

#20-002

**RESOLUTION OF MEMORIALIZATION GRANTING BULK VARIANCE RELIEF TO  
CHAPLIN HOMES TO PERMIT THE CONSTRUCTION OF A SINGLE-FAMILY  
DWELLING AND RELATED IMPROVEMENTS ON LOT 51 IN BLOCK 2**

**Approved: January 22, 2020  
Memorialized: February 26, 2020**

**WHEREAS**, the Applicant, Chaplin Homes (“Applicant”) is the contract purchaser of Lot 51 in Block 2 (“Property”) as noted on the Tax Map for the Borough of Mt. Arlington and having an address of 112 McGregor Avenue; and

**WHEREAS**, the Applicant submitted an Application for Development with the Borough of Mt. Arlington Land Use Board (“Board”) on or about October 29, 2019, seeking bulk variance relief to construct a single-family dwelling on the Property with other related improvements; and

**WHEREAS**, the Applicant indicated that it had previously been denied a zoning permit to construct the proposed single-family dwelling because it required variance relief; and

**WHEREAS**, the Applicant submitted with its application engineering plans entitled “Variance Map for 112 McGregor Avenue, Lot 51 Block 2,” dated July 29, 2019, last revised December 30, 2019 prepared by Stewart Surveying & Engineering, LLC, consisting of 2 sheets and architectural plans prepared by Michael Bengis, dated September 20, 2019, consisting of 5 sheets; and

**WHEREAS**, the aforesaid plans indicated that the Applicant required bulk variance relief from the Borough’ zoning requirements in the RA-15 district related to lot area; lot width; principal building setback for 1 side; setback for total side yards; slope of proposed driveway; retaining wall setback to property line; disturbance of steep slope areas on Property; and grading setback from boundary of the Property; and

**WHEREAS**, the Applicant submitted with its application the appropriate fees and escrow deposits; and

**WHEREAS**, the Application was deemed administratively complete by the Board’s engineer on December 13, 2019; and

**WHEREAS**, a public hearing was scheduled and held on January 22, 2020 notice being required and lawfully provided; and

**WHEREAS**, the Applicant was represented by Douglas Sclar, Esq.; and

**WHEREAS**, the Board’s engineer, David A. Clark, P.E. issued a Technical Review Report dated January 16, 2020 and the Board’s planner, Jessica Caldwell, P.P. issued a report dated January 15, 2020; and

**WHEREAS**, at the conclusion of the public hearing on January 22, 2020, the Board rendered the 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:

Brian Chaplin testified on behalf of the Applicant. He told the Board that the Applicant was the contract purchaser for the Property and would acquire title if it secured the approvals needed to construct a single-family dwelling on the Property. He described the Property as being vacant, except for a foundation for a former house located in the center of the Property. He said that he was hoping to build a 28 by 46-foot home in approximately the same location as the existing foundation.

After Mr. Chaplin concluded, the Applicant called Fred Stewart, P.E. Mr. Stewart explained to the Board that the Property was located on the southside of McGregor Avenue and was zoned RA-15. The Property was undersized, having a total area of 10,999.83 square feet, whereas the zone required a minimum lot size of 15,000 square feet. Mr. Stewart noted that the lot was also extremely narrow, having a width of 55 feet whereas the RA-15 zone required 100 feet. He added that the Property was significantly sloped from its rear yard down to McGregor Avenue.

Mr. Stewart testified that the Applicant wanted to construct a 2-story home. Given the sloping topography of the Property, Mr. Stewart said that construction would require the use of a horseshoe shaped, 6-foot-high retaining wall encircling the side and rear yards of the proposed dwelling. Given the height of the retaining wall, Mr. Stewart agreed that the Applicant would install a barrier or fence along the top of the wall to prevent accidental falls. Mr. Stewart believed that the proposed retaining wall would require a variance from Borough ordinance Sec. 17-22.6(f) which prohibited a retaining wall being any closer to the property line than the height of the wall itself. Here, Mr. Stewart noted that the wall was to be 6 feet high and would be only 5 feet from the property line on either side.

Mr. Stewart testified that the retaining wall was designed to capture runoff from the rear of the Property and direct it to 2 drywells located in the front. He asserted that this design would significantly reduce stormwater runoff. He further agreed that the Applicant would install a 10-inch trench grate along the front of the driveway to capture runoff from the driveway and direct it into a catch basin in McGregor Avenue. Mr. Stewart assured the Board that the Applicant would agree to a deed restriction that would set forth the maintenance plan for the stormwater management system to be installed.

Due to the sloping topography of the Property, Mr. Stewart said that the Applicant would require variances from the Borough's ordinances regulating development in steep sloped areas. For instance, he opined that the Borough Ordinance 17-30.8(d)(2) limited the amount of disturbance of sloped areas having a grade between and 10 and 15% to 40%; however, the Applicant proposed to disturb 82.1% of this area. Similarly, he advised the Board that Ordinance Sec.17-30.8(d)(3) prohibited disturbing more than 30% of an area having slopes between 15 and

25%. The Applicant intended to disturb 47.1%. Finally, Mr. Stewart agreed that the Applicant needed a variance from Ordinance Sec. 17-30.8(d)(4) since the Applicant proposed to disturb 50.9% of an area with slopes greater than 25% whereas only 15% is allowed.

