

21-006

BOROUGH OF MOUNT ARLINGTON LAND USE BOARD

RESOLUTION OF MEMORIALIZATION DENYING USE AND BULK VARIANCE RELIEF TO LEONID BOGUSLAVSKY TO NOT PERMIT THE CONSTRUCTION OF AN IN-GROUND POOL WITH A CABANA AND A BOAT HOUSE ON LOT 6 BLOCK 39

Denied: June 23, 2021

Memorialized: August 25, 2021

WHEREAS, Leonid Boguslavsky (“Applicant”) is the owner of Lot 6 in Block 39 (“Property”) as noted on the tax map of Borough of Mount Arlington, having a street address of 485 Windemere Avenue; and

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”) on or about April 13, 2021, seeking use and bulk variance relief to, among other things, construct an inground pool with a cabana and erect a boathouse on an existing concrete dock; and

WHEREAS, the Applicant required bulk variance relief from the zoning limitations set forth in the RA-30 single-family residence zone relating to maximum impervious coverage where twenty-five percent (25%) is allowed and twenty-six percent (26%) is proposed; water lot coverage where 15% percent is allowed and 18.06% is proposed; driveway slope at street where 10 feet at 2% is permitted and 12% is proposed; overall drive slope where 15% is permitted and 25% is proposed; the construction of a retaining wall in the right-of-way when no wall is permitted; maximum building height for an accessory building where 12 feet is permitted and 33.58 feet is proposed; maximum square footage of an accessory building where 528 feet is allowed and 1955 feet is proposed; habitable space in accessory building where none is permitted and bedrooms are proposed; minimum side yard setback for a garage where 12 feet is allowed and only 8.5 feet is proposed; maximum building height for a garage where 12 feet is allow and 13 feet is proposed; maximum square footage for an accessory garage where 528 feet is allowed for all accessory buildings and 1955 feet is proposed; maximum square footage for an accessory cabana; and maximum square footage for an accessory dog run shelter. In addition, use variance relief is needed to allow a habitable boathouse where no accessory structure may allow for human habitation as per section 17-32.1a of the Borough’s Ordinances. Similarly, according to section 17-48a(8), no living or sleeping accommodations or bathrooms facilities are permitted in a boathouse and the Applicant proposes two bedrooms, two bathrooms, a living area, and a kitchen. Finally, the boathouse constitutes a second principal use thereby requiring another use variance; and

WHEREAS, the Applicant submitted with his Application, plans entitled “Variance-Site Plan, Lot 6, Block 39, 485 Windemere Avenue, Borough of Mount

Arlington, Morris County- New Jersey” prepared by Carega Engineering Inc., dated January 20, 2021 last revised April 6, 2021, consisting of five sheets, plans entitled “Dock and Boathouse Re- Constructions Plans, 485 Windemere Avenue, Lot 6 Block 39, Situated in: Borough of Mount Arlington, Morris County, New Jersey” prepared Carega Engineering Inc.,” dated January 20, 2021, consisting of four sheet and survey entitled “Boundary and Topographic Survey, Stanislav Gutkin, Lot 6 Block 39, 485 Windemere, Borough of Mount Arlington, Morris County, New Jersey” prepared by Carega Engineering Inc. dated July 30, 2015; and

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

WHEREAS, the Application deemed administratively complete by the Board’s Engineer on or about May 5, 2021 and public hearings were scheduled and held on May 26 and June 23, 2021, notice being required and lawfully provided; and

WHEREAS, the Board’s engineer, David A. Clark, P.E., issued several reports regarding the Application, the most recent dated May 26, 2021; and

WHEREAS, the Board’s planner, Jessica P. Caldwell, P.P., also issued a report dated May 19, 2021; and

WHEREAS, at the conclusion of the June 23, 2021 public hearing, the Board rendered a decision on the Application in accordance with the requirements set forth in N.J.S.A. 40:55D-10(g); and

WHEREAS, the Board received as part of the hearing process the following testimony and documentary evidence:

The Applicant’s son in-law, Stan Gutkin, testified in support of the application and affirmed that he and the Applicant purchased the property in 2014 to be used as a family home. Mr. Gutkin informed the Board that the Applicant, his wife, and all four of his children resided on the Property.

