

24-008

**RESOLUTION OF MEMORIALIZATION GRANTING MINOR SUBDIVISION TO
ADJUST THE LOT LINE BETWEEN THE PROPERTIES KNOWN AS BLOCK 1, LOT
1 AND LOT 4**

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

WHEREAS, Lots 1 and 4 in Block 1 (“Properties”) are owned by Applicant Ronald Whaley and are adjacent to one another. Lot 1 consists of approximately 8,865 square feet and Lot 4 consists of 11,023 square feet. Both are located in the RA-7.5 zone district; and

WHEREAS, the Applicant submitted a development application (“Application”) to the Borough of Mount Arlington Land Use Board (“Board”) on or about March 21, 2024, seeking a minor subdivision to adjust the lot line between the two lots. No new development was proposed; and

WHEREAS, the Applicant previously applied for and received variance land use approvals to allow the conversion of the dwelling on Lot 1 into a full time residence, which said approvals were memorialized in a Resolution adopted on March 22, 2023; 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”) on both lots, whereas .30 in the maximum permitted and Lot 1 currently has a nonconforming FAR of .363 and .406 is proposed and Lot 4 has a nonconforming FAR of .356 and .387 is proposed. In addition, Lot 1 was approved for a nonconforming rear yard setback of 4 feet whereas 15 feet is required and only 3.7 feet is proposed. Finally, the proposal would exacerbate the nonconforming impervious coverage on Lot 1, whereas 50% is allowed 61.7% exists and 64.0% is proposed; and

WHEREAS, the Applicant included with its Application plans entitled “Lot Line Adjustment Subdivision, Whaley Residence, Block 1, Lots 1 & 4, Cove Road, Borough of Mount Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group, signed and unsealed by Kenneth D. Dykstra, P.E., L.S., dated November 28, 2023, no revisions, consisting of three sheets; and

WHEREAS, the application was deemed administratively complete by the Board’s engineer on April 15, 2024 and a public hearing was subsequently conducted on June 26, 2024, 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 June 24, 2024, and May 7, 2024 respectively; 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 Applicant was represented by Bernd Hefele, Esq. at the public hearing; and

WHEREAS, the Board received as part of the hearing process the following testimony and documentary evidence:

Mr. Hefele introduced the application and advised the Board that the Applicant wanted to adjust the lot line between Lots 1 and 4 to ensure that the driveway accessing Lot 1 does not encroach on Lot 4. He admitted that the Applicant probably should have requested this relief when he last appeared before the Board in 2023.

Following Mr. Hefele's introduction, he presented 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 had previously testified before the Board in connection with the Applicant's prior application in 2023.

Mr. Fisher presented two exhibits to support his testimony. Exhibit A-1 was a colored version of the boundary and topographical survey submitted and Exhibit A-2 was a colored version of the Lot 1 development plan. He explained that the current property line as shown on Exhibit A-1, bisects the driveway accessing Lot 1. He said that the proposed property as shown on Exhibit A-2 would eliminate this encroachment by moving the line in a southerly direction several feet. Mr. Fisher acknowledged that the adjustment would exacerbate an already pre-existing nonconforming rear yard setback on Lot 1 whereas 15 feet is required, 4 feet was previously approved and now only 3.7 feet is proposed. Similarly, he did indicate that by adjusting the lot line, Lot 1 would increase in size thus impacting the FAR calculations on both lots even though no new development was proposed. Mr. Fisher noted that .30 was the permitted FAR in the zone and Lot 1 currently has a nonconforming FAR of .363, but **.406** was proposed by virtue of the lot's increase in size. Conversely, Lot 4 has a nonconforming FAR of .356 which would increase to .387 since the lot was decreasing in size. He also concluded by stating that the lot line adjustment would exacerbate the nonconforming impervious coverage on Lot 1, whereas 50% is allowed 61.7% exists and **64.0%** is proposed.

Mr. Fisher was asked about the retaining walls on Lot 4 which appeared to be close to the proposed property line. He assured the Board that the walls would be located solely on Lot 4.

The matter was opened to the public but no one appeared.

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

1. Applicant owns Lots 1 and 4 in Block 1 that are adjacent to one another. Lot 1 consists of approximately **8,170** square feet and Lot 4 consists of **11,000** square feet. Both are located in the RA-7.5 zone district.

2. Applicant seeks to adjust the property line existing between the two lots to ensure that the driveway accessing Lot 1 does not encroach on Lot 4 as it currently does. No new development is proposed.
3. The proposal will generate certain variance relief, including a “d(4)” variance for exceeding the Floor Area Ratio (“FAR”) on both lots, whereas .30 is the maximum permitted and Lot 1 currently has a nonconforming FAR of .363 and **.406** is proposed and Lot 4 has a nonconforming FAR of .356 and **.387** is proposed. In addition, Lot 1 was approved for a nonconforming rear yard setback of 4 feet whereas 15 feet is required and only 3.7 feet is proposed. Finally, the proposal would exacerbate the nonconforming impervious coverage on Lot 1, whereas 50% is allowed 61.7% exists and **64.0%** is proposed.
4. The Board finds that these variances are warranted because the proposal does represent a better planning proposal for the use of both Lots by ensuring that the driveway is located exclusively on the lot it is intended to serve. The Board finds that the lot line adjustment advances the general welfare which is purpose a of the Municipal Land Use Law. The proposal thereby satisfied the positive criteria in support of both the FAR (use) variance and the bulk variances as per the standard set forth in N.J.S.A. 40:55D-70(c)(2).
5. The Board does not find that the proposal represents a substantial detriment to the public good nor will it be a substantial impairment to the Borough’s zoning ordinances or Master Plan. The lots will maintain their residential character and will be brought into better conformity with municipal regulations
6. The Board thereby concludes that the Applicant is entitled to the lot line adjustment as 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 seeking a minor subdivision to adjust the lot line between Lots 1 and 4 in Block 1 together with variance relief, including a “d(4)” variance to exceed the Floor Area Ratio (“FAR”) on both lots and C(2) bulk variance relief for a nonconforming rear yard setback on Lot 1 and conforming impervious coverage on Lot 1, more particularly described on the plan entitled “Lot Line Adjustment Subdivision, Whaley Residence, Block 1, Lots 1 & 4, Cove Road, Borough of Mount Arlington, Morris County, New Jersey” prepared by Dykstra Walker Design Group, signed and unsealed by Kenneth D. Dykstra, P.E., L.S., dated November 28, 2023, no revisions, consisting of three sheets, subject to the following terms and conditions:

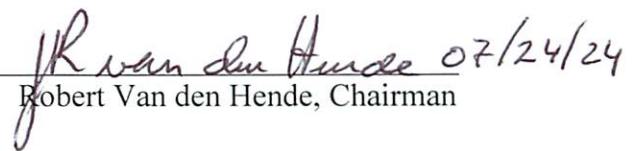
1. Applicant to prepare and submit to the Board attorney and engineer a proposed Deed to Perfect Minor Subdivision with the correct metes and bounds descriptions. The description for Lot 4 must ensure that the retaining wall on the lot be contained solely on the lot and not encroach into Lot 1. Said deed is to be recorded within 180 days of the memorialization of the within Resolution.

2. The **Applicant** 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.
3. The Applicant shall comply with the rules and regulations and ordinances of the Borough of Mt. Arlington applicable to the proposed project.
4. The approval is conditional upon any approvals, permits, or licenses required from any other outside agency exercising jurisdiction 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:  07/24/24
Robert Van den Hende, 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