

22-002

**RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK
VARIANCE RELIEF TO MICHAEL ASSILE TO PERMIT THE
CONSTRUCTION OF A SINGLE-FAMILY RESIDENCE ON LOT 61 IN
BLOCK 10**

**Approved: April 27, 2022
Memorialized: May 25, 2022**

WHEREAS, Michael Assile (“Applicant”) is the owner of Lot 61 in Block 10 (“Property”) as noted on the Tax Map for the Borough of Mount Arlington with a street address of 21 McGregor Avenue;

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about March 2, 2022, seeking use and bulk variance relief to construct a single-family dwelling on the Property; and

WHEREAS, the Applicant requires bulk variance relief from the zoning limitations set forth in the RA-15 zone district relating to lot area, lot width, lot frontage, maximum impervious coverage, maximum water lot coverage, minimum side yard setback for a boathouse, area of a boathouse, and minimum side yard setback for a covered dock. Further, he requires variance relief for disturbing steep slopes having between 10% and 15% Slope Maximum Vegetation Disturbance, steep slopes having between 15% and 25% Slope Maximum Vegetation Disturbance, steep slopes having a greater than 25% Slope Maximum Vegetation Disturbance. In addition, the Applicant requires a use variance since the proposed development will exceed the Floor Area Ratio of 28%;

WHEREAS, the Applicant included with his Application engineering plans titled: “Variance Plan, Assile Residence, Block 10, Lot 61, #21 McGregor Avenue, Borough of Mount Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group, PA signed by Thomas F. Graham, P.E. dated February 7, 2022, last revised April 28, 2022, consisting of four sheets; Plan titled: “Boundary and Topographic Survey Plan, Block 10, Lot 61, #21 McGregor Avenue, Borough of Mount Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group, PA signed by Kenneth D. Dykstra, P.E. dated January 6, 2022, no revisions; and Plan titled: “New Residence for Mike Assile, 21 McGregor, Mount Arlington, New Jersey” prepared by Charles Schaffer Associates LLC signed and sealed by Charles Schaffer dated February 7, 2022, no revisions, consisting of two 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 April 4, 2022, and a public hearing was subsequently scheduled and held on April 27, 2022, notice being required and lawfully provided. Bernd Hefele, Esq. represented the Applicant at all times during the application process;

WHEREAS, the Board Engineer, David A. Clark, P.E., issued a report regarding the Application prior to the public hearing dated April 4, 2022;

WHEREAS, the Board's Planner, Jessica P. Caldwell, P.P., also issued a Report, dated April 5, 2022; and

WHEREAS, at the conclusion of the public hearing on April 27, 2022, 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:

Mark Gimigliano, P.E. testified as the Applicant's professional engineer. Mr. Gimigliano confirmed that he had prepared the plans and began his testimony by describing current conditions on the Property. He explained that the Property was undersized for the R-15 zone district and sloped steeply from the McGregor Avenue to Lake Hopatcong. Mr. Gimigliano noted that the Property was vacant except for a dock and boathouse to the rear of the Property along the shoreline of the Lake. He testified that the Property was nonconforming with respect to lot area and lot width. Mr. Gimigliano also further noted that the lots on either side of the Property were fully developed.

Mr. Gimigliano said that the Applicant wanted to build a modest single-family home on the Property. He presented Exhibit A-1 which was a colored site plan that depicted all of the proposed improvements. He explained that the home would be two stories with a walkout basement. From the rear of the home, the Applicant proposed a walkway leading to the existing dock and boathouse. While the home was not particularly large according to Mr. Gimigliano, it would exceed the floor area ratio for the zone district which is .28. He opined that the proposed FAR would be .55. However, upon further consideration, it was discovered that he had included the boathouse in the FAR calculation which was not necessary. Consequently, after discounting the boathouse, the FAR was only approximately .46. There would be an attached garage located in the front of the home facing McGregor Avenue. The house would be served by a private well and public sewer. Although Mr. Gimigliano acknowledged that the project did not constitute a major development, the Applicant would incorporate drywells and rain gardens to help control runoff into the Lake.

