undersized and extremely narrow with severe slopes extending from the front of the property along the McGregor Avenue to the rear of the lot that abuts Lake Hopatcong. The slope, shape, size and the dimensions of the lot along with Lake Hopatcong located to the rear, impose significant hardships on any development proposed for the property. Indeed, the Board finds that the already-existing residential home on the lot does not satisfy these standards. Further, the Board finds that the Applicant's proposal will advance purposes (a) and (i) of the

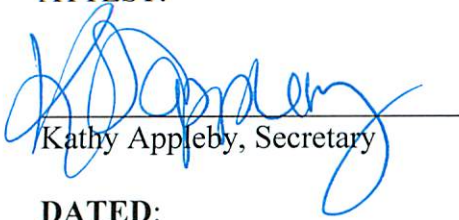
Municipal Land Use Law.

5. The Board believes that the Applicant has satisfied the negative criteria associated with its bulk variance request. The relief will enable the property to be maintained as an attractive residential dwelling that will be in keeping with the neighborhood. The proposal will not negatively impact the Lake or neighboring properties due to excessive stormwater runoff. The proposal is consistent with lakefront development in the Borough. Indeed, the Borough's Master Plan seeks to encourage the redevelopment or rehabilitation of lakefront homes. For these reasons, the Board finds that these Applicant has satisfied the negative criteria and is entitled to the bulk variance relief sought.

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 and bulk variance relief to the Applicant, Ashdyl Properties LLC, more particularly described on the engineering plans entitled "Variance Map For 113 McGregor Avenue Lot 36, Block 10" prepared by Stewart Surveying & Engineering, LLC, dated May 15, 2019, last revised June 3, 2019, consisting of two (2) sheets; a Survey of the property prepared by Greenaway Surveying, dated May 14, 2018, last revised April 24, 2019, consisting of one (1) sheet; and architectural plans entitled "New Residence for: Ashdyl Properties LLC, 113 McGregor Avenue Mt Arlington, NJ", prepared by Charles Schaffer Associates LLC, dated August 16, 2018, last revised June 5, 2019, consisting of two (2) sheets, subject to the following:

1. The Applicants shall comply with the technical comments set forth in the Application Review prepared by Board engineer, Thomas R. Lemanowicz, P.E., dated June 21, 2019.
2. 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.
3. The Applicants shall comply with and adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development.
4. 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, including confirmation that there is sufficient capacity to support 4 bathrooms.
5. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be deemed necessary and appropriate.

ATTEST:


Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By:  07/24/19
Robert Van den Hende, 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 July 24, 2019.


Kathy Appleby, Board Secretary