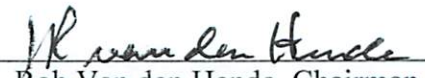


6. The Appliance shall provide proof that fees, escrow amounts, real estate taxes and assessments, if any, have been satisfied prior to the issuance of both the Building Permit and the Certificate of Occupancy.
7. The Applicant shall comply with the rules and regulations and ordinances of the Borough of Mt. Arlington applicable to the proposed project.
8. The approval is conditional upon any approvals, permits, or licenses required from any other outside agency exercising jurisdiction of the Property.
9. The secretary of the Board shall file a copy of this Resolution with all governmental bodies, agencies and commissions as shall be deemed necessary and appropriate.

ATTEST:

BOROUGH OF MOUNT ARLINGTON  
LAND USE BOARD

  
Kathy Appleby, Secretary

By:  04/01/23  
Rob Van den Hende, Chairman

DATED:

THE VOTE:

IN FAVOR: 4  
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 22, 2023.

  
Kathy Appleby, Board Secretary

- b. More than one accessory building is prohibited and two are proposed.
- c. Maximum impervious coverage is 50% and 60.3% is proposed.

Steep slope-vegetative disturbance

- a. Slopes of 10% to 14.99% is limited to no more than 40% vegetative disturbance where 64.8% is proposed.
- b. Slopes of 15% to 24.99% is limited to no more than 30% vegetative disturbance where 81.55% is proposed.

D (4) Variance

- a. Floor area ratio variance where .30 is the maximum permitted and .434 is proposed.

**NOW THEREFORE**, be it resolved that the Land Use Board of the Borough of Mount Arlington, County of Morris, State of New Jersey, does hereby approve the application for the construction of a detached two-story garage and two-story boathouse with attached dock with bulk variances and “d(4)” variance relief, more particularly described on the plan entitled “Lot Development Plans, Whaley Residence Block 1, Lot 1, #28 Cove Road, Borough of Mount Arlington, Morris County-New Jersey” prepared by Dykstra Walker Design Group, P.A., last revised January 18, 2023, as will be amended, subject to the following terms and conditions:

1. Applicant to utilize a permeable driveway paving system for the driveway and walkways on the property, including any parking pads to be utilized by the Applicant.
2. Applicant to deed restrict the property to limit the number of boats moored at the property at any one time to 4 (inclusive of any boats in the boat house).
3. The Applicant to reduce the length of the proposed dock to 21 ft. as measured from the boathouse face or 25 feet as measured from the bulkhead with the Applicant’s engineer to submit amended plans reflecting this modification.
4. The Applicant to deed restrict the boathouse and the garage to prohibit any residential use.
5. The Applicant’s engineer to consult with the Board engineer to divert as much water to a drywell proposed to be installed on the property as possible and the applicant’s engineer will verify that a permit by Rule #17 is applicable and provide proof of same prior to any construction on the boathouse/dock being commenced.

pursuant to N.J.S.A. 40:55D-70d(4) based upon the testimony and proofs introduced at the hearing. The Board finds that all bulk variances sought are warranted in accordance with N.J.S.A. 40:55D-70(c)(1) and (2). The Board finds that the Applicant has satisfied the criteria required under the analysis as well as satisfying the negative criteria as set forth above. None of the variances will be a substantial detriment to the public good nor any substantially impair the intent and purpose of the zoning plan. Indeed, the Board finds that the proposed development of the property and the variance relief being sought will improve the aesthetics of the neighborhood as a whole and will provide benefits to the community as a whole.

3. In granting such relief, the Board specifically finds that the following purpose of the municipal land use law are advanced by granting such relief: N.J.S.A. 40:55D-2(a)(g)(i)(m).
4. The Board finds that with the granting of the bulk variance and (D)(4) Variance along with the conditions to be imposed upon agreement that the Applicant is deserving of approval. The Board believes that the application can be granted in accordance with the Borough's applicable ordinances and that any deviations from those requirements will not pose a substantial detriment to the public good or substantial impairment to the intent or purpose of the borough's zoning plan.
5. The Board finds that the following variance relief is therefore warranted and justified:

#### Garage

- a. Side-yard setback where 10 ft. is required and 5 ft. is proposed.
- b. Rear-yard setback where 15 ft. is required and 4 ft. is proposed.
- c. Maximum height where 12 ft. is the maximum height and 20.6 ft. is proposed.

#### Boathouse

- a. Location of an accessory structure in the front yard where same is prohibited.
- b. Side-yard setback where 14 ft. is required and 3.9 is proposed.
- c. Maximum height where 12 ft. is the maximum height and 18.2 ft. is proposed.
- d. Dock length where 13.6 ft. is permitted and 25 ft. is proposed.
- e. Location of the dock on the side-yard where same is prohibited.
- f. More than one dock on the property is prohibited and two are proposed.

