

20-004

RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO ANDRE AND KIM FLOYD TO PERMIT THE CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE ON LOT 15 IN BLOCK 52

Approved: February 26, 2020
Memorialized: April 22, 2020

WHEREAS, Andre and Kim Floyd (“Applicants”) are the owners of Lot 15 in Block 52 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 21 South Bertrand Road;

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about October 31, 2019, seeking use and bulk variance relief to construct a single-family dwelling on the Property; and

WHEREAS, the Applicants initially sought bulk variance relief from the zoning limitations set forth in the RA-7.5 zone district and set forth in Borough Ordinance Sec. 17-29 relating to minimum lot area, minimum lot width, front yard setback, minimum side yard setback; minimum total side yard setback; and the number of principal building stories. In addition, the Applicant requested use variance relief since the proposed development on the Property was to exceed the Floor Area Ratio of 30%;

WHEREAS, upon a review of the application, it was discovered that the Applicants also needed bulk variance relief from the Ordinance Sec. 17-22.5(h) relating to the slopes of the driveway; Ordinance Sec. 17-22.6 relating to retaining walls proximity to the property lines and grading along a property line; and Ordinance Sec. 17-30.8.d relating to grading within steep slope areas;

WHEREAS, the Applicant included with its Application engineering plans entitled “Topographical Survey of Property, Lot 15, Block 52, #21 South Bertrand Island Road, Borough of Mt. Arlington, Morris County, New Jersey” prepared by Lakeland surveying, PA, dated September 6, 2019, consisting of one (1) sheet; architectural plans entitled “Proposed New Home for Floyd Residence, 21 South Bertrand Road, Block 52, Lot 15”, prepared by Michael Bengis, A.I.A, dated December 26, 2019, last revised February 13, 2020; and plan titled “Variance Map for 21 South Bertrand Road, Lot 15, Block 52,” prepared by Stewart Surveying & Engineering, LLC dated January 7, 2020, last revised February 14, 2020;

WHEREAS, the Applicants submitted with their Application the appropriate fees and escrow deposit;

WHEREAS, the Application was deemed administratively complete by the Board’s Engineer on or about December 26, 2019, and public hearings were subsequently scheduled and held on January 22 and February 26, 2020, notice being required and lawfully provided;

WHEREAS, the Board Engineer, David A. Clark, P.E., issued several reports regarding the Application prior to the public hearings, the most recent dated February 26, 2020;

WHEREAS, the Board's Planner, Jessica P. Caldwell, P.P., also issued two memorandums, dated January 21 and February 24, 2020;

WHEREAS, at the conclusion of the public hearing on February 26, 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);

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

The Applicants' engineer, Fred Stewart, testified on behalf of the Applicants. Mr. Stewart explained that the current home is located in the southwesterly portion of the Property. He described the home as an older bungalow. He stated that the Property was exceedingly narrow with severe slopes down towards Lake Hopatcong. He informed the Board that these slopes would require the construction of retaining walls. He agreed that he would provide the design standards for said walls. He noted that the Property was zoned RA-7.5 and the home was a permitted use. Mr. Stewart said that the Applicants were hoping to raze the existing dwelling and construct a three-story dwelling with a walkout basement. He told the Board that the third story was a result of the slope of the Property. In the front of the home, Mr. Stewart stated that the Applicants would install a paver driveway.

The proposal, according to Mr. Stewart, would generate the need for several bulk variances and a use variance from the zone's mandatory floor area ratio. He opined that the bulk variances needed included a variance from the zone district's minimum lot area requirement, whereas 7,500 square feet was mandated, but the Property was only 6,895 square feet. Mr. Stewart explained that the Applicants needed a variance for minimum lot width whereas 50 feet is required and there is only 40 feet. Similarly, he noted that the Applicants would require a variance for insufficient front yard setback whereas 25 feet is required and only 16 feet was proposed. Mr. Stewart, however, did say that this setback was an improvement over the current condition which was only 5.7 feet.

Mr. Stewart testified that he had designed the proposed dwelling to help minimize any adverse impacts from stormwater runoff by designing swales on both sides of the home and a roof leader system that would be connected to an underground stone filled trench. He said that a trench grate along the driveway would also capture runoff and direct it into the same underground system. If the trench ever reached capacity, it would overflow into a small pond in the rear of the property and drain into the ground. Mr. Stewart represented that the Applicants would agree to a deed restriction that would reference the required maintenance for the storm water management system to be installed.

