24-005

RESOLUTION OF MEMORIALIZATION GRANTING BULK VARIANCE RELIEF TO RENEE INTELISANO TO PERMIT THE CONSTRUCTION OF A PATIO ADJACENT TO HER SINGLE-FAMILY HOME LOCATED ON LOT 6, BLOCK 30

Approved: April 24, 2024
Memorialized: May 22, 2024

WHEREAS, Renee Intelisano ("Applicant") is the owner of Lot 6 in Block 30 as noted on Tax Map for the Borough of Mount Arlington and having a street address of 37 Mountainview Avenue ("Property"); and

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mount Arlington Land Use Board ("Board"), on or about January 5, 2024, seeking bulk variance relief to construct a patio adjacent to her existing single-family home located on the Property which is in the Single-Family Residence RA-15 Zone; and

WHEREAS, the Applicants sought bulk variance relief to exceed the maximum impervious coverage in the zone where 35% is allowed and 45.8% is proposed; and to construct retaining walls closer to the property line than the height of the wall; and

WHEREAS, the Applicant included with her application engineering plans entitled: "Variance Plan, Intelisano Residence, Block 30, Lot 6, 37 Mountainview Avenue, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, P.A., signed and sealed by Thomas F. Graham, P.E., dated December 21, 2023, no revisions, consisting of one sheet and a Survey entitled "Boundary and Topographic Survey Plan, Block 30, Lot 6, 37 Mountainview Avenue, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, P.A., signed and unsealed; and

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

WHEREAS, the application was deemed administratively complete by the Borough's engineer, David A. Clark, P.E., on January 26, 2024; and

WHEREAS, Mr. Clark also issued a report offering his Technical Review on the same date; and

WHEREAS, the Board conducted a public hearing on April 24, 2024, notice being

required and lawfully provided; and

WHEREAS, the Applicant was represented by Bernard E. Hefele, Esq.

WHEREAS, at the conclusion of the 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:

After Mr. Hefele's introductory remarks, the Applicant herself testified. She explained that she had lived at the Property for 23 years. She said that when she purchased the Property, there was a wooden patio to the easterly side of the dwelling that was deteriorated and unsightly. Ms. Intelisano presented a photograph of the deck and the railing which was marked as Exhibit A-1. She opined that the photograph showed how unsightly the deck and railing were and why it was important for her to replace them. She explained that she wanted a paver patio and walkway rather than maintaining the wooden deck.

The Applicants' civil engineer, Thomas Graham, P.E., testified next as to the engineering plans he prepared and submitted in support of the application. He presented the Variance Plan he prepared to support his testimony. He stated that the Property was known as Lot 6 in Block 30. He explained that the Property was undersized, consisting of only .0898 acres or 3913 square feet when the RA-15 zone required a minimum of 15,000 square feet. Mr. Graham noted that the Property had irregular dimensions with a trapezoid shape. He noted that the Property drew more narrow as it extended to the rear property line. He said that to the rear was a commercial zone where Pat's Bar was located.

Mr. Graham testified that there were a number of other pre-existing nonconforming conditions, including principal building minimum front and side yard setbacks and the floor area ratio of .49 when only .28 was allowed. He testified that none of these conditions would be exacerbated by virtue of the Applicant's proposed patio. Mr. Graham also noted that there was an accessory shed in the rear of the Property that was within the side yard setback. After some discussion, the Board recommended and the Applicant agreed that a bulk variance should be granted in order for the shed to remain in its current location.

Mr. Graham said that the Applicant had begun the work by removing the deck and constructing the proposed retaining wall. He explained that a stop work order was issued when it

was discovered that the retaining wall was being built on the neighbor's property. The stop work order eventually led to the submission of the application.

Mr. Graham then presented Exhibit A-2 which was a colored plan that illustrated the coverage and variance conditions. He noted that the Applicant needed bulk variance relief to exceed the maximum impervious coverage in the zone where 35% is allowed and 45.8% is proposed; to allow a retaining wall greater than two feet in height to be built within two feet of the property line as per §17-32.4.d; and to allow a retaining walls closer to the property line than the height of the wall as per §17-22.6.f. He stated that the proposed modular block retaining wall has a height of 3.5 feet and is within 3.5 feet of the property line. Mr. Graham also agreed with the Board engineer that a variance was needed to allow the patio to be constructed within an applicable setback, since it exceeds 20% of the first floor of the building or structure and is to be constructed within 50% of the applicable setback as prohibited by Ordinance 17-30.7.b. Mr. Graham explained that the ordinance would only allow a deck consisting of 183 square feet and 249 square feet was proposed. Further, he said that the patio was to be within 27.2% of the front yard setback.

Despite these nonconforming conditions, Mr. Graham opined that the proposed patio was an aesthetic improvement over the prior wooden patio. He noted that the patio would include clean edges and would be visually more pleasing. He also stated that the Applicant would include a wheel stop in her driveway which would prevent automobiles parking in her driveway from inadvertently travelling into the patio area.

The matter was open to the public. Michael Lavy, a tenant leasing the adjacent home at Lot 8 appeared and complained that the patio would intrude on his privacy. He said that the proposed patio would be at a higher elevation than the home and would allow people on the patio to peer directly into the windows on the side of the home. He claimed that this has happened in the past.

The owner of Lot 8, Carol Post, also spoke. She stated that she and her husband had previously lived in the home on Lot 8. She explained that during that time, they had intended to install a wooden patio on their property but it was too large for the area. She told the Board that they instead offered it to the former owners of the Applicant's Property who gladly accepted it.