Mr. Gimigliano stated that the development would involve grading in the protected steep slope areas. He noted that it would be virtually impossible to avoid doing so given the topography of the Property. Mr. Gimigliano did represent that the Applicant would adhere to all applicable soil erosion measures during construction. He also testified that

except for lot frontage and maximum impervious coverage, all of other bulk requirements would be met.

The Applicant also presented Alex Dougherty, P.P., as its professional planner to offer testimony to justify the variances sought. Mr. Dougherty said that he visited the Property and surrounding neighborhood and reviewed the Borough's Master Plan. He also presented Exhibit A-2 which was a series of photographs of the Property and the surrounding area.

He began by first attempting to justify the use variance needed to allow the Property to exceed the required FAR. He explained that a FAR requirement is intended to prevent overdevelopment of a lot. If an owner cannot satisfy the FAR requirement, Mr. Dougherty said that he must address the standards set forth in N.J.S.A. 40:55D-70(d)(4) which means that the Board must evaluate whether the site can still accommodate the structure.

He informed the Board that the zone district imposed an FAR of 28% and the proposed home would have a FAR of .46. Despite this, he opined that the lot was still suitable for the proposed home. Ms. Dougherty stated that the lot was undersized and sloped away from the road towards Lake Hopatcong. In his estimation, the topographical conditions were an important consideration.

Mr. Dougherty said that the proposal satisfied the positive and negative criteria needed to be evaluated when deciding whether to grant a use variance for FAR. Specifically, he testified that the proposal provided ample light, air and open space. He maintained that the home was modest and would not exert an impact on the adjacent homeowners because many of the required yard setback requirements were being satisfied. In his estimation, the proposal provided an appropriate location for a residential use and promoted a desirable visual environment. He did not anticipate any substantial negative impacts because the home was intending to be consistent with the existing dwellings on other side of the Property. Further, Mr. Dougherty stated that he did not believe the proposal would be a substantial detriment to the public good and would not impair the intent or purpose of the Borough's Master Plan.

Mr. Dougherty also offered planning testimony in support of the bulk variances required by Applicant. He indicated that the Applicant needed variance relief from the zone district's bulk requirements set forth in Ordinance Sec. 17-29 including lot area whereas 15,000 square feet are required and 8,322 square feet are proposed; lot width whereas 100 feet is required and 50.1 feet are proposed; lot coverage whereas 35% is allowed and 44.8% is proposed. He also noted that Ordinance 17-47 set a covered dock minimum side yard of 14 feet and only 7 feet was proposed. Further Ordinance Section 17-48 set the maximum water lot area coverage to be 15% and 48.3% is proposed; the boathouse minimum side yard of 14 feet and only 13.7 feet is proposed; and the area of boathouse water lot area of 10% and 27.5% is proposed. Finally he testified that Ordinance 17-30.8.d set various limitations on slope disturbance that the Applicant could not meet.

Mr. Dougherty testified that several of the conditions were pre-existing including lot area and lot width. Others were related to the dock and boat house which have existed on the property for decades. The newly proposed conditions were related to the Property's topography and narrow dimensions. He opined that given the homes on either side of the Property there was no realistic opportunity to acquire more land to address many of the nonconforming condition.

Questions were raised about the Applicant's purchase of the Property. He testified that he bought it for \$550,520. When asked if he tried to acquire property from either neighbor, he admitted that he did not.

However, Lisa Palanchi testified. She resides at 19 McGregor Avenue which is the lot to the west of the Property. She indicated that the Property was for sale for over 5 years and that neither she or the owner on the other side of the Property had any interest in buying it. She also said that she supported the Applicant's proposal.

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 Applicant is seeking to construct a single-family residence located on Lot 61 in Block 10, having an address of 21 McGregor Avenue in the Borough of Mt. Arlington. The property is located in the Borough's RA-15 Zone.
2. The Applicant's proposal exceeds the zone district's FAR requirement of 28%. The Applicant's proposed home shall have a floor area ratio of 46%. 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 Applicant that the larger than permitted floor area of the proposed dwelling can be accommodated on the site and it will be compatible with the homes in the surrounding neighborhood. The Board finds that the design of the home fits well with the topography of the Property which makes the home look less visible from the street and not incompatible with surrounding homes when viewed from Lake Hopatcong. The Board finds that the Applicant's proposal promotes purposes (g) and (i) 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 properties along Lake Hopatcong and also seeks to minimize the environmental degradation of the lake. The proposed home and the proposed drainage system associated with its construction will satisfy both goals.
3. The Applicant is 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-15 zone district. Specifically, the Board finds that the Applicant will require relief from district's bulk requirements set forth in Ordinance Sec. 17-29 including lot area whereas