Mr. Stewart continued his testimony by advising the Board that the Applicants would require a bulk variance for insufficient side yard setback whereas 10 feet is required and only 5.4

feet would be available on the right side of the Property and 4.2 feet on the left. This was also an improvement according to Mr. Stewart over the current condition since the setback on the left side was only 2.9 feet. The sum of the two side yard setbacks gave rise to another bulk variance from the combined side yard setback requirement which was 20 feet and only 9.6 feet was proposed. Finally, Mr. Stewart believed that the Applicants might also require a bulk variance since the proposed number of stories was 3 whereas only 2.5 stories were permitted. Mr. Stewart explained too that the Applicants needed a use variance from the floor area ratio which was .30 and .523 was being proposed.

After Mr. Stewart finished, the Applicants' architect, Michael Bengis, testified. He informed the Board that the property had been in the family for 90 years. It had been used primarily as a summer bungalow. The Applicants now wish to convert it into a year-round residence similar to other homes in the immediate neighborhood.

The Applicants builder, Peter Hestevold, also testified saying that the lot size was comparable to others in the neighborhood. He claimed that residents in the area would welcome the proposed house.

The Applicants retained the services of David Troast, P.P. Mr. Troast began his testimony by introducing a series of pictures of the Applicants' property and the surrounding neighborhood. He noted that the existing dwelling was to be demolished and replaced with a new single family home consistent with other dwellings in vicinity. Mr. Troast stated that the Property was located in the Borough's RA-7.5 residential zone district. He indicated that the proposal would not satisfy several of the bulk variance standards for the zone district and would require a use variance for not meeting the floor area ratio.

Mr. Troast first testified in support of the use variance. He opined that the Applicants would require relief in accordance with N.J.S.A. 40:55D-2. In offering evidence in support of the positive criteria, Mr. Troast noted that the removal of the dilapidated bungalow and replacing it with a modern home compatible and consistent with others in the area would promote the general welfare. He stated that the location of the home would provide adequate light air and open space by reducing the existing non-conforming side yard setback. He explained that he believed the proposal promoted a desirable visual environment through creative development techniques. In his view, the architectural character of the dwelling was consistent and complementary with other dwellings in the neighborhood. For these reasons, Mr. Frost believed that the Applicants had satisfied positive criteria necessary for the FAR variance.

Mr. Troast then testified in support of the bulk variance relief. He stated that the minimum lot area in this zone district was 7,500 square feet but the Applicants' Property only had 6,895 square feet available to them. However, Mr. Troast testified that none of the adjacent lots had available land to subdivide and sell to the Applicants. He also advised the Board that the Applicants could not satisfy the minimum lot width requirement which was 50 feet and only 40 feet was available. Again, he stated that no adjacent lot had land available to subdivide and convey to the Applicants.

Mr. Troast noted that the Applicants could not meet the minimum front yard requirement of 25 feet. However, the current setback was 5.7 feet and the Applicants were proposing a setback of 16 feet. He therefore believed that this was an improvement over the current condition. He identified the minimum side yard setback of 10 feet but explained that there was only 5.4 feet on the right side and 4.2 feet on the left. However, he did explain that the left side yard setback was an improvement over current condition. Similarly, he advised that the Applicants could not satisfy the combined minimum side yard setback of 20 feet since they only had 9.4 feet. Lastly, he told the Board that the Applicants would require a bulk variance for the maximum number of stories allowed which was only 2.5.

Mr. Troast argued that the bulk variance relief was justified under the C-1 or the C-2 standard. He maintained that Property had exceptional topographic conditions which made compliance with the bulk requirements a hardship which was the guiding standard under the C-1 analysis. In his opinion a strict application of the ordinance standards would result in a hardship for the Applicants who would be stuck with continued structural issues and building maintenance. He felt that the bulk variance relief would enable the Applicants to construct a home consistent with the established development pattern in the neighborhood. He added that the neighborhood would benefit from an updated modern residence thereby increasing the quality of life, the general welfare and the property values for those living on Bertrand Island.

Mr. Troast also believed that the variance relief was justified under the C-2 standard. He felt that the relief would advance several purposes of zoning including the general welfare through an enhancement of the Property particularly in light of what is currently located on land. He also felt that the home would promote a desirable visual environment through creative development techniques as designed by the Applicants' architect. Mr. Troast felt that the proposed dwelling was complementary with surrounding properties in size, mass, scale and architectural details. He also reminded the Board that the proposal reduced two existing nonconforming conditions.