Mr. Gutkin described the property as being a 200-foot by 200-foot parcel with a home and detached garage located near the street and a concrete dock along the shoreline of Lake Hopatcong. Mr. Gutkin stated that the property sloped downward from Windemere Avenue to the lake. Mr. Gutkin explained that the house was two-stories with a walkout basement. He indicated that there were four bedrooms on the second floor along with two bathrooms. He testified that on the first floor there was a living room, kitchen, foyer, and a fifth bedroom on the first floor.

Mr. Gutkin acknowledged that there was no boathouse on the property when it was purchased in 2014. He explained that the prior owner had given him plans for a proposed boathouse that the prior owner did not pursue. Although Mr. Gutkin said that realtor told

him that the boathouse was destroyed by Super Storm Sandy, he later learned that the home was demolished by the prior homeowner who obtained a demolition permit in 2009.

Mr. Gutkin informed the Board that the Applicant was seeking permission to install a pool and cabana in the rear of the property. In addition, the Applicant was hoping to construct a two-story boathouse that would include bathrooms, bedrooms, and a kitchen. Mr. Gutkin said that the boathouse would allow he and his wife to have closer access to a bathroom and a kitchen area while the family was enjoying the pool. The first floor of the boathouse would include three spaces for boats along with lifts to ensure that boats did not get damaged by waves from heavy boat traffic along Lake Hopatcong.

After Mr. Gutkin concluded, the Applicant presented John McDonough, P.P. to provide expert testimony in support of the use and bulk variance reliefs needed. Before beginning his testimony, Mr. McDonough introduced the following exhibits:

- A-1. Tax Map of Subject Parcel;
- A-2. Arial Photo of the Property;
- A-3. Colored Land Use Map of the Subject Property and Surrounding Area;
- A-4. Zone Map;
- A-5. Arial View from the Northeast of the Property;
- A-6. Arial View over the Property;
- A-7. View of the Property from the Lake;
- A-8. Lake Views of Properties to the East with Boathouses; and
- A-9. Photo of Boathouse located on the Property in 1910.

Mr. McDonough advised that there were two categories of relief that the Applicant required. He opined that there was use variance relief related to the boathouse and bulk variance relief related to the main home in the main property. He described the property and the structures upon it. He explained that the dock had previously accommodated a boathouse and was large enough to accommodate the boathouse proposed. He also described in detail the bulk variance relief required.

Mr. McDonough then offered testimony in support of the use variance relief. He believed that special reasons existed to support the grant of use variance relief. He believed that the proposal promoted positive aesthetics and an efficient use of the

property. He cited purposes a, c, g, i, and m under the New Jersey Municipal Land Use Law. He then said that the Applicant's proposal would have minimal negative impact on the community and surrounding residents.

After he concluded, Board members and Ms. Caldwell raised questions concerning the proposed boathouse. Ms. Caldwell asked if there were any comparable boathouses in the area. Mr. McDonough said that he did not know. As Board members expressed concerns about the boathouse being transformed into a second residential use, the Applicant did agree to record a deed restriction that would require the kitchen to be removed when the property was sold.

After Mr. McDonough concluded his testimony, the Applicant presented Jeff Carega, P.E who prepared the engineering plans. Mr. Carega described current conditions at the Property and explained that the Applicant proposed to install a pool, cabana, firepit, and patio. He also discussed the boathouse. In describing the Applicant's proposal, Mr. Carega identified the bulk variance relief needed. He did emphasize that there would be no additional runoff from the development. He also advised that although the Applicant would require bulk variance from the Borough's impervious coverage standards, the proposed boathouse was not included in this calculation since it was not constructed over the real property. He did state that the boathouse was oversized even though it was below the maximum DEP footprint requirement of 2000 square feet. Mr. Carega did not dispute Mr. Clark's recommendation that the Applicant would require DEP approval as per the flood hazard regulations prior to construction. Mr. Carega testified that the Applicant's development would be below the floor area ratio restriction in the zone. He indicated that the current FAR was 6.32% and the proposed FAR was 11.31% which was below the 18% threshold.

