

21-002

RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO JAY AND KAREN DECKER TO PERMIT THE CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE ON LOT 7 IN BLOCK 55

Approved: January 27, 2021

Memorialized: February 24, 2021

WHEREAS, Jay and Karen Decker (“Applicants”) are the owners of Lot 7 in Block 55 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 52 West Bertrand Road;

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about December 2, 2020, seeking use and bulk variance relief to demolish their current home and construct a new single-family dwelling on the Property; and

WHEREAS, the Applicants require bulk variance relief from the zoning limitations set forth in the RA-7.5 zone district relating to minimum lot area whereas 7500 square feet is required and 4000 is available; minimum lot width whereas 50 feet is required and only 40 feet is available; minimum side yard (one) setback whereas 10 feet is required and only 6.3 feet is proposed; minimum total side yard setback whereas 20 feet is required and only 13.3 feet is proposed; and grading setback from property line whereas five feet is required and zero feet is proposed. In addition, the Applicants require a use variance since the proposed development will exceed the Floor Area Ratio of 30% with 48% proposed;

WHEREAS, the Applicants included with their Application engineering plans entitled “Boundary and Topography Survey for Karen Decker Lot 7, Block 55, 52 West Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey” prepared by Careaga Engineering, Inc. signed and sealed by Charles Worthington, P.L.S., consisting of one (1) sheet; “Lot Redevelopment Plan, Decker Residence, Block 55, Lot 7, #52 West Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group, P.A. dated November 10, 2020, consisting of six (6) sheets; and an architectural plan entitled “Two Story Model OH-90760,” prepared by Professional Building Systems, Inc., dated March 13, 2020 consisting of ten (10) sheets.

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 January 5, 2021, and a public hearing was subsequently scheduled and held on January 27, 2021, notice being required and lawfully provided.

At all times the Applicants were represented by Bernd Hefele, Esq.;

WHEREAS, the Board Engineer, David A. Clark, P.E., issued several reports regarding the Application prior to the public hearing, the most recent dated January 27, 2021;

WHEREAS, the Board's Planner, Jessica P. Caldwell, P.P., also issued a Report, dated January 20, 2021; and

WHEREAS, at the conclusion of the public hearing on January 27, 2021, 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 Applicant, Jay Decker, testified on behalf of he and his wife, Karen. Mr. Decker explained that they reside in a small dwelling on the property that is in dire need of renovating and updating. He informed the Board that the home recently sustained significant damage when a tree fell on it. Mr. Decker stated that rather than simply repair the damage, he and his wife are hoping to raze the structure and build new two-story home. He opined that the proposed residence would be similar to other newer homes in the neighborhood and would be suitable for the smaller lot which they own.

After Mr. Decker concluded his testimony, Thomas Graham, P.E. appeared to discuss the engineering plan and issues associated with the application. Mr. Graham described the property as being 40 feet wide and 100 feet deep for a total of 4000 square feet. He agreed that the total lot area was less than the 7500 square feet required in the zone. He observed that the property was located on West Betrand Road and was surrounded by other single-family homes. Mr. Graham said that the property sloped towards the road. Importantly, Mr. Graham testified that the proposed dwelling would actually have a smaller footprint than the current home which would reduce lot coverage from 44.1% to 43.3%. Further, the proposed structure would eliminate the pre-existing, non-conforming front yard setback of 23.5 feet by increasing the front yard setback to 25.6 feet which exceeded the 25-foot requirement in the zone. Mr. Graham also explained that the smaller footprint for the home would improve upon the current non-conforming side yard conditions. Specifically, he said that the home presently has a side yard of 1.5 feet whereas 10 feet is required. The proposed new home, according to Mr. Graham, would be 6.3 feet from the side yard which was still non-conforming but, in his opinion, greatly improved over the current condition. Similarly, Mr. Graham noted that the total side yard was only 3.8 feet where 20 feet is required. He advised that the total side yard for the proposed residence would be 13.3 feet which was still non-conforming, but a much better condition than currently found.

Mr. Graham did acknowledge that the proposed home would not satisfy the Borough's floor area ratio requirement of 30%. He indicated that the new floor area ratio

would be 48%. In his opinion, this figure was more of a function of the smaller lot size and not the overall massing of the proposed dwelling. Mr. Graham opined that the size of the proposed home is consistent with others in the neighborhood and did not exceed the building height permitted in the district.

Mr. Graham explained that the proposed driveway would be more conforming than the current driveway and that the grading on the property would be consistent with the Borough's standards, although the Applicants could not meet the 5-foot grading setback from the property line. He stated that that the grading setback would be zero. Mr. Graham noted that the report from Lake Hopatcong Commission did not require any stormwater management for the project. The Board engineer, however, believed that an infiltrator at the street might be appropriate. Mr. Graham did not disagree and indicated that the Applicants would try to implement some stormwater management techniques.

The Applicants then introduced Matt Flynn, P.P., who testified as to the variance relief being sought. Mr. Flynn prepared a planning exhibit to support his testimony which was marked A-1. The exhibit included a portion of the tax map of the immediate neighborhood which showed most of the lots were non-conforming with respect to size. Mr. Flynn also included photographs of homes in the immediate vicinity which demonstrated that many were already two-stories in size.

