

21-003

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO WADE R. AND LEE ANN MARTIN TO PERMIT THE CONSTRUCTION OF AN ADDITION TO A SINGLE-FAMILY RESIDENCE ON LOT 10.02 IN BLOCK 51**

Approved: February 24, 2021  
Memorialized: March 24, 2021

**WHEREAS**, Wade R. and Lee Ann Martin (“Applicants”) are the owners of Lot 10.02 in Block 51 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 69 North Bertrand Road. The Property is situated in the RA-7.5 zone district; and

**WHEREAS**, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about December 1, 2020, seeking use and bulk variance relief to construct an addition to the single-family dwelling on the Property; and

**WHEREAS**, the Applicants sought bulk variance relief from the zoning limitations in the RA-7.5 zone district as set forth in Borough Ordinance Sec. 17-29 relating to minimum lot area, minimum lot width, minimum side yard setback; rear yard setback, minimum total side yard setback; and lot coverage. Further, the Applicants requested bulk variance relief from Section 17-22.6e which requires a 5-foot setback from the property boundary and Section 17-30.8d.2 which regulates slope disturbance in steep areas. Finally, the Applicant requested use variance relief since the proposed development on the Property was to exceed the maximum floor area ratio of 30%; and

**WHEREAS**, the Applicant included with its Application a plan titled: “Boundary and Topography Survey Plan, Block 51 Lot 10.02, #69 North Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group P.A., signed and sealed by Kenneth D. Dykstra, P.E., P.L.S. dated August 7, 2020; a plan titled “Lot Redevelopment Plans, Martin Residence, Block 51, Lot 10.02, #69 North Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey”, prepared by Dykstra Walker Design Group P.A., signed and sealed by Thomas F. Graham, P.E., dated November 2, 2020, latest revision date February 9, 2021, consisting of six sheets; and a plan titled: “Martin Lake House Addition and Renovation” prepared by SEK Architect LLC, signed and sealed by Stephen E. Kowalski, latest revision date February 9, 2021, consisting of five sheets; and

**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 7, 2021, and public hearings were subsequently scheduled and held on January 27 and February 24, 2021, 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 24, 2021;

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

**WHEREAS**, at the conclusion of the public hearing on February 24, 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, Mr. Martin, testified. He informed the Board that the home is currently two stories with four bedrooms comprising approximately 1,600 square feet. He explained that he and his wife are seeking to construct a 360 square foot addition that would provide extra space for their elderly parents when they visit.

After Mr. Martin concluded his testimony, Thomas Graham, P.E. testified. Mr. Graham identified the property as Lot 10.02 in Block 51, located at 69 North Bertrand Road. The property sloped from the front yard to the rear along Lake Hopatcong and was zoned RA-7.5.

Mr. Graham noted that the Property was triangularly shaped and undersized. He explained that the lot area requirement was 7,500 feet, and the Applicants' lot was only 6,208 feet. He said that the property was only 12 feet wide along the road, whereas the Borough's Ordinances required 50 feet. Mr. Graham further highlighted the need for a variance for one side yard setback whereas 10 feet is required, only 4.3 feet is now provided, and 3.2 feet is proposed. Similarly, he observed that the Applicants needed a variance for the total side yard setback which was required to be 20 feet, but the Applicants were proposing to reduce it from 11.4 feet to 10.4 feet. Mr. Graham also indicated that the proposal would need a bulk variance because the lot coverage was going to exceed the 50% maximum allowed.

He testified that there were certain sections of the property that met the definition of a steep slope under the Borough's Ordinances, although he believes those areas were man-made when the lot was initially developed. Nonetheless, he admitted that the Applicants would require relief from Borough Ordinance 17-30.8d.(2) for disturbing more than 40 percent of steep slopes having a grade between 10 and 15 percent and disturbing 55.3 percent of those steep slopes having a grade between 15 and 25 percent.

Mr. Graham noted that while the addition would only be approximately 356 square feet, the overall project would result in considerably more living space. He explained that the Applicants were proposing to raise the first floor of the home which would provide more living space on the lower level. He also advised that the Applicants would be reconstructing a paver patio and building a deck off the back of the house. Mr. Graham stated that the Applicants were proposing to install rain gardens in the rear of the property to mitigate against the increase in the impervious coverage. He added that the work would require two permits from the DEP.

