

24-006

RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO JOHN AND AMY HOLVECK TO PERMIT THE CONSTRUCTION OF SECOND STORY ADDITION TO THEIR SINGLE-FAMILY HOME LOCATED ON LOT 23, BLOCK 10

Approved: May 22, 2024
Memorialized: June 26, 2024

WHEREAS, John and Amy Holveck (“Applicants”) are the owners of Lot 23 in Block 10 as noted on Tax Map for the Borough of Mount Arlington and having a street address of 43 McGregor Avenue (“Property”); and

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about March 4, 2024, seeking use and bulk variance relief to construct second story addition to their existing single-family home located on the Property; and

WHEREAS, the Applicants sought use variance relief to exceed the Floor Area Ratio (“FAR”) established in the RA-30 Zone whereas 18% is allowed, 29.96% is existing and 34.49% was proposed; and

WHEREAS, the Applicants also sought bulk variance relief from the bulk standards in the RA-30 Zone relating to an accessory building in the front yard where none are permitted, one exists, and one is proposed; front yard setback for accessory buildings, whereas 40 feet is required, 8.6 feet exists, and 8.6 feet was proposed; and side yard setback for accessory buildings, whereas 12 feet is required, 0 feet exists, and 0 feet was proposed.

WHEREAS, the Applicants included with their application a Variance Plan entitled “43 McGregor Ave., Applicant - Mr. & Mrs. Holveck, Block 10, Lot 23, Borough of Mount Arlington, Morris County, New Jersey” prepared by Mendham Design Architects, dated February 19, 2024, consisting of 3 sheets; and

WHEREAS, the Applicant submitted with their 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 April 9, 2024; and

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

date; and

WHEREAS, the Board's planner, Jessica P. Caldwell, P.P., also issued a report dated April 12, 2024; and

WHEREAS, the Board conducted a public hearing on May 22, 2024, notice being required and lawfully provided; and

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:

Am Holveck testified that she and her family had been living in the home for three (3) years. She stated the home was passed down from grandparents who owned the home since 1954. Ms. Holveck testified that she and her husband wanted to make the home their own and grow into the home and keep in it the family. Ms. Holveck stated she and her husband have three children and need more bedroom space.

The Applicants' architect, Mr. Daniel Encin, testified that the Property was located at 43 McGregor Avenue, in the RA-30 Zone. Mr. Encin advised the Board that the lot was currently 7,401 square feet where 30,000 square feet is required – less than one third ($\frac{1}{3}$) of the required size. He indicated that the percentage rate requirement for this zone creates a much steeper impact in terms of what is allowable. Mr. Encin also indicated that the existing house has a shared two car garage that straddles the property line. The existing garage is 7.3 ft off the front property line and there are no proposed changes to the garage.

The Chairman asked whether the garage is included in their calculations for FAR and Impervious coverage. In response, Mr. Encin stated that only the percentage of the garage that is on the Holveck's property is included in the calculations. Mr. Encin proceeded to review Mr. Clark's technical review. A revised Variance Plan, dated May 21, 2024, was admitted as Exhibit A2.

The Applicants' Planner, Mr. Michael Roth, of Roth Engineering, testified that the lot is undersized, with a pre-existing bulk area of 7,401 square feet and a lot width of 43.6 feet. Mr. Roth advised the Board that the FAR is a pre-existing non-conforming condition at 29.96% where 18% is required. He further advised that the impervious coverage is a pre-existing non-conforming

condition at 62.18% where 25% is required. Mr. Roth stated that the proposed height is 29.1 feet and there are no changes to the lot coverage or impervious coverage. He advised that the 335 square foot addition increases the Floor Area Ratio to 34.49% where 18% is required.

With respect to the bulk variances, Mr. Roth opined that both the C-1 and C-2 criteria could be applied to the Applicants' request for relief. Under the C-1 analysis, Mr. Roth stated that the hardship was due to the Applicants' undersized lot in the RA-30 zone which led to the pre-existing non-conforming for setbacks and impervious coverage. Under the C-2 analysis, he believed that the addition would promote a desirable visual environment which would benefit the neighborhood. These factors led Mr. Roth to conclude that the Applicants' proposal would advance purposes (a) and (i).

Mr. Roth felt that the use variance for the FAR exception would satisfy the relevant legal standard. For the positive criteria, Mr. Roth opined that while the FAR is higher than the maximum permitted, he believes that the site can accommodate the higher FAR because the proposed addition is within the existing footprint, the height of the dwelling complies with the Ordinance, and the parking is within the residential site improvement standards that require 2.5 parking spaces for a four (4) bedroom. Mr. Roth stated that as of today, the site has 4 parking spaces.

