

21-004

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE
RELIEF AND PRELIMINARY AND FINAL SITE PLAN APPROVAL TO A&E
ACQUISITION LLC TO CONVERT AN EXISTING COMMERCIAL BUILDING INTO
A MULTI-FAMILY RESIDENCE LOT 1.01, BLOCK 25**

**APPROVED: FEBRUARY 24, 2021
MEMORIALIZED: MARCH 24, 2021**

WHEREAS, A&E Acquisition LLC (“Applicant”) is the owner of Lot 1.01 in Block 25 (“Property”) as noted on the Tax Map for the Borough of Mt. Arlington and having a street address of 11 Prospect Street. The Property is situated in the B-1 Business Zone and contains a vacant commercial building; and

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mt. Arlington Land Use (“Board”) on or about December 15, 2020, seeking use and bulk variance relief and preliminary and final site plan approvals to renovate the interior of the existing building to create three (3) residential apartments; and

WHEREAS, the Applicant requires use variance relief from the zoning requirements in the B-1 Zone which does not allow residential uses; and

WHEREAS, the Applicant requires bulk variance relief for several pre-existing conditions which are contrary to the bulk standards in the B-1 Zone including lot area whereas 25,000 square feet is required and only 4,000 feet is provided; lot width whereas 125 feet is required and only 52.2 feet is provided; front yard setback whereas 40 feet is required and only 5.16 feet is available; one side yard setback whereas 20 feet is required and only 8.81 feet is provided; lot coverage whereas a maximum of 60% is allowed and 79.78% is provided; minimum side yard setback for a parking lot whereas 10 feet is required and only 4.4 feet is provided; parking space size/area whereas 162 square feet is required and only 56.6 feet is provided; and parking space size/width whereas 9 feet is required and 8.7 feet is proposed; and

WHEREAS, the Applicant included in its application architectural plans entitled, “Renovation of Existing Building” prepared by Elizabeth Reeves, dated November 9, 2020, with latest revision date of November 19, 2020, consisting of four sheets; and

WHEREAS, the Applicant submitted with its application the appropriate fees and escrow deposit;

WHEREAS, the application was deemed administratively complete by the Board’s Engineer on or about February 9, 2021 and a public hearing was subsequently scheduled and held on February 24, 2021, notice being required and lawfully provided. At all times the Applicant was represented by William Askin, Esq.; and

WHEREAS, the Board's Engineer, David A. Clark, issued several reports regarding the application prior to the public hearing, the most recent dated February 24, 2021; and

WHEREAS, the Board's Planner, Jessica P. Caldwell P.P. also issued a report dated February 23, 2021; and

WHEREAS, at the conclusion of the public hearing on February 24, 2021 the Board rendered a decision on the application in accordance with 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:

Eugene Boohoff initially testified. He is the managing member for the Applicant which is a residential investor that develops and constructs multi-family properties. Mr. Boohoff indicated that he is the contract purchaser for the Property. He advised the Board that the Property currently has a vacant commercial building with a small parking lot to the rear. He explained to the Board that he wished to convert the interior of the building into three residential apartments. Mr. Boohoff stated that there would be a 3-bedroom apartment on the first floor and two 2-bedroom apartments on the second floor. He also proposed exterior renovations of the building that would complement the neighborhood. The Applicant represented that it would remove an existing oil tank and convert the building to natural gas. According to Mr. Boohoff, the six parking spaces in the rear of the Property would be adequate for the needs of the residents.

After concluding his testimony, the Applicant called Elizabeth Reeves, A.I.A, the licensed architect for the project. Ms. Reeves discussed the interior renovations and the floor plan for each apartment. She informed that Board that the exterior of the building would have stucco on block with beige vinyl siding.

Peter Kalafut, the project manager, next testified. He explained that the apartments would be accessed by an entrance door in the front of the building into the rear. He also discussed the proposed exterior lighting and landscaping.

