24-007

RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO PETER AND LINDA WELLS TO PERMIT THE CONSTRUCTION OF A TWO-STORY SINGLE-FAMILY RESIDENCE WITH AN ACCESSORY GARAGE AND BOAT HOUSE ON LOT 10 IN BLOCK 10

Approved: June 26, 2024
Memorialized: July 24, 2024

WHEREAS, Peter and Linda Wells ("Applicants") are the owners of Lot 10 in Block 10 ("Property") as noted on the Tax Map for the Borough of Mount Arlington with a street address of 83 McGregor Avenue; and

WHEREAS, the Applicants submitted an Application for Development with the Borough of Mount Arlington Land Use Board ("Board"), on or about March 1, 2024, seeking use and bulk variance relief to raze a dilapidated home on the Property and construct a two-story single-family dwelling with an attached two-story accessory garage, a boat house and associated improvements on the Property; and

WHEREAS, the Applicants required bulk variance relief from the zoning limitations set forth in the RA-30 zone district relating to minimum lot area whereas 15,000 square feet is required and 13,600 square feet is available; minimum lot width whereas 100 feet is required and only 62.4 feet is available; maximum impervious coverage whereas 35% is permitted and 55% is proposed; minimum side yard (one) whereas 12 feet is required and 10.2 feet is proposed on the easterly side and 10 feet is proposed on the westerly side; minimum side yard (both) whereas 25 feet is required and 20,2 feet is proposed; maximum water lot coverage whereas 15% is allowed and 26.8% is proposed; maximum accessory building height whereas 12 feet is permitted and 16 feet is proposed; and maximum dock width, whereas 10 feet is permitted and 20 feet is proposed In addition, the Applicants required a use variance since the proposed development will have a Floor Area Ratio of 36% which will exceed the permitted Floor Area Ratio of 28%. Subsequent to the filing of their application, the Applicants revised their plans to eliminate the side yard variances, reduce the amount of impervious coverage from 55% to 41.6%; reduce the FAR to 35.8%, while the maximum water lot coverage increased to 28.9% where 15% is permitted; and

WHEREAS, the Applicant included with their one (1) sheet of a Variance Plan entitled, "Wells Residence, 83 McGregor Avenue, Block 10, Lot 10, Mt. Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, dated December 20, 2023 and last revised on June 10, 2024; one (1) sheet of a Grading/Drainage/Utilities Plan Soil Erosion and Sediment Control entitled, "Wells Residence, 83 McGregor Avenue, Block 10, Lot 10, Mt. Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, dated December 20, 2023 and last revised on June 10, 2024; one (1) sheet of a Landscape

Plan entitled, "Wells Residence, 83 McGregor Avenue, Block 10, Lot 10, Mt. Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, dated February 23, 2024 and last revised on June 10, 2024; seven (7) sheets of Architectural Building Elevations and Floorplans entitled, "Proposed New Construction for: Peter & Linda Wells, 83 McGregor Avenue, Mount Arlington, New Jersey 07856," and prepared by Wells Architecture. Revisions to Sheets A-201, A-202, A-203 and A-104 were provided revised through June 6, 2024; one (1) sheet of a Riparian Zone and Wetland Determination Survey entitled, "Location Survey for 83 McGregor Avenue, Block 10 Lot 10, Boro of Mount Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, and dated August 8, 2022; and Environmental Impact Statement prepared by Allison Engineering and Land Surveying, LLC, and dated February 29, 2024; a Planner's Report prepared by Wells Architecture dated June 6, 2024; and

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 May 2, 2024, and public hearings were subsequently scheduled and held on May 22, 2024 and June 26, 2024, notice being required; and

WHEREAS, the Board Engineer, David A. Clark, P.E., issued reports regarding the Application dated May 21 and June 20, 2024;

WHEREAS, the Board's Planner, Jessica P. Caldwell, P.P., also issued reports, dated May 7 and June 20, 2024; and

WHEREAS, at the conclusion of the public hearing on June 26, 2024, 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:

Peter Wells testified in support of the application. Not only is he the owner of the Property, but he is also a licensed Planner and Architect. In fact, he prepared a Planner's Report that was included with the initial submission. He stated that he and his wife recently purchased the Property to develop it for their retirement home and to bequeath it to their family.

