

18-006

BOROUGH OF MOUNT ARLINGTON LAND USE BOARD

RESOLUTION OF MEMORIALIZATION IN THE MATTER OF JILLIAN PAYSEUR - VARIANCE RELIEF AS RELATED TO LOT 25 IN BLOCK 26

Approved: October 24, 2018

Memorialized: November 28, 2018

WHEREAS, Jillian Payseur (“Applicant”) had sought a zoning permit from the Zoning Officer for the Borough of Mount Arlington authorizing the prior construction of a deck located at the rear of a dwelling on Lot 24 in Block 26, having an address of 7 Park Avenue (“Property”); and

WHEREAS, said zoning permit was denied because the already-constructed deck was larger than a deck originally built for the dwelling and thus required bulk variance relief; and

WHEREAS, the Applicant subsequently submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”) on or about November 14, 2017, seeking bulk variance relief to authorize the construction of the already-existing deck; and

WHEREAS, the Applicant specifically requested bulk variance relief from the Borough’s regulations in the RA-7.5 zone related to side yard and rear yard setback requirements as expressed in Ordinance § 17-29; and

WHEREAS, the Applicant included with her application a plan entitled “7 Park Avenue, Borough of Mount Arlington, Morris County, New Jersey,” prepared by George J. Anderson, LLC dated August 30, 2017, last revised July 23, 2018, consisting of one (1) sheet; and

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

WHEREAS, the application was deemed complete and a public hearing scheduled for October 24, 2018; and

WHEREAS, the public hearing was held on the aforesaid date, notice being required and lawfully provided; and

WHEREAS, the Board Engineer Thomas P. Lemanowicz, P.E. issued several reports regarding the Application, the most recent being dated September 11, 2018; and

WHEREAS, the Applicant appeared at the hearing along with Ronald Payseur to present her application; and

WHEREAS, the Board received as part of the hearing process, the following testimony;

The Applicant stated that she purchased the home in July of 2017. At that time, there existed a rear deck that was in poor and unsafe condition. The Applicant said the staircase was steep, unstable, and blocked access to an existing basement window. Mr. Payseur added that it had inadequate footings.

The Applicant explained that after purchasing the home, she removed the old deck and constructed a new one that was better constructed and safer. The deck was larger than the old deck and provided a better utilization of the rear yard of the Property which was rocky.

The Applicant indicated that while the deck did encroach in the side and rear yard setbacks, the encroachment did not appear to substantially impact the quiet peace and enjoyment of her neighbors to the south or the west. She observed that there was existing vegetation along these property lines which buffered the view of the deck. Moreover, Mr. Payseur said the home to the west which was to the rear of her Property was at a lower elevation making it difficult to have a direct view of the deck.

Board members did question the Applicant about the original deck and she presented photographs showing its dilapidated condition. The Applicant also said that while one could walk underneath the deck, there were no plans to convert that space into an additional patio or living area. In response to more questioning, the Applicant indicated that the layout and location of the deck was the most appropriate given the topography of the rear yard and the configuration of the dwelling itself.

The matter was open to the public but no one appeared to speak for or against the application.

WHEREAS, the Board after reviewing the testamentary evidence, survey, and photographs submitted by the Applicant, made the following findings of fact and conclusions of law:

1. The Applicant requires bulk variance relief pursuant to N.J.S.A.40:55D-70(c)(1) to authorize the prior construction of a deck on an existing 1.5 story frame dwelling located on Lot 24 in Block 26. Since the Property is zoned RA-7.5, the Board finds that the Applicant requires relief from the restrictions

related to one side yard and rear yard setbacks. Specifically, the required rear yard setback is 20-feet and only 13.04 is provided and the one-yard setback is 10 feet and only 5.81 feet is available.

2. The Board finds that the Applicant is entitled to the variance relief sought in accordance with N.J.S.A.40:55d-70(c)(1). The Applicant has shown peculiar and exceptional practical difficulty associated with constructing a deck that would otherwise conform to the zone district's bulk requirements. The Board concludes that the orientation of the existing dwelling which is towards the westerly side yard of the property does not leave adequate space to construct a rear deck that would not extend into the side yard setback. Moreover, the rear yard of the Property is exceptionally narrow and the topography slopes away from the dwelling. Together, these conditions impose an undue hardship on the Applicant.
3. The Board finds that the Applicant has satisfied the negative criteria. The deck is modest in size and does not substantially encroach near the usable areas on the adjacent properties. There is also an existing vegetative buffer which will obstruct the view of the deck. Moreover, a deck had previously existed on the dwelling with no apparent impacts to the neighborhood. Further, the Board finds that a deck associated with a residential use does not impair the intent or purpose of the zone plan or zoning ordinances which allow residential use of property. The construction of a deck is consistent with that use. For these reasons, the Board finds the Applicant satisfied the negative criteria and is entitled to the bulk variance relief requested.

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 bulk variance relief to the Applicant, Jillian Payseur, as more particularly described on the plan entitled "7 Park Avenue, Borough of Mt. Arlington, Morris County, New Jersey", prepared by George J. Anderson, L.L.C., dated August 30, 2017 last revised July 23, 2018 consisting of one (1) sheet, subject to the following terms and conditions:

1. The Applicant shall revise the plan to accurately set forth the applicable zoning table.
2. The Applicant shall revise the plan to accurately set forth the rear yard setback.
3. The Applicant shall include a note on the plan indicated the minimum clear distance beneath the deck.
4. The Applicant shall provide a unique revision date on the plans submitted for resolution compliance.
5. The Applicant shall proceed with securing the requisite construction permit and/or Certificate of Occupancy.
6. The Applicant shall submit proof that all real estate taxes and assessments due on the Property have been paid in full prior to the issuance of the building permit and Certificate of Occupancy.
7. The Applicant shall comply with and adhere to all rules, regulations, and

- ordinances of the Borough of Mount Arlington applicable to her project.
8. This approval is conditional upon approvals required by the Applicant from all other outside governmental agencies exercising jurisdiction over the development of the Property.
 9. Prior to the issuance of permits or certificates from the Construction Department, the applicant shall satisfy all fees and escrows related to the application.
 10. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be 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 _____, 2018.

Kathy Appleby , Board Secretary