Jason Dunn, P.P. testified on behalf of the Applicant as its professional planner. Mr. Dunn began his testimony by describing the Property. He noted that the Property is almost entirely covered with impervious surface. He said that there were some small areas of pervious surface around the perimeter of the parking lot in the rear of the building. He explained there was an above ground oil tank on the right-hand side of the Property that was to be removed. Mr. Dunn indicated that the vacant commercial building was two stories high and was approximately 4,633 square feet.

Mr. Dunn noted that the Property is in the B-1 Business zone which does not allow the Applicant's proposed three-unit apartment building. Nonetheless, Mr. Dunn opined that the proposed use would have less of an impact on the neighborhood than many of the uses permitted in the zone. In his opinion, it would generate less traffic, less noise, less odors, or lower lighting. He opined that the proposal was a creative re-use of the structure, particularly with the exterior enhancements Ms. Reeves has described.

Mr. Dunn testified that the use was particularly suited for the Property. He maintained that a residential use at this location would complement and support the nearby businesses and represented an appropriate transition from the business district to the nearby residential neighborhoods. He explained that the Applicant's proposal would promote the general welfare by enhancing an otherwise vacant and deteriorating structure to provide residential housing whose tenants would support the local businesses. This is consistent with purpose a of the New Jersey and Municipal Land Use Law ("MLUL"). He further indicated that the architectural enhancements would promote a desirable visual impact in furtherance of purpose I of the MLUL.

Mr. Dunn did not believe that the proposal would be a substantial detriment to the public good nor would it substantially impair the intent and purpose of the Borough's master plan and ordinances. He noted that the B-1 Zone was a traditional neighborhood commercial zone. The Applicant's modest multi-family proposal would be appropriate and would provide residents to support the nearby businesses. He indicated that the Borough's master plan defined the B-1 Zone as a traditional neighborhood commercial zone and the Applicant's proposal was consistent with that description.

Mr. Dunn also testified that the bulk variance relief needed for lot area, lot width, front and side yard setbacks, and lot coverage would also be supported by the same arguments he proffered in support of the D-1 variance.

Upon the conclusion of Mr. Dunn's testimony, a discussion ensued between Board members and the Applicant's representatives concerning the adequacy of parking. Board Members expressed reservations about the proposed layout, the proximity of several spaces to the building, and the paucity of spaces. As the discussion continued, it was eventually agreed that the Applicant could implement a stacked parking arrangement that would afford additional spaces while maintaining more flexibility to the rear of the structure. Eventually it was agreed that a stacked parking lot arrangement could be prepared and submitted to the Board's Engineer for his review and approval.

Another discussion arose regarding whether one of the three units should be deed restricted for affordable housing. The Board agreed that since the Borough's fair share plan had been reviewed and approved by the Court, it would not be necessary. Upon the conclusion of the Applicant's presentation, the matter was opened to the public and comments were received.

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

1. The Applicant is seeking to rehabilitate and renovate an existing two-story vacant commercial structure located on lot 1.01 in block 25 having an address of 11 Prospect Street. The Applicant's proposal is to create three apartments in the 4633 square foot building. On the first floor would be a one 3- bedroom apartment and two 2-bedroom apartments on the second floor. Since the Property is located in the Borough's B-1 Business Zone which does not permit residential uses, the Applicant will require a use variance as per N.J.S.A. 40:55D-70(d)(1).