Upon being questioned by the Board concerning the size of the boathouse, particularly when compared to other boathouses in the area, Mr. Carega stated that the Applicant would be prepared to remove the kitchen and lower its height the proposed 33 feet to 25 feet. In addition, he indicated that the Applicant would install a rain garden to help further reduce runoff.

After Mr. Carega concluded his testimony, Linda Tobey and Anne Pravs, asked questions concerning the Application. Thereafter, the matter was closed to the public.

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

1. The Applicant is seeking use variance relief as per N.J.S.A 40:55D-70(d)(1) to allow for the construction of a habitable boathouse which is contrary to Borough Ordinances 17-32.1a and 17-48a(8). The Board finds that the Applicant's willingness to eliminate the kitchen renders the proposed boathouse to be an accessory use which will not require a use variance for two principal uses on the Property.

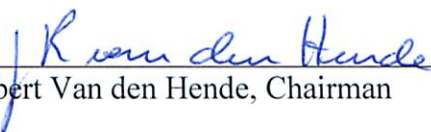
2. The Board also finds that the Applicant will require bulk variance from the Borough Ordinances related to lot coverage, water lot coverage, driveway slopes, retaining walls, height and size of accessory structures, insufficient setback, side yard setback for accessory structures.
3. The Board finds that the Applicant did not satisfy the positive and negative criteria needed for the issuance of the use variance sought. While the Applicant did present arguments that its proposal would promote several purposes of zoning under the MLUL, the Board concludes that the Applicant was unable to satisfy the negative criteria. The Board finds that the size and mass of Applicant's proposed boathouse along with the bedrooms and kitchen area is contrary to numerous Borough ordinances and is a dramatic departure from many of the boathouses along the Lake. It is also contrary to many of the goals and objectives of the Master Plan.
4. Similarly, the Board concludes that the bulk variance relief requested is not warranted. The nature and number of bulk variances represent a dramatic departure from the applicable bulk standards. They do not represent a better planning alternative for the Property or the community. The Board further believes that the Applicant did not satisfy the negative criteria as the relief would not be consistent with the neighborhood and would run contrary to the numerous standards in the Borough's Ordinances and the goals and objectives of the Borough's master plan. The Board did not find anything in the application that would advance the general welfare of neighbors even with the Applicant's willingness to propose various conditions regarding the use of the boathouse and the elimination of some the improvements found in the original proposal.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey that the Application filed by Leonid Boguslavsky seeking use and bulk variance relief for property known as Lot 6, Block 39 in the Borough of Mount Arlington as more particularly described in the plans entitled "Variance-Site Plan, Lot 6, Block 39, 485 Windemere Avenue, Borough of Mount Arlington, Morris County- New Jersey" prepared by Carega Engineering Inc., dated January 20, 2021 last revised April 6, 2021, consisting of five sheets, plans entitled "Dock and Boathouse Re- Constructions Plans, 485 Windemere Avenue, Lot 6 Block 39, Situated in: Borough of Mount Arlington, Morris County, New Jersey" prepared Carega Engineering Inc.," dated January 20, 2021, consisting of four sheet and survey entitled "Boundary and Topographic Survey Stanislav Gutkin, Lot 6 Block 39, 485 Windemere, Borough of Mount Arlington, Morris County, New Jersey" prepared by Carega Engineering Inc. dated July 30, 2015, be and is hereby denied.

ATTEST:


Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By: 
Robert Van den Hende, Chairman

DATED:

THE VOTE:

IN FAVOR: 6
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 08/25, 2021.


Kathy Appleby, Board Secretary