#### General Bulk Variance Relief for Accessory structures

- a. Maximum area of accessory structures where 625 sq. ft. is the maximum and 1095 sq. ft. is proposed.

represented a better zoning alternative to what was permitted by ordinance and provided benefits to the community, not just the Applicant, and that variance relief could be granted without substantial detriment to the public good. Mr. Leoncavallo presented proofs in support of granting (C)(1)(C)(2) Variances.

The Board, its professionals and the Applicant and his professionals engaged in a lengthy colloquy involving the property as a whole and the variance relief being requested. As part of the colloquy, the Applicant agreed to certain conditions being imposed on any approval which may be granted by the Board. Those conditions were as follows:

1. Applicant would agree to utilize a permeable driveway paving system for the driveway and walkways on the property, including any parking pads to be utilized by the Applicant.
2. Applicant will agree to deed restrict the property to limit the number of boats moored at the property at any one time to 4 (inclusive of any boats in the boat house).
3. The Applicant agrees to reduce the length of the proposed dock to 21 ft. as measured from the boathouse face or 25 feet as measured from the bulkhead with the Applicant's engineer to submit amended plans reflecting this modification.
4. The Applicant would deed restrict the boathouse and the garage to prohibit any residential use.
5. The Applicant's engineer will consult with the Board engineer to divert as much water to a drywell proposed to be installed on the property as possible and the applicant's engineer will verify that a permit by Rule #17 is applicable and provide proof of same prior to any construction on the boathouse/dock being commenced.

At the conclusion of the colloquy, the hearing was opened up to the public for comments with one member of the public, Steve Daily, speaking in favor of the project stating he felt it would increase the values of the neighborhood itself.

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

1. The Applicant is seeking Board approval to construct a new boathouse and dock as well as a detached garage on Block 1, Lot 1, which property is located in the RA-7.5 Single Family Zone. The Applicant requires bulk variance relief as per N.J.S.A. 30:55D-70(c) and also variance relief pursuant to N.J.S.A. 40:55D-70d(4) for exceeding the maximum floor area ratio for the zone.
2. The Board finds that the Applicant is entitled to relief from the maximum permitted floor area ratio of .30 where .434 is being proposed and that such relief is warranted

The Board also heard testimony from Michael Fisher, P.E. of Dykstra Walker Design Group, P.A. Mr. Fisher was accepted as an expert in the area of civil engineering by the Board. Mr. Fisher testified that the property contained multiple existing non-conforming bulk uses. Mr. Fisher testified that the proposed garage location would be located where there is now a shed located and which would consist of a two-story, two car detached garage. Mr. Fisher testified that the location of the garage would require certain bulk variance relief. Mr. Fisher also testified regarding the location of the boat house which would consist of non-livable office space on the second floor as well as the construction of a dock extending out into the lake. Mr. Fisher testified that the lake was technically the side yard of the property and as a result, the proposed boat house would be in the front yard of the property. The boat house also would require a variance for the maximum height restriction of 12 ft. as the proposed height of the boat house was more than 18 ft. Finally, and as it relates to the boat house construction and dock, Mr. Fisher testified that the dock length of 35.4 ft. which was proposed, would also require a variance from the town code both for length and for number of docks as there was a current pre-existing dock which the owner continued to utilize. As related to the garage Mr. Fisher testified that both side-yard and rear-yard setback variance relief was required as well as variance relief from the maximum height of 12 ft. where 20.6 ft was being proposed. Mr. Fisher also testified that the need for general bulk variance relief as the project was proposing more than one accessory building, was proposing a maximum area of all accessory buildings in excess of the 625 sq. ft. permitted; was proposing more than one dock; was proposing maximum impervious coverage in excess of 50%; was proposing steep slope and vegetative disturbance in excess of allowable limits; and was requiring a floor area ratio variance in the form of a D (4) Variance where .30 was the permitted ratio and the project was proposing a .434FAR ratio.

Mr. Fisher fielded questions from the Board regarding the various components of the project and the variance relief being requested. An extensive conversation was held regarding storm water runoff and the use of certain materials for the proposed driveway and existing walkway.

Mr. Hefele then presented John Leoncavallo, P.P. to provide expert planning testimony on behalf of the Applicant. Mr. Leoncavallo was accepted as an expert in planning and proceeded to provide testimony. Mr. Leoncavallo testified that the statutory criteria for the granting of the D (4) Variance for FAR was met because the improvements being contemplated and proposed by the homeowner would enhance the value and quality of the site and intern the neighborhood. He further testified that the buildings would provide weather protection and be esthetically pleasing, all which advance the fundamental purposes of zoning. As it relates to the negative criteria, Mr. Leoncavallo testified that that criteria was met because the new buildings will not be obtrusive or imposing in the context of the site or of the neighborhood and that the accessory buildings will clearly appear subsidiary to the main building and not overpower the area based upon the proposed design. In support of the "C" Variance relief that was being requested by the Applicant, Mr. Leoncavallo testified that the proposed improvements will integrate well with the site and the area and will not result in overcrowding or overdevelopment and further, that based upon the unique characteristics of the lot itself, including the slope, constraints and configuration, that exceptional difficulties existed and that an exception from the bulk zoning requirements were warranted based upon the unique characteristics of the specific piece of property. Mr. Leoncavallo also testified that in his opinion, the proposed development