Mr. Wells stated that the Property was undersized with a dilapidated bungalow on it. He noted that the lot had a depth of over 200 feet with a gentle slope towards the rear of the Property that abutted Lake Hopatcong. He relied on the architectural plans he submitted to describe the proposed dwelling. He explained that he and his wife wanted to build a 2-story dwelling with a walkout basement along the lakeside. The home would be 30 feet in height. Mr. Wells described Sheet A-101which showed the floor plan for the walk out basement area which would include a workshop, office, theater room,

bathroom. He presented Sheet A-102 which illustrated the main living area and master bedroom. He testified that there would be a door from the living room to deck and pool that would be built on a pedestal and not in the ground. He stated that the pool would satisfy all code requirements. He explained that the pool would be built so that it is level with the first floor deck and it would rest upon a concrete structure that would support the pool. Mr. Wells also noted that an area on the plan for an elevator to be installed if needed in future. He concluded by referencing Sheet A-103 which showed that the second floor, that included 2 bedrooms over the main house and a bedroom over the garage that was connected by a breezeway on the first floor and a hallway on the 2nd floor. He indicated that the garage and driveway could accommodate six (6) vehicles.

Board members did express reservations about the proposed development. Mr. Wells was asked if the plans could be changed to reduce the number of variances. He explained that that the irregular shape and size of the Property forced him to try to center the proposed home to provide parking in the front while not encroaching in the rear yard setback. He noted that the narrow width of the Property made it exceedingly difficult to maintain the required 12 foot side yard setbacks.

Mr. Wells then described their proposal to renovate and improve the existing concrete bulkhead and dock that currently extend beyond the pier line. He stated that he will apply for state approvals needed for this work and would agree that same could be a condition of approval by the Board. He produced Sheet A-105 which showed that the boathouse could store one boat inside with an upstairs outdoor deck and 16 foot by 18 foot interior storage area. He agreed that the interior space would not be used for a residence. A board member asked about a proposed lift between the bulkhead and the boathouse which was contrary to the Borough's ordinance that required a boathouse is to abut the shoreline. Mr. Wells explained that he wanted to take advantage of the existing bulkhead and dock. He also introduced Sheet A-204 which showed the elevation of the boathouse. He further agreed to record a deed restriction to prohibit more than two (2) boat spaces plus 2 guest spaces.

Mr. Wells testified about the retaining wall in the side yard and the proposed fence. Although he initially proposed a retaining wall over 8 feet in height, he decided to reduce the height to 2 feet with a 4-foot-high fence. The retaining wall and fence would be approximately 12 inches from the property line.

Despite Mr. Wells' arguments in support of his application, Board members were concerned about the number and the nature of the variances being requested. Questions were posed about changing the layout or reducing the scope of the project. Ultimately, Mr. Wells agreed to adjourn the matter to afford him additional time to consider possible plan revisions.

Prior to the Board's meeting on June 26, the Applicants did submit revised plans and a revised planner's report. At the meeting, Mr. Wells summarized the changes made. He presented Exhibit A-2 which was a rendering of the home as seen from the street and Exhibit A-3 which was a rendering of the home from Lake Hopatcong. He explained

that the proposed footprint of the proposed home was made smaller by reducing the width of the carport, relocating the home closer to the road, minimizing the parking area and eliminating the storage surface on the side of the dwelling. He stated that these changes reduced impervious coverage from 55% to 41.6%. He also said that these modifications eliminated the need for retaining walls and fences which in turn eliminated the need for side yard variances. Instead, he maintained that he would include additional landscaping to screen any side yard views.

Mr. Wells also testified that he had a test pit dug to verify that the subsurface conditions would support the proposed storm drainage system. He indicated that the test results were sufficient. He explained that the grading plan was also revised to move the front yard seepage pit and swales were added. He also agreed that all new grass would be sod pursuant to the recommendations from the Lake Hopatcong Commission.

Mr Wells also stated that the boathouse would rest on the existing bulkhead. He also reduced that usable second floor in the boathouse to 128 square feet. By reducing this space, he argued that the FAR for the property went from 36% to 35.8%. He further agreed that the boathouse could never be inhabited and that no more than 4 boats could use the dock and boathouse at any one time.

