

24-013

RESOLUTION OF MEMORIALIZATION GRANTING USE AND BULK VARIANCE RELIEF TO ANDREW ROUSCH TO PERMIT THREE ACCESSORY STRUCTURES ON LOT 29, BLOCK 91 AND TO ALLOW ONE OF THE THREE TO BE USED AS A HOME OFFICE

Approved: September 25, 2024
Memorialized: October 23, 2024

WHEREAS, Andrew Rousch (“Applicant”) is the owner of Lot 29 in Block 91 as noted on Tax Map for the Borough of Mount Arlington and having a street address of 34 Rogerene Way (“Property”); and

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”), on or about August 15, 2024, seeking use and bulk variance relief to permit four accessory structures (sheds) on the Property and allow one of the accessory structures to be used for a home office; and

WHEREAS, the Property is zoned R-15, Single-Family Residence. Consequently, Applicant applied for bulk variances to allow four accessory structures where only one is permitted; allow one of the accessory structures to be located in the front yard; and to allow one of the accessory structures to be 1.3 feet from the nearest side yard when 10 feet is required. In addition, the Applicant needed a use variance as per N.J.S.A. 40:55D-70(d)(1) to permit one of the accessory structures to be used as a home office; and

WHEREAS, the Applicant included with his application a marked up “Property Survey, Tax Lot 29 – Block 91, 34 Rogerene Way, Borough of Mt. Arlington, Morris County, New Jersey” prepared by Lakeland Surveying, signed and sealed by Jeffrey S. Grunn, P.L.S., dated May 17, 2024; and

WHEREAS, the Applicant submitted with his 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 September 6, 2024; and

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

WHEREAS, the Borough’s Planner, Jessica Caldwell, P.P. also issued a report dated

September 19, 2024; and

WHEREAS, the Board conducted a public hearing on September 25, 2024, notice being required and lawfully provided; and

WHEREAS, the Applicant appeared pro se; 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:

The Applicant testified. He explained that he lives at the Property which had been his grandfather's home. He indicated that there were four sheds on the Property. He acknowledged that he recently replaced one of the sheds with a new one bought at Amish Mike's. Mr. Rousch stated that shed #1 (as he referred to it) was 12 feet in length, 16 feet in width and 12 feet in height for a total square footage of 196 feet. He said that this new shed replaced a slightly smaller one that had been on the Property. He confirmed that the shed was located in the front yard of the Property, but he indicated that it could be relocated to avoid being in the front yard setback.

Mr. Rousch testified about the other 3 sheds. He said that shed #2 had been on the Property for decades. It was built in a manner similar to the home and was used to store tools and equipment. He described shed #3 as an A-frame structure that was built out of pallets. He stated that it was not used for storage but was mainly used for holiday decorations. He said that it could be broken down and relocated throughout the Property. As he described "shed #3", it became apparent to the Board that it was not really a shed, but an ornamental structure for the Property. When asked by the Board about this "shed", Mr. Rousch stated that he could remove it and store it elsewhere on the Property.

With respect to shed #4, Mr. Rousch stated that it was a small 6 foot by 5 foot structure that housed a portable generator used in emergencies by the adjacent property owner. He explained that this arrangement was something that his grandfather had allowed, and he was merely continuing it. He said that given the size of the shed, it did comply with the ten-foot side yard setback requirement.

Mr. Rousch testified that the home on the Property was rather small. He stated that it

only had 2 bedrooms. He had been using one of the bedrooms for his home office. However, he told the Board that he and his wife wanted to start a family and needed the room for their future child. He indicated that it was his intention to use shed #1 for a home office. In fact, he acknowledged that he had begun using it in that manner, unaware of the zoning implications. He explained that he was running electricity to the structure via a cord from the home. However, he did agree that if the Board granted approval, he would apply for an electrical permit to ensure that the structure was safely connected. He did repeat on several occasions that it was not his intention to reside in the structure and he agreed that such a restriction could be a condition of the approval. He also agreed that he would never rent the structure to any third party and that if he ever built an addition to his home, he would discontinue using the shed as an office.

Teresa Andrews is the owner of the lot immediately to the west of the Applicant's Property and owns the portable generator being stored in shed #4. She stated that it was a portable generator on wheels that was transported from the shed to her home in emergencies. She explained that this accommodation was first agreed to by the Applicant's grandfather, because there was no room on her property to store the generator. Both Mr. Rousch and Mrs. Andrews agreed that if either of them sold their respective properties, shed #4 would be removed and this accommodation would be ended.

