

#19-003

RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO DENNIS AND COLLEEN KEARNEY TO PERMIT THE CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE ON LOT 26 IN BLOCK 10

Approved: July 24, 2019
Memorialized: August 28, 2019

WHEREAS, Dennis and Colleen Kearney (“Applicants”) are the owners of Lot 26 in Block 10 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 37 McGregor Avenue;

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about January 25, 2019, seeking use and bulk variance relief to construct a single-family dwelling on the Property; and

WHEREAS, the Applicants require bulk variance relief from the zoning limitations set forth in the RA-15 zone district relating to minimum side yard (one) setback; minimum total side yard setback; lot coverage; the number of principal building stories; accessory building in front yard; and the height of accessory building. 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 “Boundary Survey and Topographic Survey Plan Lot 26, Block 10, #37 McGregor Avenue, Borough of Mt. Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group, PA, dated January 8, 2019, last revised March 15, 2019, consisting of one (1) sheet; architectural plans entitled “Proposed New Home for Dennis and Colleen Kearney, 37 McGregor Avenue, Borough of Mt Arlington, Morris County New Jersey”, prepared by Fox Architectural Design, P.C., dated September 30, 2018, last revised July 9, 2019; and Report entitled “Drainage Calculations for Kearney Residence, 37 MacGregor Avenue, Block 10, Lot 26, Situated in the Township [sic] of Mt. Arlington, Morris County, New Jersey,” prepared by Dykstra Walker Design Group, PA, dated March 11, 2019, last revised July 9, 2019;

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 April 26, 2019, and public hearings were subsequently scheduled and held on June 26, 2019 and July 24, 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 hearings, the most recent dated July 19, 2019;

WHEREAS, the Board’s Planner, Jessica P. Caldwell, P.P., also issued a Report, dated May 24, 2019; and

WHEREAS, at the conclusion of the public hearing on July 24, 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:

Dennis Kearney testified on behalf of he and his wife. He informed the Board that the property has been owned by his family since 1956. He represented that the dwelling was originally a summer bungalow. Mr. Kearney explained that his parents and his 8 siblings would spend summers in Lake Hopatcong. Mr. Kearney stated that he and his wife now want to be residents of the Mt. Arlington and would like to renovate the property so that it will be a year-round residence.

Ken Fox, A.I.A, P. P., testified next. He began his testimony by introducing Exhibit A-1 which was a colored Plot Plan. He also introduced Exhibit A-2 which was a comparison of the footprint of the current home and the proposed footprint of the new home. In describing both exhibits, Mr. Fox explained that the new home would be essentially built on roughly the same footprint. The proposed dwelling would include be 2 and a half stories and would be 21 feet wide and 55 feet long. The home was to have a basement with a rec room and bathroom; a first floor that would include a kitchen, dining room and a master bedroom with 2 bathrooms; and a loft level that would contain 2 small bedrooms and a bathroom. Mr. Fox indicated that there would be a deck off the rear of the house and a sidewalk along the side of the home to provide access to the rear yard.

Mr. Fox also testified that the Applicants wished to construct a detached 2-car garage that would be 19 feet high and include storage space in the attic. In response to a question from the Board Chairman, Mr. Fox admitted that there was currently no garage on the property, although there had been 2 garages many years ago. Mr. Fox acknowledged that the height of the proposed garage would exceed the height restriction for accessory buildings in RA-15 zone district. The Applicants also proposed to pave 20 feet in front of the garage to make it available for additional parking. As discussions ensued between Mr. Fox and the Board, the Applicants eventually agreed to reduce the garage to a 1 car garage.

Mr. Fox noted that the Applicant's proposal would require bulk variances plus a use variance for the floor area ratio. He testified that the bulk variances included the following:

- a. Minimum front yard setback, whereas 35 feet is allowed, 64.5 feet is existing, and 56.58 feet is proposed;
- b. Minimum setback for 1 side yard, whereas 12 feet is required, 1.5 feet is existing, and 3.3 feet is proposed;
- c. Minimum setback for both side yards, whereas 25 feet is required, 14.2 feet is existing, and 16 feet is proposed;
- d. Maximum number of stories, whereas 2.5 stories are permitted, 2 stories are existing, and 3 stories are proposed;

- e. Maximum impervious lot coverage, whereas 35% is permitted, 41% is existing and 62% is proposed;
- f. Minimum side yard setback for accessory buildings for 1 side yard, whereas 12 feet is required and only 4.0 feet is proposed;
- g. Minimum total side yard setback (2 sides), whereas 25 feet is allowed and a total of 9.41 feet is proposed;
- h. Maximum height for accessory structure, whereas is 12 feet is allowed and 19.125 feet is proposed.

