

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Deputy Ventures, LLC
Application No. 2267
Decided on February 27, 2019
Memorialized on March 18, 2019
Approval for Bulk Variance Relief

WHEREAS, Deputy Ventures, LLC (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for bulk variance relief construct a new single-family dwelling on an undersized 25 foot by 100-foot lot at 800 Prospect Avenue, also known as Block 218, Lot 2 on the Tax Map of the Borough, in the R-8 Zone; and

WHEREAS, a public hearing was conducted on January 30, 2019 and February 27, 2019 after the Board determined it had jurisdiction to hear the application; and

WHEREAS, the Applicant was represented by Jeffrey Gale, Esq.;

NOW THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made. The Applicant is the owner of the subject property. The existing home was destroyed by Superstorm Sandy. The Applicant is seeking to build a new single-family residence. The lot was acquired on May 16, 2017. The Applicant is requesting bulk variance relief as follows:

1. Section 13-10.4(f). 1. (a) – Minimum lot area of 2,500 square feet were 7,500 square feet is required **this is a pre-existing condition*
2. Section 13-10.4(f). 2. (a) – Minimum lot width of 25 feet where 75 feet is required **this is a pre-existing condition*
3. Section 13-10.4(f). 3. (a) – Minimum lot frontage of 25 feet where 75 feet is required **this is a pre-existing condition*

4. Section 13-5.5(d) total Lot coverage is 25% maximum, application is proposing 34.8%

5. Section 13-10.4(f)7 – Minimum side yard setback of 4 feet where 8 feet, with two combined side yard of not less than 20 feet for the principal building are required.

Counsel for the Applicant indicated there was no reply to letters asking members if there was any adjacent property available for purchase and did not get a response. Mark Blumencrantz of Colts Neck, for the Applicant, Curtis Reilly of Highlands and architect Dominic Macaluso of Hazlet were sworn in, and qualified as necessary as experts.

Mr. Reilly (a construction contractor) proceeded to testify that the prior residential dwelling had been demolished. He noted the house would be elevated and only storage and parking would be permitted on the ground floor.

Mr. Macaluso testified as to the design of the proposed residence and the need for bulk variance relief. He stated that the ground floor would be flood vented. There would be 3 bedrooms in the house. There would be room to park 3 cars on the property. There needs to be reconciliation due to conflicting information as to whether the house will be built on pilings or block – a resubmittal must be made to the Board Engineer to resolve this inconsistency. Mr. Macaluso agreed that the Applicant will resolve the issue as to whether the home was being built on a spread footing or on pilings, since there was an inconsistency in the information regarding the design of the structure in question. The Applicant also agreed to reduce the width of the house from 18 feet to 17 feet to help improve the amount of buffer space and setbacks.

When the floor was open to the public, Ms. Keri Sullivan of 302 Shore Drive got up and spoke. Apparently, she was interested in potentially acquiring the property, and expressed a variety of concerns regarding the application. An extended discussion ensued between Ms. Sullivan, counsel for the Applicant and the Board with regard to this issue. One other person, Elizabeth Sweeney of 707 Clark Avenue, also spoke regarding the application. At this point it was decided by the Board with consent to the Applicant to carry this hearing to the February 27, 2019 meeting of the Board.

Prior to the hearing, the Board received a letter from Ms. Sullivan, again reiterating her objections to the proposed development. Apparently, Ms. Sullivan was not able to attend the Board meeting in which to submit this application. Since Ms. Sullivan was not present, it was stipulated by the Board that the letter would be included in the administrative record, but then since neither the Board nor the Applicant could cross examine a piece of correspondence, it would not be formally admitted into evidence before the Board.