Mr. Troast felt that the use variance and bulk variance relief satisfied the negative criteria. He referenced the Borough's master plan which set forth several goals he felt were promoted by the Applicants' proposal. Specifically, Mr. Troast felt that the application would improve the Borough's character and quality of life as it is directly linked to Lake Hopatcong. He further noted that the proposal would promote the aesthetic and recreational qualities around the lake in the Borough and would create a diversity of housing types and styles. He informed the Board that the master plan also sought to promote historical development and the preservation of the rural character of Mt. Arlington while protecting environmentally sensitive areas and scenic views. In his estimation, the Applicants' proposal was consistent with these goals and objectives.

After testifying and prior to the Board's February 26, 2020 meeting, Mr. Stewart revised his plans. When he returned to testify about the revised plans, he acknowledged that the Applicants did not meet several other bulk requirements in RA-7.5 zone related to the slope of the driveway, the proximity of the retaining walls to the property line and disturbance of the sloped areas. Specifically, the proposal was not consistent with Ordinance Sec. 17-22.5 which regulates the slope of the main driveway; the slope of the driveway at the street; and the slope of

the driveway at the garage. He felt that the Applicants might not satisfy the slope of the driveway at the street and the garage. In addition, the Applicants did not satisfy Ordinance Sec. 17-22(6) which dealt with height of the retaining wall in proximity to the property line and the grading near the property line. In addition, the proposal would disturb slopes between 10-15%; 15-25%; and slopes in excess of 25% in contravention of Ordinance Sec. 17-30.8d. Mr. Stewart testified that these variances were unavoidable given the dimensions of the Property and its topographical features.

After Mr. Troast and Mr. Stewart concluded their testimony the Board opened the matter to the public. In response, a representative from the Lake Hopatcong Commission appeared and discuss the Commission's February 25, 2020 report. In response, the Applicants agreed that they would comply with the recommendations in the report. A neighbor, Mike Valenti, also appeared and testified in support of the application.

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

1. The Applicants are seeking to demolish an existing seasonal single-family residence located on Lot 15 in Block 52 having an address of 21 South Bertrand Road in the Borough of Mount Arlington. In its place the Applicants are proposing to construct a three-story, 3,457 square foot single-family home with an attached two car garage. The Property is located in the Borough's RA 7.5 zone.

2. The Board finds that the Applicants' proposed home exceeds the zone district's floor area ratio requirement of 30%. The Applicants' proposed home will have a floor area ratio of 52.3%. Accordingly, the Board determines that the Applicants 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 Applicants' intended home can be accommodated on the Property without appearing out-of-character with the neighborhood setting. The Board agrees that the proposed dwelling is compatible with other homes in the neighborhood. The Board finds that the design of the home fits well with topography of the Property. The proposed home is also an improvement over the current dwelling. The Board believes that the proposal will promote purposes a, c, and i of the Municipal Land Use Law (MLUL).

3. The Board finds that the Applicants are seeking bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)1 and (c)2. The Board has found that the Applicants will require relief from the bulk requirements set forth in Borough Ordinance Sec. 17-29. For instance, the lot area must be 7,500 square feet and the Applicants' Property is only 6,895 sq. feet. The Property has a lot width of only 40 feet, whereas 50 feet is required. The application also proposes a front yard setback of only 16 feet whereas 25 feet is required. The proposed home also has side yard setbacks less than 10 feet. Specifically, the Applicants are proposing setbacks on the left side of 4.2 feet and 5.4 feet on the right side. The Applicants also do not satisfy the combined side yard setback of 20 feet. The Applicants exceed the maximum number of building stories whereas 2.5 are allowed and 3 are proposed. The Board finds that the Applicants' proposal does not meet the

driveway slope requirements set forth in Ordinance Sec. 17-22.5h. Specifically, the Board does not believe the Applicants meet the slope requirement for the driveway at the street and the slope for the driveway at the garage. Additionally, the Board finds the Applicants have not satisfied Ordinance Sec. 17-22.6 which requires a retaining wall to be more than 7 feet from the property line. Here the Applicants are proposing a retaining wall only 3.3 feet from the property line. The Board also concludes that the Applicants do not meet the grading setback at the property line which must be more than 5 feet. The Board also finds that the Applicants do not satisfy Ordinance Sec. 17-30.8(2), (3) and (4) which limits the disturbance of slope areas within 10-15%; 15-25%; and greater than 25%.