2. The Applicant will also require bulk variance relief because the Property does not conform to several bulk standards in the B-1 Zone. Specifically, the zone requires a lot to have at least 25,000 square feet but the Applicant's lot is only 4000 square feet. The Board finds that the Applicant's proposal is not consistent with the lot width requirement of 125 feet with only 52.2 feet being available. The Board also finds that the lot does not conform to the front yard setback requirement of 40 feet with only 5.16 feet available or the side yard requirement of 20 feet with only 8.81 feet available. Finally, the Board finds that the Applicant's proposal is not consistent with the lot coverage maximum of 60% with 79.78% proposed. The Applicant's proposal does not conform to the minimum side yard setback requirement for parking which is 10 feet. The Applicant is only proposing 4 feet. Similarly, the Applicant's proposed parking spaces do not satisfy the area and width requirements for the zone.
3. The Board believes that the Applicant's proposal is entitled to use variance relief as per N.J.S.A. 40:55D-70(d)(1) to allow the conversion of the building to a multi-family residential use. The Board finds the Applicant's proposal is particularly suited for the Property. The Board believes that the conversion of the vacant commercial building into a multi-family use will be an aesthetic improvement for the neighborhood and will further support neighborhood businesses. The Board finds that the Applicant's proposal will promote the general welfare and enhance the visual environment in the area. The Board believes that the proposed multi-family use provides an appropriate transition from the adjacent residential neighborhoods to the business district. Residents in the Applicant's proposed apartments would support the neighborhood businesses. For this reason, the Board believes that the Applicant's proposal will not be a substantial detriment to the public good. The Board also finds that proposal will not be a substantial detriment to the Borough's zoning ordinances or master plan. It will support neighborhood commercial uses in the B-1 Zone. In addition, the Board finds that the one of the objectives of the master plan is to support the retail trade and service business in the Borough's B-1 Zone. The Applicant's proposal will in fact do so. For these reasons, the Board finds that the Applicant is entitled to use variance relief to allow for the conversion of the existing commercial building into a multi-family residence.
4. For the same reasons set forth, the Board also find that the Applicant is also entitled to bulk variance relief as per N.J.S.A. 40:55D-70(c)(2) to allow for deviations from the zone district's requirements related to lot area, lot width, front and side yard setbacks, and lot coverage. While these are pre-existing conditions, the Applicant's proposal will advance the public good and provide a desirable visual as per purposes a and i of the MLUL. In addition, the Board finds that the proposed stacked parking arrangement helps facilitate the proposed use and is entitled to bulk variance relief.
5. With the grant of the use and bulk variance relief, the Board finds that the Applicant is entitled to preliminary and final site plan approval in accordance with conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED that 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 and preliminary and final site plan approval to the Applicant, A&E

Acquisition LLC, more particularly described on the proposed floor plans entitled “Renovation of Existing Building,” prepared by Elizabeth Reeves, last revised, November 19, 2020, subject to the following conditions:

1. The Applicant shall revise its parking plan to incorporate double stacking of parking spaces. Prior to the issuance of any building permits, the plan must be reviewed and approved by the Board engineer, David A. Clark, P.E.
2. Prior to the issuance of any building permits, the Applicant shall submit a landscaping plan that must be approved by the Board engineer, David A. Clark, P.E.
3. Prior of the issuance of any building permits, the Applicant shall submit a proposed color scheme for the exterior of the building to the Board Planner, Jessica P. Caldwell P.P. for her review and approval.
4. The Applicant shall remove the chimney on the building and same shall be reflected on the construction plans to be submitted to the Borough’s Construction Department.
5. The interior renovations are subject to all rules and regulations under the Building Code and will be further subject to any review and approvals issued by the Borough’s Construction Department.
6. The Applicant shall revise its plans as per the comments and recommendations in the reports from David A Clark, P.E., dated February 24, 2021.
7. The Applicant shall submit proof of all fees, escrow amounts, real estate taxes, and assessments prior to the issuance of the Building Permit and Certificate of Occupancy.
8. The Applicant shall comply with the Borough’s residential development fee ordinance which will require a fee of one- and one-half percent of the equalized assessed value of the project to be paid prior to the issuance of the Certificate of Occupancy.
9. The Applicant shall comply with all rules and regulations, and ordinances of the Borough of Mt. Arlington applicable to the development.
10. The Applicants shall comply with and adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development.
11. 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.
12. 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

Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By: Jan Robert Van den Hende
Jan Robert Van den Hende, Chairman

DATED:

THE VOTE:

IN FAVOR: 5
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

Kathy Appleby, Board Secretary