

**21-005**

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO BRIAN AND CATIA REN DECKER TO PERMIT THE CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE ON LOT 12 IN BLOCK 14**

**Approved: April 28, 2021  
Memorialized: May 26, 2021**

**WHEREAS**, Brian and Catia Kitchin (“Applicants”) are the owners of Lot 12 in Block 14 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 23 Edgemere Avenue;

**WHEREAS**, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about February 18, 2021, seeking use and bulk variance relief to expand their current home, construct a new 2-car garage and modify the driveway on the Property; and

**WHEREAS**, the Applicants require bulk variance relief from the zoning limitations set forth in the RA-30 Single-Family district relating to minimum lot area whereas 20,000 square feet is required and 17,109 square feet is available; minimum lot width whereas 100 feet is required and only 39.5 feet is available; maximum impervious coverage whereas 25% is allowed and 45.6% is proposed; minimum side yard (one) setback whereas 12 feet is required and only 8.2 and 5 feet are proposed; minimum total side yard setback whereas 25 feet is required and only 13.2 feet is proposed; minimum side yard setback for an accessory structure whereas 12 feet is required and 0 feet is proposed; driveway slope at street whereas 10 feet at 2% is required and 13.5% is proposed; driveway slope at garage whereas 25 feet at 5% is required and 8.7% is proposed; driveway slope whereas 15% is required and 19.6% is proposed; and from the Borough’s water lot coverage ordinance whereas 15% is permitted and 17.5% is proposed. In addition, the Applicants require a use variance because the proposed development will exceed the Floor Area Ratio of 18% with 21.1% proposed;

**WHEREAS**, the Applicants included with their Application engineering plans titled “23 Edgemere Avenue, Layout & Grading Plan, Block 14, Lot 12, Borough of Mount Arlington, Morris County, New Jersey” prepared by Roth Engineering, signed by Michael J. Roth P.E., dated January 21, 2021; plan titled “23 Edgemere Avenue, Utility Plan and Construction Details, Block 14, Lot 12, Borough of Mount Arlington, Morris County, New Jersey” prepared by Roth Engineering, dated January 21, 2021; and architectural plan titled “Kitchin Residence, 23 Edgemere Avenue, Borough of Mount Arlington, NJ 07856” prepared by Byrne Design Associates LLC, dated January 12, 2021 consisting of 3 pages.

**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 March 29, 2021, and a public hearing was subsequently scheduled and held on April 28, 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 hearing, the most recent dated April 23, 2021;

**WHEREAS**, the Board's Planner, Jessica P. Caldwell, P.P., also issued a Report, dated April 25, 2021; and

**WHEREAS**, at the conclusion of the public hearing on April 28, 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, Brian Kitchin, testified that he grew up in the area. He stated that he was hoping to renovate the home and live there for the rest of his life. Mr. Kitchin said he wished to make the home larger, build a new garage and improve the driveway. He explained that the driveway was very steep and he was hoping to flatten it out in and around the home.

After Mr. Kitchin concluded his testimony, William Byrne, A.I.A. discussed the architectural plans. Mr. Byrne noted that the property was so steep that it was not visible from the road. He opined that the grade of the Property made it a challenge to design a home that would improve accessibility to the dwelling from the driveway.

Mr. Byrne testified that he designed the residence to convert the existing garage into living space and construct a new larger 2-car garage. He indicated that the basement area would remain unchanged. Mr. Byrne's plans showed an exercise room that some Board members worried could be converted into a bedroom. Mr. Kitchin agreed not to do so. Mr. Byrne presented Exhibit A-1 which was a rendered elevation that showed the renovated dwelling would be consistent with other homes in the neighborhood. He also advised that the Applicants intended to install typical residential lighting above the garage doors.

The Applicants next presented Michael Roth, P.E., P.P. to testify as to the engineering and planning issues. He presented Exhibit A-2 which was an existing conditions plan. He next highlighted the existing nonconforming conditions that would not be worsen by the proposal such as lot area, lot width and minimum side yard setback for an accessory structure. He noted the existing nonconforming conditions that would

be exacerbated by the proposal including impervious coverage which increased from 43.7% to 45.6% when only 25% is allowed; minimum side yard (one) setback whereas 12 feet is required, 8.2 exists and 5 feet is proposed; minimum total side yard setback whereas 25 feet is required, 19.5 feet exists and 13.2 feet is proposed. He also referenced the nonconforming driveway slope and the driveway slope at the street and garage. Mr. Roth stated that these conditions would require bulk variance relief. He also testified that the floor area ratio could not be met the permitted maximum of 18% as 21.1% was proposed.

Mr. Roth observed that the bulk relief was warranted as per N.J.S.A.40:55D-70(c)(1). He said that the property was currently undersized with fully developed parcels on either side of it. He explained that the Property was uniquely shaped and impacted by significant grade changes. These conditions presented an undue hardship on the Applicants if they tried to develop the Property in a conforming manner.