In justifying the bulk variance relief, Mr. Fox explained that the lot was exceedingly narrow and steeply sloped from McGregor Avenue to Lake Hopatcong. He indicated that this topographical condition presented a hardship for the Applicants to build any home that would conform to the bulk standards in the RA-15 Zone. However, Mr. Fox felt that the proposed dwelling would be compatible with the neighborhood and presented Exhibits A-3 and A-4 which were photographs of the surrounding homes. He maintained that the proposed home would not be a substantial detriment to the public good. Mr. Fox opined that the home was modest and consistent with other dwellings in the vicinity and would not be out of place.

Similarly, Mr. Fox testified in support of the d (4) variance which was needed because the proposed dwelling would exceed the floor area ratio in RA-15 Zone of 28%. Mr. Fox stated that the proposed floor area was 62.7%, however, he opined that the property could still accommodate the dwelling. Mr. Fox explained that the Applicants would install dry wells that would capture storm water runoff and prevent same from flowing into the lake. In addition, there was landscaping and retaining walls proposed that would also make the dwelling visually compatible with the neighborhood. For these reasons, Mr. Fox felt that the project was deserving of a d (4) variance.

After concluding his testimony, a neighbor, Joe Farino, from 41 McGregor complimented the Applicants for the proposal. In addition, Colleen Lyons, the executive director of Lake Hopatcong Commission remarked that she felt the proposed dry wells would aide in protecting the integrity of Lake Hopatcong. Eric Valentino, who owned property to the north of the Applicants' lot questioned the Applicants about set back of the proposed home which he believed was too close to his property. He also expressed concerns about the height of the dwelling and storm water runoff.

In response to Mr. Valentino's concerns and other questions raised by the Board and its professional staff, the Applicants subsequently revised their plans and resubmitted. After doing so, Mr. Fox returned to the Board and explained that the Applicants had agreed to reduce the garage to a single car garage with a high ceiling and no attic. He also explained that the size of the paved driveway had been reduced and the Applicants were proposing the use of pervious paving stone in an effort to reduce storm water runoff. In addition, Mr. Fox stated that the driveway, garage and retaining wall had been shifted closer to the southeast property line to minimize the impacts to Mr. Valentino's lot. He added that the proposed structures had also been rotated to align with the side property line while maintaining a set back of 3.3 feet. Mr. Fox noted that the concrete sidewalk had been reduced slightly and the ejector pump was also proposed to be relocated. Finally, the Applicants agreed to add additional landscaping. Mr. Fox

testified that these changes reduced the FAR to 56.8% and the impervious coverage to 58.1%. He also testified the Board that three dry wells were proposed, including one near the garage. The use of the dry wells, in his estimation, would reduce the amount of runoff. Mr. Fox also stated that the Applicants would utilize the soil erosion control measures recommended by the Morris County Soil Conservation District (MCSCD) during construction, in spite of the fact that the construction did not require certification by MCSCD.

In response to questions raised by the Board concerning the revised plans, the Applicants then agreed to eliminate the concrete sidewalk. Mr. Fox believed that eliminating the sidewalk would reduce the amount of impervious coverage to 53.5% and would also help improve the storm water runoff control.

Joseph Valentino, a resident of Villages in Florida appeared. Mr. Valentino owned properties within 200 feet of the Applicants' lot. He requested that the Applicants center the proposed home on their lot which he believed would slightly increase the set back from his property to the north. While the Applicants indicated they would do so, Mr. Fox believed that centering the dwelling would require the use of a temporary construction easement from Mr. Valentino during construction of the home. The Board did ask Mr. Valentino he would be willing to do so, and he indicated possibly, although he would not commit definitively without seeing an actual agreement.

Mr. Valentino also expressed concerns about the height of the proposed dwelling even though it was below the maximum permitted height in the zone. He also offered objections to the Applicants' proposed use of dormers which he believes would have a negative impact on the view of the lake from his home.

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 Applicants are seeking to demolish an existing seasonal, single-family residence located on Lot 26 in Block 10, having an address of 37 McGregor Avenue in the Borough of Mt. Arlington. In its place, the Applicants are proposing to construct a three story, 1,931 square foot single-family residence with a detached 1-car garage. The property is located in the Borough's RA-15 Zone.