Mrs. Post said that after the patio was placed on her neighbors' property, Mrs. Post's

family would stack rocks along the shared property line. She stated that she eventually vegetated the area and was particularly fond of it. Unfortunately, in the Fall of 2023, the Applicant's contractor mistakenly removed the rock wall while building the retaining wall of the Applicant's property. Mrs. Post presented photographs of the work improperly done on her lot that were marked as Exhibits O-1 and O-2. She advised the Board that this work is what lead to her contacting municipal officials and the issuance of the stop work order.

Mrs. Post also argued that the proposed patio would lead to an invasion of privacy for those residing in her home. She charged that there have already been examples of the Applicant or her invitees looking into the windows of her home.

A discussion followed Mrs. Post's testimony about the alleged trespass on her property by the Applicant or the Applicant's contractors. The Board was advised that it was a private matter and that it could not really take a position or render any judgment on the issue. However, the Board did advise the Applicant that until the issue was resolved, it was unlikely that the Applicant could proceed even if she received an approval.

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 bulk variance relief to construct a patio adjacent to her existing single-family home located on the Property which is in the Single-Family Residence RA-15 Zone. The Board determines that Applicant requires bulk variance relief to exceed the maximum impervious coverage in the zone where 35% is allowed and 45.8% is proposed; to allow a retaining wall greater than two feet in height to be built within two feet of the property line as per §17-32.4.d; to allow a retaining walls closer to the property line than the height of the wall as per §17-22.6.f.; and to allow the patio to be constructed within an applicable setback even though it exceeds 20% of the first floor of the building or structure and is to be constructed within 50% of the applicable setback as prohibited by Ordinance 17-30.7.b. The Board also finds that the Applicant needs a variance to allow the shed to remain in its current nonconforming location.
2. The Board finds that the Property has other pre-existing, non-conforming conditions related to minimum lot area, whereas 15,000 sq. feet is required and only 3913 sq.

feet exists; minimum lot width, whereas 100 feet is required and only 44.1 feet exists; minimum front yard setback, whereas 35 feet is required and only 17.6 feet exists; minimum side yard setback whereas 12 feet is required and 2.6 feet is provided; minimum combined side yard setbacks whereas 25 feet is required and 13.5 feet is provided; and maximum floor area ratio whereas 28% is allowed and 49% exists.

3. The Board finds that the proposed patio and shed are entitled to bulk variance relief under the standards set forth in N.J.S.A. 40:55D-70(c)(1) or (2). The Board concludes that the Applicant has satisfied the positive criteria under either statutory provision. Under the C(1) analysis, the Board finds that the Property is irregularly shaped and the location of the existing dwelling presents a peculiar and exceptional hardship for the Applicant to build a patio in a conforming location and to relocate the shed. The rear yard has significant slopes and is narrower than the front yard which makes it even more difficult to build the patio or relocate the shed.
4. The Board further finds that under the C(2) standard, the replacement of a deteriorating wooden deck with a paver patio will be an aesthetic improvement to the Property and the surrounding lots. The Board believes that the Applicant's proposal is a vast improvement over the wooden deck that had existed in the same location for decades. For these reasons, the Board believes the proposal promotes the purposes of zoning, specifically purpose "a" by providing an appropriate development of the Property that promotes the general welfare and purpose "i" which seeks to create a desirable visual environment.
5. The Board further believes that the Applicant has satisfied the negative criteria associated with the bulk variance relief. The variance will not be a substantial detriment to the public good because it will represent an aesthetic improvement to the Property. While the Board notes the adjacent owner's concerns about privacy, the Board finds that these privacy concerns have existed for years even with the wooden deck. It is not the proposed patio that is creating these concerns. The Board also finds that the proposal will not substantially impair the intent of the Borough's zoning ordinance or Master Plan. The proposed patio enhances and preserves the residential character of the Property, which is a permitted use. It is also consistent with the

Borough's master plan objective to maintain and preserve the residential character of the Borough.

6. For these reasons, the Board finds that the Applicant has satisfied the positive and negative criteria and is entitled to the variances and bulk relief requested.

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 grant of the bulk variance relief to the Applicant Renee Intelisano, as more particularly described on the engineering plans entitled: "Variance Plan, Intelisano Residence, Block 30, Lot 6, 37 Mountainview Avenue, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, P.A., signed and unsealed by Thomas F. Graham, P.E., dated December 21, 2023, no revisions, consisting of one sheet and a Survey entitled "Boundary and Topographic Survey Plan, Block 30, Lot 6, 37 Mountainview Avenue, Borough of Mount Arlington, Morris County, New Jersey" prepared by Dykstra Walker Design Group, P.A., signed and unsealed subject to the following condition:

1. Prior to the issuance of a Certificate of Approval, the Applicant will provide the Borough's Construction Department with an As-Built Survey of the Property to confirm that all improvements are located on the Applicant's Property.
2. The Applicant shall comply with the conditions set forth in the reports prepared by the Borough engineer, David A. Clark, P.E., dated January 26, 2024.
3. The Applicant will provide engineering plans for the proposed retaining walls that shall be reviewed and approved by the Board engineer prior to construction.
4. 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.
5. The Applicant shall comply with and abide to the rules, regulations, and ordinances of the Borough of Mt. Arlington applicable to the proposed development.
6. The Board's approval is conditioned upon the issuance of any other approvals required by other outside agencies exercising jurisdictional development of the Property.

7. 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:

Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By: J R vanden Heuvel 06/21/24
, Chairman

DATED:

THE VOTE:

IN FAVOR: 7
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 22, 2024.

Kathy Appleby, Board Secretary