Mr. Graham acknowledged receipt of a report from the Lake Hopatcong Commission which raised concerns about the proposed addition. Mr. Graham indicated that the Applicants would be working with the Commission to address its concerns.

After Mr. Graham concluded, Steven Kowalski, the Applicants' architect, testified. He explained to the Board that the Applicants intended to lift the first floor of the home to provide additional headroom on the lower level. This would allow them to expand their living space without necessarily having to expand the footprint of the home. Once done, Mr. Kowalski stated that the lower level would include a bedroom and a handicap bathroom. He stated that if approved, the addition and overall interior renovation would increase the square footage of the home from 1,676 feet to 2,296 square feet. He advised the Board that this would be an expensive approach but would have limited impact to the property and the neighbors. Once completed, Mr. Kowalski acknowledged that the home would have five bedrooms. He also informed the Board that the increased living area on the lower level was calculated into the floor area ratio which the Applicants would require relief from.

Mr. Kowalski was asked if the increase in the number of bedrooms would create a parking issue. Mr. Martin, the Applicant, explained that there was a shared parking arrangement with the neighbors and as per that agreement he had the ability to park six vehicles.

As Mr. Kowalski concluded his testimony, questions arose concerning lot coverage and the potential stormwater runoff into Lake Hopatcong. The Board also raised concerns about the report from the Commission. It was suggested that the Applicants might wish to consider reducing coverage or implementing other measures that would satisfy the Commission. Consequently, the Applicants adjourned the hearing and agreed to work with the Commission.

Following the initial meeting, the Applicants did revise their plans. Mr. Graham appeared before the Board once again at the continuation of the public hearing and explained that the Applicants proposed to use permeable pavers to reduce impervious coverage and address stormwater management. He noted that the use of permeable pavers around the parking area, the front walkway, the rear patio, and the proposed stairway landing at the rear of the dwelling would reduce lot coverage to 46.5 percent, which is below the maximum lot coverage allowed. Mr. Graham noted that this proposal satisfied the concerns raised by the Lake Hopatcong Commission. He did agree that the Applicants would be required to file a deed restriction that would incorporate the maintenance plan for the pavers and rain garden to ensure that future owners were familiar with the requirements and abided by them.

After Mr. Graham concluded his testimony, the Applicants presented John McDonough, P.P., testifying support of the variance relief sought. Mr. McDonough acknowledged that the Applicants would require use variance relief to address the nonconforming floor area ratio. He indicated that the zone district would only allow an FAR of .30 and the Applicants proposed .37. He also explained that the Applicants would require relief for the nonconforming single side yard setback and the combined side yard setbacks. He said that these are currently nonconforming conditions that would be exacerbated by the Applicants' proposal. He similarly noted that the Applicants would require relief for work proposed to be done within steep slope areas of 10-15% and 15-25%.

With respect to the use variance relief, Mr. McDonough opined that the property could adequately handle the addition to the home even if it exceeded the FAR. He stated that the Applicants' proposal would advance several purposes of zoning. Specifically, he believed that the proposal would promote the general welfare, which is purpose a of the New Jersey Municipal Land Use Law. He further explained that the proposal would provide adequate light and open space which advances purpose c. Mr. McDonough added that the proposal would contribute to the wellbeing of the neighborhood, provide sufficient space in an appropriate location for this residential use, and create a desirable visual environment, all of which advance purposes e, g, and i respectively.

Mr. McDonough also advised that the Applicants' proposal created no new earthwork disturbance, improved upon lot coverage and was consistent with the neighborhood scheme. For these reasons, Mr. McDonough opined that the proposal would not be a substantial detriment to the public good and was otherwise consistent with the Borough's Master Plan goals and objectives. For these reasons, he maintained that the Applicants were entitled to use variance relief for the excessive floor area ratio.

Mr. McDonough also argued in support of the bulk variances identified. He believed that the relief could be justified under the C-1 or the C-2 analysis. In support of the C-1 approach, Mr. McDonough indicated that the property was irregularly shaped and the existing home imposed an exceptional situation uniquely affecting the property. As a result, he argued that the Applicants were facing an undue hardship if they tried to construct an addition that would be in compliance with the bulk standards.