At the outset of the resumed hearing, Mr. Gale again addressed the issue with regard to the offer to purchase the property. Mr. Gale said that the average price for a 25 foot by 100 foot lot was going in the range of \$72,500. He noted that the prior hearing, he instated that the offer made was made for \$75,000. Mr. Gale then referred to a February 18 letter with revised plans and changes to the first sheet noting that the footing and foundation would not be done on piling, since the soil was found to be suitable, pilings would not be necessary. Counsel for the Applicant also waived the right to cross-examine Ms. Sullivan due to her failure to be able to attend the meeting. There were no other members of the public at this resumed hearing wishing to express any opinions for or against this subject application or desiring to ask any questions to the Applicant or its experts.

NOW THEREFORE, the Planning Board makes the following conclusions of law, based upon the findings of fact. The Applicant before the Board seeks approval for bulk variance relief to build a single family home on 800 Prospect Avenue in the R-8 Zone. The use is permitted in the zone. There is the need for the bulk variance relief as described above.

With respect to the bulk variances, the Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other non-use related Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions; physical features, or other extraordinary circumstances exist which uniquely affect the specific piece of property and limit its development potential in conformance with Ordinance requirements, such that the strict application of a regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Alternatively, under the (c) (2) criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an Applicant for these variances must also show that the proposed relief sought will not cause a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met.

Based upon the application, plans, reports and testimony placed before the Board, the Board finds that the Applicant has met the requirements of the Municipal Land Use Law, case law and City ordinances so as to grant the relief requested. Pursuant to these criteria, the purposes of the Municipal Land Use Law will be advanced and the benefits of granting the relief requested clearly outweigh any detriments. The use is one that is permitted in the R-8 Zone. As noted in the report of the acting zoning official, three of the five bulk variances that are being sought are triggered by pre-existing conditions in nature. The Board finds that several of the bulk variances requested are for conditions which are not being significantly exacerbated. The benefits of the redevelopment of the property and the re-occupation of the property with a single family home outweigh any minimal detriments from granting this relief. Furthermore, the evidence before this Board indicates there will be no substantial detriment to the public good, and no substantial impairment to the intent and purpose of the zoning ordinance or Master Plan, by approving this application. The Board finds that the variance relief that has been requested is consistent with the ability to redevelop a 25 foot by a 100 foot. Apparently, Ms. Sullivan's comments to the contrary, there has been no other person that has come forward based on notice that has been provided by counsel for the Applicant to indicate any interest in purchasing the property. If the Applicant is not granted the relief, there is practically no other way of redeveloping the property in question. The record also reflects that the Applicant issued corrective notice advising those of interest, as required by law, of the hearing to be held on this matter at the January meeting of the Board.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Deputy Ventures, LLC for property located at

800 Prospect Avenue in the R-8 Zone, requesting five bulk variances as listed above, is determined as follows:

1. The five bulk variances as recited herein are approved pursuant to N.J.S.A. 40:55D-70(c)(1) and (2).

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved.

2. This approval is granted strictly in accordance with the survey prepared by Edward M. Weinert, PLS dated October 10, 2017, and architectural plans from Dominick Macaluso dated September 20, 2018.

3. The Applicant shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications.

4. Payment of all fees, costs and escrow due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary.

5. Certification that taxes have been paid to the date of approval.

6. Monmouth County Soil Conservation District approval.

7. Municipal Board of Health approval.

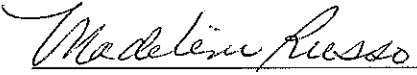
8. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official, an affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply a copy of any approvals received.

9. At least one week prior to the start of construction the Applicant shall meet with Borough code officials to insure all necessary permits and approvals have been secured and bonds posted with the Borough.

10. The Applicant shall take all necessary dust and vermin controls during construction work on the property.

11. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Union Beach, County of Monmouth, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies the within decision was adopted by this Board on February 27, 2019 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on March 18, 2019.


Madeline Russo, Planning Board

FOR: *Moved by Faresse seconded by Andruzzi*

AGAINST: 0

ABSTAIN: 01 *Cannors*

Board Member(s) Eligible to Vote: *Wells, Moriz, Faresse, Andruzzi, Costello and Wade*