15,000 square feet are required and 8,322 square feet are proposed; lot width whereas 100 feet is required and 50.1 feet are proposed; lot coverage whereas 35% is allowed and 44.8% is proposed. Further, the Board finds that Ordinance 17-47 set a covered dock minimum side yard of 14 feet and only 7 feet was proposed. The Board also concludes that Ordinance Section 17-48 set the maximum water lot area coverage to be 15% and 48.3% is proposed; the boathouse minimum side yard of 14 feet and only 13.7 feet is proposed; and the area of boathouse water lot area of 10% and 27.5% is proposed. Finally the Board determines that Ordinance 17-30.8.d set various limitations on slope disturbance that the Applicant could not meet.

4. The Board finds that the bulk variance relief is warranted as per N.J.S.A. 40-55D-70(c)(1). The Board has determined that the Property is undersized and extremely narrow with severe slopes extending from the front of the property along the McGregor Avenue to the rear of the lot that abuts Lake Hopatcong. The slope, shape, size and the dimensions of the lot along with Lake Hopatcong located to the rear, impose significant hardships on any development proposed for the property. There is no opportunity to acquire additional land to address these nonconforming conditions. Further, the Board finds that the Applicant's proposal will advance purposes (a) and (i) 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 developed with an attractive residential dwelling that will be in keeping with the neighborhood. The proposal will not negatively impact the Lake or neighboring properties due to excessive stormwater runoff. The proposal is consistent with lakefront development in the Borough. Indeed, the Borough's Master Plan seeks to encourage the redevelopment or rehabilitation of lakefront homes. For these reasons, the Board finds that these Applicant has 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, Michael Assile, more particularly described on the engineering plans entitled "Variance Plan, Assile Residence, Block 10, Lot 61, #21 McGregor Avenue, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, PA signed by Thomas F. Graham, P.E. dated February 7, 2022, last revised April 28, 2022, consisting of four sheets; Plan titled: "Boundary and Topographic Survey Plan, Block 10, Lot 61, #21 McGregor Avenue, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, PA signed by Kenneth D. Dykstra, P.E. dated January 6, 2022, no revisions; and Plan titled: "New Residence for Mike Assile, 21 McGregor, Mount Arlington, New Jersey" prepared by Charles Schaffer Associates LLC signed and sealed by Charles Schaffer dated February 7, 2022, no revisions, consisting of two sheets, subject to the following conditions:

1. The Applicant shall comply with the technical comments set forth in the report

prepared by Board engineer, David A. Clark, P.E., dated April 4, 2022.

2. The Applicant 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.
3. The Applicant shall prepare and record a deed restriction to be recorded against the Property prohibiting the conversion of the existing boathouse into habitable space. The restriction shall be presented to the Board attorney prior to be recording for his approval. The recording of the restriction shall be a condition precedent to the issuance of a certificate of occupancy for the home.
4. The Applicant shall comply with the recommendations of the Lake Hopatcong Commission as set forth in its report dated April 26, 2022.
5. The Applicant 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 Applicant shall further amend its plans as per the representations made at the public hearings and the comments from the Board Planner, Board Secretary, and Board Members.
8. All other State, County, and Municipal regulatory agency reviews that may be necessary must be obtained.
9. No construction permits of any type shall be issued by the Construction Code Official of the Borough of Mt. Arlington until all Board escrow fees have been paid, a Resolution of Approval has been memorialized and appropriately signed by the Board, and the Construction Code Official has received final plans appropriately signed by the Board Chairman, Board Secretary, and Board Engineer.
10. Pursuant to the provisions of N.J.S.A. 40:55D-39 and 55D-65, the Applicant shall provide proof that no taxes or assessments for local improvements are due 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: _____
Rob 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 May 25, 2022.

Kathy Appleby, Board Secretary