4. The Board finds that the bulk variance relief is warranted under both N.J.S.A. 40:55D-70(c)(1) and (c)(2). With regards to the (C)1 standard, the Board agrees that the Property is undersized and extremely narrow with severe slopes extending from the front of the Property along South Bertrand Road to the rear of the lot that abuts Lake Hopatcong. The slope, shape, size and dimensions of the Property along with the lake to the rear impose a significant hardship on any development proposed for the Property. Indeed, Board finds that the already-existing residential home on the lot does not satisfy all of the bulk standards. Accordingly, the Board agrees that a strict application of the ordinance requirements would result in a hardship to the Applicants with respect to continued structural issues and building maintenance. The Board agrees that the size, shape and topography of the Property provide challenges to the Applicants to construct a home that is consistent with established development patterns.

5. Additionally, the Board finds that bulk variance relief would be warranted as per N.J.S.A. 40:55D-70(c)2 because the Applicants' proposal will enhance and improve the residential neighborhood thereby promoting the general welfare which is purpose a of the MLUL. Similarly, the Applicants' proposed home is consistent with and complementary to the homes in the surrounding community with respect to size, mass, scale and architectural details. The proposal represents good civic design which helps promote a desirable visual environment as noted in purpose i of the MLUL.

6. The Board believes that the Applicants have satisfied the negative criteria associated with their use and bulk variance request. The relief sought will enable the Property to be developed as an attractive residential development that will be in keeping with the neighborhood. The Applicants' proposal is not a substantial detriment to the neighborhood, for the intended home will be consistent with the established development patterns on Bertrand Island. In addition, the proposal will promote many of the goals and objectives of the Borough's Master Plan which seeks to promote the character and quality of life along Lake Hopatcong. It will promote aesthetic and recreational qualities along the Lake and provides a diversity of housing types and styles. In addition, the Applicants use of creative stormwater management techniques will help protect the environmental integrity of the Lake. For these reasons the Board finds the Applicants have satisfied the negative criterion are entitled to the use and 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, Andre and Kim Floyd , more particularly described on

the engineering plans entitled “Topographical Survey of Property, Lot 15, Block 52, #21 South Bertrand Road, Borough of Mt. Arlington, Morris County, New Jersey” prepared by Lakeland surveying, PA, dated September 6, 2019, consisting of one (1) sheet; architectural plans entitled “Proposed New Home for Floyd Residence, 21 South Bertrand Road, Block 52, Lot 15”, prepared by Michael Bengis, A.I.A, dated December 26, 2019, last revised February 13, 2020; and plan titled “Variance Map for 21 South Bertrand Road, Lot 15, Block 52,” prepared by Stewart Surveying & Engineering, LLC dated January 7, 2020, last revised February 14, 2020; subject to the following conditions:

1. Applicants shall comply with the technical comments and revise their engineering and architectural plans as noted in the reports of Board engineer David Clark, P.E. dated February 26, 2020 and the memorandum issued by Jessica Caldwell, P.P., dated February 24, 2020.
2. The Applicants shall comply with the recommendations set forth in the report from the Lake Hopatcong Commission dated February 25, 2020.
3. The Applicants shall agree to record a deed restriction against their Property setting forth the required maintenance for the stormwater management system to be installed on the Property, as well as the requirement that only pervious pavers be used all driveways and walkways. The deed restriction shall be a condition precedent to the issuance of the Certificate of Occupancy. The proposed deed restriction shall first be presented and approved by the Board’s attorney prior to recording.
4. The Applicants will provide the design standards for the retaining walls proposed to be built on the Property and the soil logs for the infiltration areas for the stormwater facility proposed. Both must be approved by the Board engineer prior the issuance of a building permit.
5. The Applicants shall submit proof that all real estate taxes and assessments due on the property have been paid in full prior to the issuance of both the Building Permit and Certificate of Occupancy.
6. The Applicants shall comply with and adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development.
7. The Boards’ approval is conditional upon approvals required by the Application from all outside Governmental Agencies, exercising jurisdiction over the development of the property.
8. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be deemed necessary and appropriate. 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.

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