The matter was open to the public. Four neighbors appeared to voice support for the proposal. Paula Danchuk, Maureen O'Connell, Eugene Creg and Andrew Danchuk told the Board that the sheds were aesthetically appealing and did not appear out of place in the neighborhood. They spoke about how small the dwelling was and concurred that the shed #1 was needed to help the Applicant.

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

1. The Applicant was originally seeking use and bulk variance relief to allow four accessory structures on the Property where only one was permitted; allow one of the accessory structures to be in the front yard; and to allow one of the accessory structures to be 1.3 feet from the nearest side yard when 10 feet is required. After hearing the testimony offered, the Board finds that shed #3 is not an accessory structure, leaving only 3 accessory structures on the Property. In addition, shed #2

has long existed on the Property and thereby qualifies as a lawful pre-existing structure and does not need a bulk variance to remain 1.3 feet from the easterly side yard. Finally, the Board finds that the Applicant's willingness to relocate shed #1 so that it is no longer in the front yard eliminates the need for another bulk variance. Consequently, the only bulk variance the Applicant requires is a variance to allow three accessory structures on the Property although the Applicant does still need a use variance to allow shed #1 to be used as a home office.

2. The Board finds that the Applicant requires use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) to allow shed #1 to be used as a home office. The Board concludes that shed #1 qualifies as an accessory structure as per the municipal ordinances. As per the Borough's ordinances, habitable space can only exist in a room in a dwelling and not in an accessory structure. The Board believes that the use variance relief is warranted because the use of accessory structure promotes a desirable visual environment through a creative development technique as per purpose I of the Municipal Land Use Law. The use of the accessory structure ensures that the unique and older dwelling unit on the Property remains intact and continues to serve as a reminder of the historic nature of the Lake Rogerene community which advances purpose J of the MLUL.
3. The Board also believes that the Applicant is entitled to bulk variance relief to allow three accessory structures on the Property in accordance with N.J.S.A. 40:55D-70(c)(2). The Board concludes that the three accessory structures promote the same two purposes of the MLUL detailed above. The Board finds that the three accessory structures promote a desirable aesthetic environment rather than seeing the historic character of the home irretrievably destroyed by an addition. Moreover, the accessory structure to be used for the home office is visually appealing.
4. The Board further believes that the Applicant has satisfied the negative criteria associated with the use and bulk variance relief. Both variances will not be a substantial detriment to the public good because they will represent an aesthetic improvement to the Property. Moreover, the many neighbors who appeared in support of the application is a strong indication that there is no substantial detriment

to the public good. Moreover, the Board believes that the conditions imposed with its approval as set forth below ensures the protection and preservation of the public good. The Board also finds that the proposal will not substantially impair the intent of the Borough's zoning ordinance or Master Plan. The proposal 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.

5. For these reasons, the Board finds that the Applicant has satisfied the positive and negative criteria and is entitled to the use and bulk variance 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 approve the grant of the use and bulk variance relief to the Applicant, Andrew Rousch, as more particularly described on the marked up survey entitled: "Property Survey, Tax Lot 29 – Block 91, 34 Rogerene Way, Borough of Mt. Arlington, Morris County, New Jersey" prepared by Lakeland Surveying, signed and sealed by Jeffrey S. Grunn, P.L.S., dated May 17, 2024, subject to the following conditions:


1. Shed #1 shall be relocated on the Property to avoid being in the front yard and not on the existing septic system. The location shall be reviewed and approved by the Board Engineer before the Applicant moves the accessory structure.
2. The Applicant shall apply for and secure all permits required by the Borough needed to use the accessory structure known as "shed #1" as a home office.
3. Accessory structure known as "shed #1" shall only be used as a home office by the owners of Lot 29 and cannot be leased to anyone not possessing an ownership interest in said property.
4. The Applicant will record a deed restriction against the Property that requires the removal of the accessory structure known as "shed #4 (generator shed)" when the Applicant sells the Property or there is a change in the ownership of adjacent lot 32.
5. Shed #3 is shall not be converted into an accessory structure and shall only be used for ornamental or decorative purposes intermittently during the year.

6. The Applicant shall submit proof that all fees, escrow amounts, real estate taxes and assessments have been paid prior to the issuance of any building permit and Certificates of Occupancy.
7. The Applicant shall comply with and abide to the rules, regulations, and ordinances of the Borough of Mt. Arlington applicable to the proposed development.
8. The Board's approval is conditioned upon the issuance of any other approvals required by other outside agencies exercising jurisdictional development 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:  10/23/24
, Chairman

DATED: 10/23/24

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 October 23, 2024.


Kathy Appleby, Board Secretary