The pool fencing would be installed in accordance with the building code according to Mr. Wells and all exterior lighting would be directed in a downward manner. Finally, he said that the fan in the basement would be eliminated.

Allison Laptka, P.E. was next called to testify. She introduced Exhibit A-4 which was a colored rendering of the site plan dated 6/10/24. She described the various changes Mr. Wells proposed and the impacts those changes had of the development. She discussed the redesigned stormwater grading system and the proposed seepage pits. She also advised the Board that the Applicants would apply for any necessary DEP Permit-By Rules for the dock and boat house. However, she did state that the Applicants would no longer need the variance for the boathouse not being adjacent to the shoreline.

Mr. Wells next testified in his capacity as a professional planner. He opined that the proposed home now met all the bulk setback requirements. He stated that several of the nonconforming bulk requirements were pre-existing nonconforming conditions such as lot area and lot width. The others were the result of the undersized and irregularly shaped lot. He stated that the smaller lot generated the need for a variance for impervious lot coverage and also was a contributing factor for the use variance needed for the noncompliant FAR.

Mr. Wells contended that the proposed location of the home helped preserve open space along the Lake while still supporting a modest home. He felt this advanced purpose g of the Municipal Land Use Law. He also felt the size and scale of the home promoted a desirable visual impact which is purpose I of the MLUL while conserving open space, purpose j. He said that he also felt that the proposed home would be a more efficient use of the Property which is purpose m. In his opinion, the location also

demonstrated that the more intense development could be accommodated on the Property by satisfying all of the setback requirements.

With respect to the bulk variances needed for water lot coverage, dock width and the height of boathouse, Mr. Wells testified that the proposal would renovate an existing and dilapidated concrete dock and help create a more desirable visual impact as per purpose I of the MLUL.

Mr. Wells said that the proposed home and boathouse would not be a substantial detriment to the public good. The home was to be similar in scale in size to others in the neighborhood. He contended the home was consistent with the applicable bulk requirements and that helped avoid any detriment to surrounding properties. He also argued that the proposal did not represent a substantial detriment to the zoning ordinances or Master Plan. He noted that the Master Plan sought to promote the rehabilitation and improvement of residential properties along Lake Hopatcong. He believed razing the old dwelling and replacing it with a new home as well as rehabilitating the existing concrete dock was consistent with the Master Plan.

Mr. Wells was asked if it would be more appropriate to replace the proposed boathouse with an open dock. Mr. Wells argued that the proposed boathouse was consistent with the aesthetics of the proposed home and would better protect the boats being stored on the property while also providing storage of boating related accessories, thereby keeping the property tidy. Questions were also raised about whether the boathouse should be factored into the FAR calculation. The Board planner explained that the FAR should consider the boathouse. It is a permitted use although only the space above is to be considered when calculating the FAR.

Mr. Wells was also asked about the width of the dock. He explained that the shape of the current concrete bulkhead will not allow you to pull a boat in, so adding the 2 feet of dock gives it a bumper. He also questioned about the width of breezeway parking. Mr. Wells confirmed that it was reduced to one car width for their personal use. There will be a steel post with railings (bollards) for safety reasons.

The matter was opened to the public. An attorney Bernd Hefele representing a neighbor living at 85 McGregor addressed the Board and advised that his client was satisfied with the proposal. He stated that it was well designed and saw no detriment to the public good.

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 use and bulk variance relief to raze a dilapidated home on the Property and construct a two-story single-family dwelling with an attached two-story accessory garage, a boat house and associated improvements. The Applicants required bulk variance relief from the zoning limitations set forth in the RA-30 zone district relating to minimum lot area whereas 15,000 square feet is required and 13,600 square feet is available; minimum lot width whereas

100 feet is required and only 62.4 feet is available; maximum impervious coverage whereas 35% is permitted and 41.6% is proposed; maximum water lot coverage whereas 15% is allowed and 26.8% is proposed; maximum accessory building height whereas 12 feet is permitted and 16 feet is proposed; and maximum dock width, whereas 10 feet is permitted and 20 feet is proposed In addition, the Applicants required a use variance since the proposed development will have a Floor Area Ratio of 35.8% which will exceed the permitted Floor Area Ratio of 28%.