2. The Applicants' proposed home exceeds the zone district's FAR requirement of 28%. The Applicant's proposed home shall have a floor area ratio of 56.8%. 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 and can accommodate the larger proposed structure. The Board agreed that 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 fits well with the topography of the Property. The home will not dwarf neighboring dwellings and is an improvement over current conditions. The proposed home is also not readily visible from the street. The Board believes that the proposal promotes purposes (g) and (i) of the Municipal Land Use Law. In addition, the Board finds that the Applicants satisfied 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.

3. The Applicants are also 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-15 zone district. Specifically, the Board finds that the Applicants will require relief from the minimum side yard setback of 12 feet whereas only 1.5 feet is existing, and 3.3 feet is proposed without a temporary construction easement and 5.3 is proposed with one. Further the Board finds the minimum setback for both side yards is 25 feet whereas 14.2 feet is existing and 9.62 is proposed if the home is centered on the property. Further, the Board finds that the Applicants require a bulk variance for lot coverage, whereas 35% is permitted, 41% is presently existing, and 53.5% is proposed. The Board also finds the Applicants will require bulk variance relief from the maximum number of building stories, whereas 2.5 stories is permitted, 2 is existing, and 3 stories are proposed. The Board finds that the Applicants will require bulk variance relief for the 1-car garage that exists in the front yard which is not allowed. Also, the Board finds that the ordinance requires an accessory building to have a front yard setback of 35 feet and only 20 feet is proposed. The Board also find that the Applicants require bulk variance relief for the garage which has a proposed side yard setback of 4 feet, whereas 12 feet is required. Similarly, the Applicants require bulk variance for the garage's total side yard setbacks, whereas 25 feet is required and only 18.7 feet is provided. In addition, the Applicants need bulk variance relief since the height of the garage is 17.6 feet and only 12 feet is permitted. Lastly, the Applicants require bulk variance relief since the RA-15 Zone only allows one accessory building and two are proposed (the garage and a detached shed).

4. The Board finds that the bulk variance relief is warranted as per N.J.S.A. 40-55D-70(c)(1). 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 hardship 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. The Board finds that the Applicant's proposal will advance purposes (a) of the Municipal Land Use Law by promoting the general welfare and (i) by promoting a desirable visual impact.

5. The Board also believes that the Applicants have satisfied the negative criteria associated with their use and bulk variance requests. The relief will enable the property to be have an attractive residential dwelling that will be in keeping with the neighborhood, unlike the current dwelling. The proposal will not negatively impact the Lake or neighboring properties due to excessive stormwater runoff. The drainage system proposed will curtail much of the runoff that would have otherwise drained into the lake. The proposal is consistent with lakefront development in the Borough. 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, Dennis and Colleen Kearney, more particularly described on the engineering plans entitled "Boundary Survey and Topographic Survey Plan Lot 26, Block 10, #37 McGregor Avenue, Borough of Mt. Arlington, Morris County, New Jersey"

prepared by Dykstra Walker Design Group, PA, dated January 8, 2019, last revised March 15, 2019, consisting of one (1) sheet; architectural plans entitled “Proposed New Home for Dennis and Colleen Kearney, 37 McGregor Avenue, Borough of Mt Arlington, Morris County New Jersey”, prepared by Fox Architectural Design, P.C., dated September 30, 2018, last revised July 9, 2019; and Report entitled “Drainage Calculations for Kearney Residence, 37 MacGregor Avenue, Block 10, Lot 26, Situated in the Township [sic] of Mt. Arlington, Morris County, New Jersey,” prepared by Dykstra Walker Design Group, PA, dated March 11, 2019, last revised July 9, 2019, subject to the following conditions:

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 July 19, 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 Applicants shall have 60 days from the adoption of this Resolution to negotiate a temporary construction easement with Eric and Joseph Valentino. If successful, the Applicants shall center the proposed dwelling on Property so that the dwelling would be 5.3 feet from the northernly property line shared with Mr. Valentino. If the Applicants and Mr. Valentino cannot successfully negotiate the aforementioned temporary construction easement, the Board will allow the Applicants to locate the home as proposed in the architectural plans prepared by Mr. Fox, last revised July 9, 2019.
5. Following the conclusion of the construction easement negotiations, regardless of the result, revised plans shall be prepared to address the remaining changes and edits as discussed in testimony and submitted to the Board Engineer for review.
6. The Applicants shall provide calculations for the structural retaining walls proposed for the property.
7. The Applicants shall eliminate the section of the proposed concrete sidewalk along the south side of the proposed dwelling.
8. The Applicants shall abide by the soil erosion control measures prescribed by the Morris County Soil Conservation District when constructing their home.
9. 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.
10. 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 August 28, 2019.

Kathy Appleby, Board Secretary