Mr. Stewart also stated that the slope of the Property would require the Applicant to secure variances for the slope of the driveway. He indicated that Ordinance Sec. 17-22.5(h) required 10 feet of the driveway to have a slope no more than 2% and the Applicant was proposing 15%. Moreover, he said that this ordinance limited the driveway leading to the garage to a slope no more than 5% for 25 feet. He indicated that the Applicant's driveway was only 20 feet and could not meet this standard.

After Mr. Stewart concluded, Board members expressed concerns about the amount of disturbance in the sloped areas to accommodate the home and the driveway. In response to their questions, Mr. Chaplin agreed to reduce the size of the home from 28 by 46 feet to 26 by 46 feet. Mr. Stewart stated that the reduction in the size of the proposed dwelling would eliminate the variance related to the height of the retaining wall as related to the distance from the property line. He pointed out to the Board that this reduction would also reduce the FAR and lot coverage. Mr. Chaplin also agreed to modify the driveway to provide a slightly steeper grade near the road and direct runoff from the driveway towards a catch basin in McGregor Avenue. This modification would give rise to another bulk variance from the requirement in Ordinance Sec. 17-22.5(h) which required the main driveway slope from the street to be no more than 15%.

After the Board concluded its questioning of Mr. Chaplin and Mr. Stewart, the matter was opened to the public. Several neighbors appeared including Juanita Patterson who owned the lot across the street at 111 McGregor Avenue. Ms. Patterson and her daughter Tamary said that their home had been in the family for many years. During that time, they experienced runoff from the Property. Consequently, many of their questions focused on the design of the stormwater system and its impacts, if any. Mr. Stewart and the Board engineer, Mr. Clark addressed many of their questions and opined that the proposal was designed to reduce runoff and direct it away from the street and their lot. Colleen DeGraw, the owner of the lot at 110 McGregor Avenue, which was the home immediately to the west of the Property, also had questions about runoff. The owner of the property, Michael DiPasquale, spoke in support of the application.

**WHEREAS**, the Board after hearing the testimony and reviewing the application and plans made the following finding of fact and conclusions of law:

1. The Applicant is seeking to construct a single-family, 2-story home on the Property located at 112 McGregor Avenue. The home is has a permitted use in the RA-15 zone.

2. The Applicant's proposal does require bulk variance relief as per N.J.S.A. 40:55D-70(c)(1). The Board finds that the Applicant will require relief from zone district's minimum lot area requirement of 15,000 square feet, whereas only 10,999.83 feet exists. The Applicant will also need relief from the zone district's requirement that lot width be 100 feet, whereas only 55 feet is available. While the Board recognizes that the Applicant's willingness to reduce the size of the building eliminated the need for a variance for 1 side yard setback, it will still need a variance for the total side yard setback requirements since 25 feet is required and

only 22 feet is available. The Board also finds that the bulk variance relief will be needed since the grading setback from the boundary has been set by Borough Ordinance at 5 feet and 0 feet is proposed. Moreover, the Board finds that the Applicant will need relief from the Borough's ordinance regulating disturbance of steep sloped areas set forth in Sec. 17-30.8(d). The Board finds that the Applicant will be disturbing 82.1% of the sloped areas between 10 and 15% whereas only 40% is allowed; 47.1% of the sloped areas between 15 and 25% whereas only 30% is allowed; and 50.9% of the sloped areas in excess of 25% whereas only 15% is allowed. Lastly, the Board finds that the Applicant will require bulk variance relief from Ordinance Sec. 14-22.5(h) which regulates the grade of driveways. Specifically, the Applicant will not be able to maintain a slope of 15% for the main driveway at the street; a 2% grade for 10 feet for the driveway extending from the street; and a slope of 5% for 25 feet of the driveway.

3. The Board finds that the bulk variance relief set forth above is justified as per N.J.S.A. 40:55D-70(c)(1), because the Property is exceptionally narrow with exceptional topographic conditions which result in peculiar and exceptional difficulties to the Applicant when trying to construct a home that would be conforming with the zone district's bulk standards. The Board does not believe that the Applicant's development proposal is unreasonable in light of the exceptionally narrow lot and the sloping features on the Property.

4. The Board finds that the Applicant has satisfied the negative criteria associated with its bulk variance requests. The variances to be granted by this resolution will enable the Property to be developed as an attractive residential dwelling that would be consistent with other homes in the neighborhood. Further, the Board finds that the Applicant's proposed stormwater management techniques, including drywells and the trench grate, will help eliminate stormwater runoff that presently flows from the Property onto and across McGregor Avenue. The home is also compliant with the Borough's FAR and height requirements, thereby preserving air, light, and open space in the neighborhood. Moreover, the Board believes that the proposal is consistent with the goals and objectives of the Borough's master plan as it relates to the development and improvement of an existing lots.

**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 bulk variance relief as requested by the Applicant, Chaplin Homes, more particularly described in the engineering plans entitled "Variance Map for 112 McGregor Avenue, Lot 51 Block 2," dated July 29, 2019, last revised December 30, 2019 prepared by Stewart Surveying & Engineering, LLC, consisting of 2 sheets and architectural plans prepared by Michael Bengis, dated September 20, 2019, consisting of 5 sheets, subject to the following conditions:

1. The Applicant shall comply with the technical comments set forth in the Technical Review Report prepared by Board engineer, David A. Clark, P.E., dated January 16, 2020.

2. The Applicant shall comply with the recommendations from the Lake Hopatcong Commission.

3. Prior to the issuance of a building permit, the Applicant 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.

4. The Applicant 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.

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

6. 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.

7. 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: \_\_\_\_\_  
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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Kathy Appleby, Board Secretary