Mr. Roth testified that the use variance for the noncompliant floor area ratio was governed by N.J.S.A. 40:55D-70(d)(4). Under this standard, he informed the Board that the relief was justified if the Property could accommodate the larger than permitted structure. In his estimation, it could. He observed that the proposed dwelling was smaller than most in the immediate neighborhood. The height of the home was also consistent with others as well. He stated that the Applicants proposed to install drywells that would offset any negative impacts from stormwater runoff. He further noted that the improvements to the driveway would make the use of the Property safer.

With respect to both the bulk and use variance relief, Mr. Roth claimed that the negative criteria would be met because the proposed dwelling was modest in size. He stated that the smaller footprint and more open space on the Property would serve the public good. He further testified 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.

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. She stated that the Commission recommended that the Applicants employ dry wells to be approved by the Board engineer and that the Applicants not use fertilizer on their lawn. Mr. Kitchin agreed to both suggestions.

Questions were raised by Board members regarding certain aspects of the project. For instance, issues were raised about the dock and the water lot coverage variance. Ultimately, the Applicants agreed to relocate the dock to avoid needing a variance. Other questions were asked about the relocation of a shed and lighting.

**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 renovate and expand an existing, single-family

residence located on Lot 12 in Block 14, having an address of 23 Edgemere Avenue in the Borough of Mt. Arlington. The Applicants are proposing to construct a 2-story single-family residence with a 2-car garage. The property is located in the Borough's RA-30 Zone.

2. The Applicants' proposal exceeds the zone district's FAR requirement of 18%. The Applicant's proposed home shall have a floor area ratio of 21.1%. 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 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 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 Applicants are 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-30 zone district. Specifically, the Board finds that the Applicants will require relief from the zoning limitations relating to minimum lot area whereas 20,000 square feet is required and 17,109 square feet is available; minimum lot width whereas 100 feet is required and only 39.5 feet is available; maximum impervious coverage whereas 25% is allowed and 45.6% is proposed; minimum side yard (one) setback whereas 12 feet is required and only 8.2 and 5 feet are proposed; minimum total side yard setback whereas 25 feet is required and only 13.2 feet is proposed; minimum side yard setback for an accessory structure whereas 12 feet is required and 0 feet is proposed; driveway slope at street whereas 10 feet at 2% is required and 13.5% is proposed; driveway slope at garage whereas 25 feet at 5% is required and 8.7% is proposed; and driveway slope whereas 15% is required and 19.6% is proposed. The Applicant had required relief from the Borough's water lot coverage ordinance but agreed to relocate the dock to avoid this variance.
4. The Board finds that the bulk variance relief is warranted. The Board has determined that the Property is undersized with extreme changes in grade. The lot also has a unique shape that imposes an undue hardship on virtually any proposed development.
5. The Board believes that the Applicant has satisfied the negative criteria associated with its use and bulk variance requests. 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 given the Applicants' use of a stormwater

management system that will be reviewed and approved by the Board engineer. 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, Brian and Catia Kitchen, more particularly described on the engineering plans titled "23 Edgemere Avenue, Layout & Grading Plan, Block 14, Lot 12, Borough of Mount Arlington, Morris County, New Jersey" prepared by Roth Engineering, signed by Michael J. Roth P.E., dated January 21, 2021; plan titled "23 Edgemere Avenue, Utility Plan and Construction Details, Block 14, Lot 12, Borough of Mount Arlington, Morris County, New Jersey" prepared by Roth Engineering, dated January 21, 2021; and architectural plan titled "Kitchin Residence, 23 Edgemere Avenue, Borough of Mount Arlington, NJ 07856" prepared by Byrne Design Associates LLC, dated January 12, 2021 consisting of 3 pages, 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, the Board Planner Jessica C. Caldwell, dated April 25, 2021, and Board members.
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. 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 and to prohibit the use of fertilizer on the Property.
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 shall comply with and adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development.
5. 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.
6. Before a building permit may be issued, the Applicants' stormwater dry well proposal must be deemed acceptable by the Board Engineer to address quantity and recharge for the proposed increase in impervious area. Prior to the issuance of a building permit the Applicants must also prepare an Operations and Maintenance Plan for the proposed stormwater management system that is

approved by the Board Engineer and recorded against the Property.

- 7. The Applicants must provide the location of the silt fence to be installed during construction activities on the project plan.
- 8. The Applicants shall not convert the proposed exercise room in the home into a bedroom.
- 9. Prior to the issuance of the Certificate of Occupancy the Applicants shall relocate the existing dock so as to eliminate the need for a water lot coverage variance.
- 10. Prior to the issuance of the building permit, the Applicants shall remove or relocate the existing shed that currently is on the Property.
- 11. 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: \_\_\_\_

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 May 24, 2021.

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Kathy Appleby, Board Secretary