With respect to the negative criteria associated with both the FAR and bulk variance relief, Mr. Roth stated that the requested variances have no detriment to the public good and no impact to the adjacent properties. He explained that there is a landscape buffer to the north and that the properties to the east, on the opposite side of the road, sit much higher so there will be no change to the view for those properties. Mr. Roth further stated that the proposal promotes many goals of the Borough's Master Plan by improving the property and protecting the ground water, while the impervious coverage is staying the same.

Board Member Eric Green asked if the proposed portico added to the impervious coverage. Mr. Encin stated that the portico is over existing hardscape.

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

1. The Applicants are seeking to construct an addition to the second floor to their existing single-family home, and to expand the existing second floor deck, located on Lot 23 in Block 10 and having a street address of 43 McGregor Avenue.

2. The Property is in the Borough's RA-30 Zone District. The Applicants' proposal is contrary to the ordinance standards for the RA-30 Zone with respect to the maximum floor area ratio permitted of 18%, whereas 29.96% is existing and 34.49% is proposed. Further, the Applicants will require bulk variance relief from the bulk standards in the RA-30 Zone relating to an accessory building in the front yard where none are permitted, one exists, and one is proposed; front yard setback for accessory buildings, whereas 40 feet is required, 8.6 feet exists, and 8.6 feet was proposed; and side yard setback for accessory buildings, whereas 12 feet is required, 0 feet exists, and 0 feet was proposed.
3. The Board finds that the Property has other pre-existing, non-conforming conditions related to minimum lot area, whereas 30,000 square feet is required and only 7,401 square feet exists; minimum lot width, whereas 125 feet is required and only 43.6 feet exists; minimum side yard setback, whereas 12 feet is required and only 4.1 feet exists; minimum combined side yard setback, whereas 25 feet is required and only 10.7 feet exists; and maximum impervious coverage, whereas 25% is required and 62.18% exists. The Board concludes that these conditions are lawful preexisting conditions which do not require variance relief.
4. The Board finds that the Applicants' proposed second floor addition will increase the FAR from 29.96% to 35.44% which requires a use variance pursuant to N.J.S.A. 40:55D-71(d)(4). The Board finds that the relief is justified because the Property is particularly suited for the more intense development. The Board agrees with the Applicants' planner that the larger than permitted floor area can be accommodated and will be compatible with the surrounding neighborhood. The Board finds that the proposal will promote 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 Applicants are also seeking variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) from several of the bulk requirements in the Borough's RA-30 Zone District. Specifically, the Board finds that the Applicants will require relief for an accessory building in the front yard where none are permitted, one exists, and one is proposed;

and relief from the front yard setback for accessory buildings, whereas 40 feet is required, 8.6 feet exists, and 8.6 feet was proposed; and side yard setback for accessory buildings, whereas 12 feet is required, 0 feet exists, and 0 feet was proposed.

6. The Board finds that bulk variance relief is warranted under the standards set forth in N.J.S.A. 40:55D-70(c)(1) or (c)(2). Under the (c)(1) analysis, the Board agrees with the Applicants' planner who concluded that the undersized lot presents an exceptional hardship for the Applicants to construct a conforming addition and that relief from the zoning ordinance will not be substantially detrimental to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
7. Under the (c)(2) analysis, the Board further finds that the second floor addition will be an aesthetic improvement to the Property and surrounding lots. 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.
8. The Board further believes that the Applicants have satisfied the negative criteria associated with both the use and bulk variance relief. The variance will enable the Property to be maintained as an attractive residential dwelling that is in keeping with the neighborhood. The Board finds that the requested variances will have no detriment to the public good and no impact on the adjacent properties. The Board finds there is a landscape buffer to the north and that the properties to the east, on the opposite side of the road, sit much higher so there will be no change to the view for those properties. The Board finds that the Applicants' proposal promotes many goals of the Borough's Master Plan by improving the property and protecting the ground water, while the impervious coverage is staying the same. For these reasons, the Board finds that the Applicants have satisfied the negative criteria and are entitled to the variance sue and bulk relief requested.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mount Arlington, County of Morris, State of New Jersey, does hereby approved the grant of the use and bulk variance relief to the Applicants, John and Amy Holveck, more particularly described on the Variance Plan entitled "43 McGregor Ave., Applicant - Mr. & Mrs. Holveck, Block 10, Lot

23, Borough of Mount Arlington, Morris County, New Jersey” prepared by Mendham Design Architects, dated February 19, 2024, last revised May 21, 2024, consisting of 3 sheets. Subject to the following conditions:

1. The Applicants will provide a revised Variance Plan which includes a fully drawn side elevation.
2. 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 Occupancy.
3. The Applicants shall comply with and abide to the rules, regulations, and ordinances of the Borough of Mt. Arlington applicable to the proposed development.
4. The Board’s approval is conditioned upon the issuance of any other approvals required by other outside agencies exercising jurisdictional development of the Property.
5. 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:  06/26/24
JK Randolph Hinde, 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 June 26, 2024.


Kathy Appleby, Board Secretary