With regard to the C-2 analysis, Mr. McDonough believed that the purposes of zoning that he identified in support of the use variance would also be promote the bulk variance relief. For this reason, he believed that the Applicants satisfied the positive criteria in support of the bulk variance relief under either C-1 or C-2 approach. And as he indicated in connection with the use variance, the negative criteria was also satisfied, meaning that the Applicants were entitled to the bulk variance relief.

Upon the conclusion of the Applicants' presentation, members of the public appeared who spoke in favor of the Applicants' proposal.

**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 construct an addition to an existing single-family residence located on Lot 10.02 in Block 51 having an address of 69 North Bertrand Road in the Borough of Mount Arlington. The Property is located in the Borough's RA 7.5 zone.

2. The Board finds that the Applicants' proposed addition will result in the home exceeding the zone district's floor area ratio requirement of 30%. The Applicants' proposed home will have a floor area ratio of 37%. Accordingly, the Board determines that the Applicants will require relief pursuant to N.J.S.A. 40:55D-70(d)<sup>4</sup>. The Board finds that the relief is justified,

because the Property is particularly suited for the more intense development. The Applicants' intended addition can be accommodated on the Property without appearing out-of-character with the neighborhood setting. The Board agrees that the dwelling will still be compatible with other homes in the neighborhood. The Board finds that the design of the home fits well with topography of the Property. The Board believes that the proposal will promote purposes a, c, e, g 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 6,208 sq. feet. The Property has a lot width of only 12 feet, whereas 50 feet is required. The proposed home also has side yard setbacks less than 10 feet. Specifically, the Applicants are proposing a setback on the left side of 3.3 feet. The Applicants also do not satisfy the combined side yard setback of 20 feet with only 10.4 feet proposed. Additionally, the Board finds the Applicants have not satisfied Ordinance Sec. 17-22.6e which requires a grading setback of 5 feet from the property line. Here the Applicants are proposing no setback from the property line. The Board also finds that the Applicants do not satisfy Ordinance Sec. 17-30.8(2) which limits the disturbance of slope areas of 10-15%; and 15-25%;

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 slopes extending from the front of the Property along North Bertrand Road to the rear of the lot that abuts Lake Hopatcong. It is also triangularly shaped. 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 their proposed addition. The Board agrees that the size, shape and topography of the Property provide challenges to the Applicants to construct an addition that is consistent with established development patterns.

5. 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 purposes a, c, e, g, and, i 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.

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 residence that will be in keeping with the neighborhood. The Applicants' proposal is not a substantial detriment to the neighborhood, for the 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 as well as reducing impervious coverage on the Property. For these reasons, the Board finds the Applicants have satisfied the negative criteria and 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 Applicants, Wade R. and Lee Ann Martin, as more particularly described on a plan titled "Boundary and Topography Survey Plan, Block 51 Lot 10.02, #69 North Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group P.A., signed and sealed by Kenneth D. Dykstra, P.E., P.L.S. dated August 7, 2020; a plan titled "Lot Redevelopment Plans, Martin Residence, Block 51, Lot 10.02, #69 North Bertrand Road, Borough of Mount Arlington, Morris County, New Jersey", prepared by Dykstra Walker Design Group P.A., signed and sealed by Thomas F. Graham, P.E., dated November 2, 2020, latest revision date February 9, 2021, consisting of six sheets; and a plan titled: "Martin Lake House Addition and Renovation" prepared by SEK Architect LLC, signed and sealed by Stephen E. Kowalski, latest revision date February 9, 2021, consisting of five sheets, 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 24, 2021 and the memorandum issued by Jessica Caldwell, P.P., dated January 20, 2021.
2. The Applicants shall comply with the recommendations set forth in the report from the Lake Hopatcong Commission dated February 24, 2021.
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 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.
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. 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.

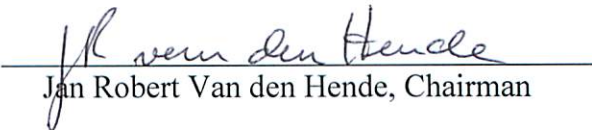
8. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be deemed necessary and appropriate.

ATTEST:

BOROUGH OF MOUNT ARLINGTON  
LAND USE BOARD



Kathy Appleby, Secretary

By:   
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 March 24, 2021.



Kathy Appleby, Board Secretary