Mr. Flynn first offered expert testimony in support of the use variance needed for the non-conforming floor area ratio condition. He explained to the Board that the Applicants were not held to enhanced burden of proof as commonly associated with uses that are not permitted in a zone district. Mr. Flynn emphasized that the Applicants' use was permitted; therefore, they merely needed to show that the property was still suited for the home even though the floor area ratio would not be exceeded. Mr. Flynn opined that the proposed dwelling was suitable for the property. He indicated that the home would provide more open and would be located farther from the adjacent property owners than the current dwelling. It would also provide an improved living environment.

Mr. Flynn felt that the application would not be a substantial detriment to the public good nor would it substantially impair the intent for purposes of the zone plan. He believed that the Applicants' proposed dwelling was modest in size and pointed to the fact it would continue to only be a 3-bedroom structure. He stated that the smaller footprint and more open space would advance the public good. He further testified that the Master Plan acknowledged that the neighborhood was already significantly built out with few vacant lots. In his estimation, the development proposed by the Applicants was consistent with the neighborhood and current development trends.

Mr. Flynn also acknowledged that the Applicants would need bulk variance relief from the one side yard setback and total side yard setback in the zone, as well as a variance from the grading setback requirement of 5 feet where no feet was proposed. He believed that the bulk variance relief was justified in a manner similar to the arguments in support of the use variance for the floor area ratio variance. He suggested that under the analysis dictated by N.J.S.A.40:55D-70c(2) that purposes advanced for the floor area ratio variance would also be advanced by the deviations from the bulk standards.

Moreover, Mr. Flynn stated that the negative criteria was satisfied for the same arguments he proffered with the floor area ratio variance. Consequently, he concluded that both the use and bulk variance relief being sought should be granted. After Mr. Flynn concluded, the matter was opened to the public. John Driscoll asked several questions concerning the size of the lot and Crista Owen voiced her support for the proposal, as did Mike Stanzillas.

Colleen Lyons, the administrative assistant for the Lake Hopatcong Commission also addressed the Board and indicated that the commission was supportive of the Applicants' proposal. However, several Board members raised questions concerning stormwater runoff. As a result, the Applicants agreed that they would orient the gutters on the home to run to the rear of the property and would consider the use of an infiltration system or rain garden. Ultimately, it was agreed that the Applicants would work with the Board engineer to come up with a possible design that would help reduce stormwater runoff. The Applicants also agreed to use silt fence during the construction of the 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, single-family residence located on Lot 7 in Block 55, having an address of 52 West Betrand Road in the Borough of Mt. Arlington. In its place, the Applicants are proposing to construct a 2-story, 1900 square foot single-family residence. The property is located in the Borough's RA-7.5 Zone.
2. The Applicants' proposal exceeds the zone district's FAR requirement of 30%. The Applicant's proposed home shall have a floor area ratio of 48%. 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 Applicants 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 and the proposed residence are not incompatible with surrounding homes. The Board finds that the proposal promotes purposes (g), (i), and (j) 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 residential properties along Lake Hopatcong.
3. The Applicant is seeking bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) from several of the bulk requirements in the Borough's RA-7.5 zone district. Specifically, the Board finds that the Applicants will require relief from the minimum setback for one side yard requirement of ten (10) feet whereas only 6.3 feet will be provided; the minimum setback for both side yards of 20 feet whereas 13.3 feet is proposed; and the grading setback from the boundary

whereas 5 feet is required and zero feet is proposed.

4. The Board finds that the bulk variance relief is warranted. The Board has determined that the Property is undersized and extremely narrow. The dimensions of the lot impose significant hardships on any development proposed for the property. The Board finds that the Applicant's proposal will advance purposes (g), (i), and (j) 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 Lake Hopatcong or neighboring properties. The proposal preserves the residential character of the area in keeping with the Borough's Master Plan. For these reasons, the Board finds that the Applicants have 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 and Topography Survey for Karen Decker Lot 7, Block 55, 52 West Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey" prepared by Careaga Engineering, Inc. signed and sealed by Charles Worthington, P.L.S., consisting of one (1) sheet; "Lot Redevelopment Plan, Decker Residence, Block 55, Lot 7, #52 West Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, P.A. dated November 10, 2020, consisting of six (6) sheets; and an architectural plan entitled "Two Story Model OH-90760," prepared by Professional Building Systems, Inc., dated March 13, 2020 consisting of ten (10) sheets, subject to the following conditions:

1. The Applicants shall comply with the technical comments set forth in the Application Review prepared by Board engineer, David A. Clark, P.E., dated January 27, 2021.
2. The Applicants and their engineer shall work with the Board engineer to devise a possible stormwater management technique to implement on the Property to minimize stormwater runoff. If necessary, the Applicants will agree to record a deed restriction against the Property to ensure the proper operation and maintenance of any storm water technique employed.
3. 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.
4. The Applicants will install silt fencing throughout the demolition and

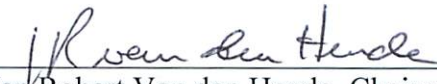
construction process.

5. The Applicants 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:


Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By: 
Jan Robert Van den Hende, Chairman

DATED:

THE VOTE:

IN FAVOR: 7
OPPOSED: 0
ABSTENTIONS: 0

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 February 24, 2021.


Kathy Appleby, Board Secretary