2. The Board finds that the bulk variance relief for minimum lot area, minimum lot width and maximum impervious coverage is warranted under either the standard in N.J.S.A. 40:55D-70(C)(1) or (2). With respect to the C(1) standard, the Board finds that the Property is irregularly shaped and undersized. The lots on either side of the Property are fully developed making it virtually impossible to acquire additional land to cure these deficiencies. Thus, the Applicants are faced with exceptional and practical difficulties trying to develop the Property in a conforming manner. With respect to the C(2) standard, the Boards that the Applicants' proposal promotes a desirable visual impact which advances purpose i of the MLUL.

3. The Board finds that the bulk variance relief for the variances needed for maximum water lot coverage, maximum accessory building height, and maximum dock width is warranted under the C(2) standard. The improvements to the boathouse will create a more desirable visual impact for the Property particularly along the shoreline of Lake Hopatcong.

4. The Board finds that the use variance required for the nonconforming FAR is warranted under N.J.S.A. 40:55D-70(4). The Board believes that the relief is appropriate because the Property is particularly suited for the more intense development. The Board agrees with the Applicants that the larger dwelling can be accommodated on the Property, 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. The size and scope of the proposed dwelling is consistent with surrounding homes when viewed from Lake Hopatcong. The Board finds that the Applicants' proposed home does satisfy the critical bulk standards which minimizes the slightly larger structure. The Board finds that the Applicants' proposal promotes purposes (g) and (i) of the Municipal Land Use Law.

5. In addition, the Board believes that the Applicants have satisfied the negative criteria for both the use and bulk variances requested. The design of the home is consistent with the neighborhood scheme and does not present a substantial detriment to the public good. 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. The

demolition of the existing home and the rehabilitation of the existing concrete dock certainly advance this goal of the Master Plan. For these reasons, the Board finds that the Applicant has satisfied the negative criteria and is entitled to the use and 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 Applicants, Peter and Linda Wells, more particularly described on the Variance Plan entitled, "Wells Residence, 83 McGregor Avenue, Block 10, Lot 10, Mt. Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, dated December 20, 2023 and last revised on June 10, 2024; one (1) sheet of a Grading/Drainage/Utilities Plan Soil Erosion and Sediment Control entitled, "Wells Residence, 83 McGregor Avenue, Block 10, Lot 10, Mt. Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, dated December 20, 2023 and last revised on June 10, 2024; one (1) sheet of a Landscape Plan entitled, "Wells Residence, 83 McGregor Avenue, Block 10, Lot 10, Mt. Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, dated February 23, 2024 and last revised on June 10, 2024; seven (7) sheets of Architectural Building Elevations and Floorplans entitled, "Proposed New Construction for: Peter & Linda Wells, 83 McGregor Avenue, Mount Arlington, New Jersey 07856," and prepared by Wells Architecture. Revisions to Sheets A-201, A-202, A-203 and A-104 were provided revised through June 6, 2024; one (1) sheet of a Riparian Zone and Wetland Determination Survey entitled, "Location Survey for 83 McGregor Avenue, Block 10 Lot 10, Boro of Mount Arlington, Morris County, New Jersey," prepared by Allison Engineering and Land Surveying, LLC, and dated August 8, 2022; and Environmental Impact Statement prepared by Allison Engineering and Land Surveying, LLC, and dated February 29, 2024, subject to the following conditions:

1. The Applicants shall comply with the technical comments set forth in the reports prepared by Board engineer, David A. Clark, P.E., dated May 21 and June 20, 2024.

2. The Applicants shall install sod to establish new lawn areas pursuant to the report from the Lake Hopatcong Commission dated April 23, 2024, revised June 21,2024.

3. As a condition of the issuance of the certificate of occupancy for the proposed home, the Applicants will record a deed restriction against the Property prohibiting the use of any portion of the proposed boathouse for living quarters and limiting the use of the dock and boathouse to no more than 4 boats. The proposed deed shall be reviewed and approved by the Board attorney prior to recording.

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 adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development, including but not limited to Section 17-94 of the Borough's Land Development Ordinances that governs the payment of residential development fees.

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, including the NJ Department of Environmental Protection for the permits needed for the dock and boathouse and to abandon the private well on 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:

Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

By: J R vern den Hende 07/24/24
, Chairman

DATED:

THE VOTE:

IN FAVOR: 5
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 July 24, 2024.

Kathy Appleby, Board Secretary