## Exhibits

- A1 - Colored version of submission of the garage
- A2 - Colored version of submission - arial view of garage and boathouse.
- A3 - Colored version of submission - lakeview of property
- A4 - Colored version of Submission Revised 1/18/23 by Mike Fisher.
- A5 - Recent Arial shot of the property (Three (3) pages)
  - Page 1 – Arial of site (source: Maps on X)
  - Page 2 – Drone view of site looking East (by John McDonough 1/24/23)
  - Page 3 – Drone view of site looking south (by John McDonough 1/24/23)

The Applicant was represented by Bernd Hefe, Esq. Mr. Hefe introduced the application and advised the Board that the Applicant had purchased the Property with the intention to occupy same year-round along with his spouse. As part of the year-round occupancy, the Applicant was seeking to make certain improvements to the Property in order to accommodate the full time use of same as both the Applicant and his spouse worked from home. As such, a detached garage with usable office space on the second floor was being proposed in addition to a boat house with usable office space on the second floor. The boat house would have a dock extending out into the lake as well. Mr. Hefe advised that in order to construct the improvements, a “d(4)” variance for Floor Area Ratio exceedances was required as well as approximately fourteen (14) “c” bulk variances.

Following Mr. Hefe’s introduction, he presented the Owner/Applicant, Ronald Whaley. Mr. Whaley testified that he and his Spouse had searched for years for a lake front home throughout the Northeast Region, before ultimately selecting the current Property within the Borough. In purchasing the property, Mr. Whaley testified that it was his and his spouse’s intention to occupy the Property year-round. However, in order to do that, Mr. Whaley needed to create space to work in and to accommodate the use of the Property full time (to wit: a garage and boathouse with attendant dock). Mr. Whaley fielded questions from the Board regarding certain design aspects and also provided additional information as to why certain improvements were being made.

The Board also heard testimony from architect Steven Martilla, who provided testimony regarding plans submitted entitled “Whaley residence 28 Cove Road, Mount Arlington, New Jersey” with a revision date of August 5, 2022. Mr. Martilla testified that the existing property contained a sole single-family structure with a detached shed and that the proposed plans contemplated removing the existing shed and construction a detached garage with office space on the second floor in addition to a boat house and attached dock. Mr. Martilla describes his philosophy in the design of the project and noted that the intent was to obstruct as minimally as possible the view of the shed of the lake of others. Mr. Whaley also testified that as a result of the configuration of the lot, the project required a variety of bulk variance relief for setbacks, building height and accessory structure locations, to name a few. Mr. Martilla fielded the questions from the Board regarding the architectural renderings and design aspects of the project.

23-004

**RESOLUTION OF MEMORIALIZATION GRANTING CERTAIN VARIANCE RELIEF  
IN CONNECTION WITH THE DEVELOPMENT APPLICATION SUBMITTED FOR  
PROPERTY LOCATED ON BLOCK 1, LOT 1**

Approved: February 22, 2023  
Memorialized: March 22, 2023

**WHEREAS**, Lot 1 in Block 1 (“Property”) is owned by Applicant Ronald Whaley and consists of approximately 10,300 square feet of land on which is currently situated a lakefront home with existing dock and a detached shed located in the side yard opposite the lake and is located in the RA-7.5 zone district; and

**WHEREAS**, the Applicant submitted a development application (“Application”) on seeking to construct a detached boathouse with second story floor space and dock, as well as a detached garage with second story floor space; and

**WHEREAS**, as part of the Application, certain variance relief was requested and/or required, including a “d(4)” variance for exceeding the Floor Area Ratio (“FAR”) limits as well as certain bulk variances;

**WHEREAS**, the Applicant included with its Application plans entitled “Lot Development Plans, Whaley Residence Block 1, Lot 1 #28 Cove Road Borough of Mount Arlington Morris County – New Jersey,” prepared by Dykstra Walker Design Group P.A., dated May 26, 2022 and revised January 18, 2023; and, plans entitled “Whaley Residence 28 Cove Road Mount Arlington, NJ” prepared by Nissequogue Rive Designs, Steven Martilla, Architect, dated April 26, 2022 and revised August 5, 2022; and

**WHEREAS**, the application was deemed administratively complete by the Board’s engineer and a public hearing was subsequently conducted on February 22, 2023, notice being required and lawfully provided;

**WHEREAS**, the Board’s engineer, David A. Clark, P.E. and the Board’s planner, Jessica C. Caldwell, P.P. issued technical reports regarding the application dated January 13, 2023 and February 16, 2023 respectively;

**WHEREAS**, at the conclusion of the public hearing on February 22, 2023, 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: