RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Domenick Mastrocola/60 Creek Road, LLC
Block 149 Lot 16
Decided on February 27, 2019
Memorialized on May 22, 2019
Denial of Application for
Bulk Variances, Design Waiver and Minor Subdivision

WHEREAS, Domenick Mastrocola, a/k/a 60 Creed Road, LLC (the "applicant") has made an application to the Borough of Union Beach Planning Board for numerous bulk (c) variances, one design waiver and minor subdivision located at the corner of Spruce Street and Lorillard Avenue, also known as Block 149, Lot 16 as shown on the tax map of the Borough, located in the R-8 Residential Zone; and

WHEREAS, public hearings were conducted on this application on August 29, 2018, November 28, 2018 and February 27, 2019 after the Board determined it had jurisdiction; and

NOW THEREFORE, the Board makes the following findings of fact based upon evidence presented at the aforesaid public hearings, at which a record was made. The application before the Board seeks minor subdivision approval, along with nine (9) bulk variances, and a design waiver. The applicant is seeking to subdivide an existing sub-standard lot of 7,500 square feet into two single family lots. The property in question currently contains two (2) dwelling units on the single lot. Proposed Lot 16.01 would be 2,500 square feet in area with 25 feet of frontage on Lorillard Avenue. The applicant subsequently amended the application and proposed to construct a new two-story single-family dwelling on the lot in question. The proposed 5,000 square foot corner lot with 50 feet of frontage on Lorillard Avenue and 100 feet of frontage on Spruce Street contains an existing two-story dwelling that is being reconstructed with associated deck and stairs. The property is located in the R-8

Residential Zone, which permits single family dwellings on 7,500 square foot interior lots and 10,000 square foot corner lots.

By way of background, in February 2018, the applicant sought approval to elevate the pre-existing two-story single-family dwelling on the property. In a hand-written note provided with the submission of February 5, 2018, the applicant indicated that he was looking to elevate the two-story structure as shown on page 2 of 8 on plans submitted to the Zoning Officer. The letter notes as follows:

> "We are in the process of attempting to apply for a subdivision at this location. If we are denied, we will demo the single-story home. Please approve the elevation for the two-story home."

The Acting Zoning Official approved the elevation of the existing two-story dwelling in correspondence dated February 8, 2018.

Subsequently, the applicant, contrary to the representation in the aforesaid letter, proceeded to submit an application for a minor subdivision approval of the property in question. The applicant was originally scheduled to be in front of the Planning Board at its meeting on May 30, 2018; proof of service was deemed in order and the Board exercised jurisdiction. At that point it was announced the applicant would be carried to the June 18, 2018 meeting of the Board. At the June 18, 2018 meeting, it was announced that the application was again being carried, that further notice being mandated of the applicant. At the July 25, 2018 meeting, legal counsel for the applicant requested a continuance of the application to the August 29, 2018 meeting, which was approved by the Board.

In addition to the proposed minor subdivision, the applicant requires extensive bulk variance relief as follows:

1. A variance is required from Section 13-10.4.f.1(a) of the Ordinance to permit proposed Lot 16.01 to have a lot area of only 2,500 square feet, where a minimum area of 7,500 square feet for interior lots is required.
2. A bulk variance is required from Section 13.10.4.f.1(a) of the Ordinance to permit proposed Lot 16.02 (corner lot) to have a lot area of only 5,000 square feet, where a minimum area of 10,000 square feet for corner lots is required.
3. Variance relief is necessary since the applicant is proposing to take a pre-existing, undersized non-conforming lot and further subdivide it into two (2) non-conforming undersized lots.
4. Sections 13-10.4.f.2 and 13-10.4.f.3 of the Ordinance require a lot frontage and width of 75 feet for interior lots. Bulk variance relief is required for proposed Lot 16.02 which has a lot width/frontage of only 50 feet on Lorillard Avenue.
5. Sections 13-10.4.f.2 and 13-10.4.f.3 of the Ordinance requires a lot frontage and width of 100 feet for corner lots. Although the frontage on Spruce Street complies variances are required for proposed Lot 16.02 which has a lot width/frontage of only 50 feet on Lorillard Avenue.
6. Section 13-10.4.f.43 of the Ordinance requires a lot depth of 100 feet for corner lots. A variance is required for proposed Lot 16.02 which has a lot depth of only 50 feet on Spruce Street.
7. Section 13-10.4.f.2 of the Ordinance requires a front yard setback of 20 feet. Although the new proposed home on Lot 16.01 complies, Lot 16.02 (corner lot) has a front setback of 10.7 feet and 11 feet on Lorillard Avenue and 13.9 feet in Spruce Street; as such bulk variances are required.

8. Section 13-10.4.f.6(a) of the Ordinance requires a minimum side yard setback of 8 feet and a combined side yard setback of 20 feet. The proposed dwelling on proposed Lot 16.01 has a non-conforming side yard setback of 5 feet and a combined yard setback of approximately 10 feet. Therefore, bulk variance relief is required.
9. Section 13-10.4.f.6(a) of the Ordinance requires a minimum gross habitable floor area of 960 square feet for one bedroom, and 1,060 square feet for two bedroom, 1,160 square feet for three bedroom and 1,260 square feet for four bedroom dwellings. The applicant proposes a three (3) bedroom home with gross habitable floor area of 1,096 square feet for the proposed home on proposed Lot 16.01 and 1,218 square feet for the four (4 bedroom home proposed Lot 16.02. Therefore, bulk variance relief is required for both lots.

The applicant also needs a design waiver. In accordance with the Residential Site Improvements Standards, between 2 and 3 parking spaces are required for each dwelling based on the number of bedrooms in the dwelling. The applicant proposes 1 driveway space and 1 garage space on Lot 16.01 where 2 spaces are required. Additionally, the applicant proposes 2 garage spaces for Lot 16.02, where a minimum of 2.5 parking spaces are required. Therefore, a waiver and *de minimum* exception from DCA is required for the existing home on Lot 16.02.

At the August 29, 2018 meeting of the Board, testimony was initially heard on this application from Mr. Domenick Mastrocola, a principal of 60 Creek Road, LLC. He testified that no trees would be removed from the property. He further testified that it was his intention that if a minor subdivision was approved, to sell both houses to separate owners, and if not, he would rehab the other residence and rent it out.

Mr. James Higgins, licensed professional planner, was sworn in and qualified as an expert in his field. He proceeded to describe the proposed minor subdivision and noted that there were a number of undersized lots of similar configuration to the general area. He acknowledged that an additional variance would be needed for a drive-way on a smaller lot. The Board then engaged in a brief discussion with regard to whether the second structure should be demolished. At this point in time, the applicant requested that the hearing be carried to the subsequent hearing of the Board, and this request was granted with no further notice required of the applicant.

At the September 26, 2018 meeting of the Board, the applicant requested an adjournment to the subsequent meeting of the Board; it was agreed that the application would be carried to the November 28, 2018 with no further notice being required of the applicant.

The hearing on this application resumed before the Board at its regular meeting on November 28, 2018. At the outset, Mr. Mastrocola, as the owner of the LLC, was again sworn in and testified before the Board. Mr. Mastrocola proceeded to respond to questions with regard to the number of the bedrooms for the second house proposed on the property; he testified it would be a two-bedroom residence.

Counsel for the applicant then asked if the testimony Mr. Mastrocola provided previously can be relied upon as stipulated, to which the Board agreed. Counsel for the applicant also agreed that the recitation in the reports from the Board engineer, T&M Associates, with the number and type of bulk variance relief and one design waiver needed was correct.

At this point the floor was open to the public for any questions of the witness; Mr. John Smith, presiding at an adjacent property at 352 Lorillard Avenue, testified that the second single story house had been abandoned since Hurricane Sandy. He is concerned that a new two-story home would block out the light on the one window on the side of his house, which is

approximately five (5) feet between the two properties. Two photographs were admitted into the record without objection, submitted by Mr. Smith, regarding the distance in question between the two homes. Mr. Mastrocola testified that he believes that it is approximately seven (7) feet between the new home to be proposed on the second lot, and the home recently reconstructed by Mr. Smith on his property. At that point, counsel for the applicant wished to correct the record indicating the distance between the existing house owned by Mr. Smith and the house proposed by the applicant would be 9.6 feet in distance. After further discussions with the applicant's planner, Mr. Higgins, it was determined that the distance between the existing structure owned by Mr. Smith and the structure proposed by the applicant would be 9.1 feet. Mr. Higgins then testified with regard to clarifying which of the various exhibits was the one to be relied upon before the Board. It was determined that the exhibit map dated September 25, 2018, which showed a setback of five (5) feet from either property line. He further testified that it would be possible to move the proposed two-story dwelling a foot over to create an additional foot of separation between the existing dwelling, owned by Mr. Smith and the proposed dwelling. Mr. Higgins then went on to briefly recap his prior testimony and to attempt to address the concerns of the Board.

Mr. Higgins then went on to testify that with the construction of the new dwelling, it would provide housing at the identical level of density as a property directly across the street, as well as eliminated the non-conforming front yard setback, thus reducing by one the amount of bulk variance relief needed by the applicant.

Questions then came up about the initial intent of the applicant when it secured approval to raise the other house on the property in February 2018. In the letter, he indicated that variance relief would be needed. Apparently, counsel for the applicant did not have the letters from

Dennis Dayback from February 2018 with the prior approval to lift the house on the property had been granted by the zoning officer, which also incorporated the handwritten note from the applicant described earlier in this resolution. In response from questions from the Board as to what would happen to the property with the existing dwelling if the application was denied, Mr. Higgins asserted that under the Sandy Relief Legislation he would have the right to raise and remodel it, so long as he remained in the same building footprint and with the same number of stories.

Mr. Kantor then referred to some photographs that he showed Mr. Higgins regarding the property and the proposed home to be demolished between the larger existing house on the property and the house owned by Mr. Smith on the adjacent property.

Mr. Higgins then, at the request of counsel for the applicant, went back over the positive and negative criteria that would have to be proven by the applicant in order to justify the relief being sought, especially given the amount of bulk variances involved.

Mr. Higgins acknowledged that the proposed minor subdivision is inconsistent with the ordinance but considered it to be consistent with the character of the immediate surrounding properties, and with a new residence with better separation from adjacent residences there now. In his professional opinion he believed there was no substantial adverse impact by what is being proposed. At this point, several Board members started asking questions of Mr. Higgins and counsel for the applicant with regard to the proper setback for the existing house and the proposed house. Questions were also asked by the Board with regard to the impact of building height from the proposed structure.

At this point in time, an extensive colloquy occurred between the applicant, the Board and Board counsel with regard to issue of concern of the interplay between the requirements of

Borough ordinance, the Master Plan, and certain provisions under CAFRA and under Hurricane Sandy Legislation with regard to restorations of structures that are storm damaged. There is also the ancillary issue of whether the existing structure was abandoned to the point where it could not be rehabilitated or rented out given that it had remained vacant since Hurricane Sandy.

Mr. Smith was again heard from with regard to his concerns and objection to the proposed application.

At this point, the Board asked additional questions of the applicant and his professionals, particularly regarding the February 2018 submission and the indication from the applicant at that time that he intended to demolish and not replace the structure that is now the subject of this application. Mr. Mastrocola represented that "I was told that there was absolutely no way I could subdivide the property". This provoked a response from several members of the Board with regard to the guidance the applicant was given by the Acting Zoning Officer.

The Board also wanted clarifications on the scope of the application given the prior record and the intent of the applicant to demolish the remaining structure on the property and replace it with a new residential dwelling. This would be done as part of the minor subdivision application that is pending before the Board, which engenders the significant amount of bulk variance relief as recited herein. Several Board members again expressed concerns with regard to the inconsistency of the proposed subdivision and the need to look at the overall impact on planning within the Borough. At that point the applicant consented to carry the hearing.

The hearing on this application resumed before the Board as a regular meeting on February 27, 2019. In addition to the four (4) reports previously issued by T&M Associates, the Board also had before a February 27, 2019 memo from T&M Associates, specifically planners

Jeffrey Cucinotta and Malcolm Truscott. Mr. Truscott, as well as Mark Leder, a professional engineer and planner engaged by the applicant, testified before the Board.

Mr. Leder was the first to testify at the hearing, having been sworn in and qualified before the Board. Mr. Kantor noted that the outset of the testimony that there are issues regarding the previous history of the property as it pertains to the merger of the lots in the distant past. Mr. Leder proceeded to testify with regard to the research he did into the history of the property, reviewing prior tax records, information from the Borough Tax Accessor, Zoning Officer and Master Plan. Mr. Leder testified that records going back to 1957 showed a lot on 354 Lorillard Avenue with a single improvement on it. At the time the lot was 25x100 and was known at that time as Block 111 Lot 28. The corner lot was listed separately in the tax records at 50x100 feet and listed at Lots 29 and 30. He then testified reviewing records from 1961, it still continued to show two (2) separate lots. He then testified that in 1962, there was a municipal-wide reevaluation and from those records apparently the lots were merged and became one entry on the records of the tax accessor. Mr. Leder claimed that this merger was not legal based on his research of subsequent records from the tax department. Moving forward to the mid-1990s, and through to today, the lots remained merged. There was a period of time when it had been at least several exchanges of title of the property in question.

Counsel for the applicant then referred to an email of February 25, 2019 regarding the history of the property, according to tax records. Mr. Kantor asserted that the merger was inappropriate because usually it is done when one of the lots is vacant, which was not the case in this particular instance. Mr. Kantor did acknowledge that "I don't really know how relevant any of this is because all this occurred before your zoning ordinance was in place". He also acknowledged that since the zoning ordinance requirements for the current R-8 Zone did not

exist at that time, there is no way for anyone to define what an undersized lot would have been nearly fifty-five (55) years ago. Resuming this testimony, Mr. Leder noted that there is a provision in the Master Plan limiting infill development that increases the density or intensity of the use of the neighborhood. He asserted that was not a concern here, since these dwellings were existing prior to and subsequent to Hurricane Sandy.

Mr. Leder then went on to assert that under Borough ordinance, a non-conforming use for a building or structure that sustains partial destruction be restored or repaired to its condition prior to destruction, pursuant to Chapter 13-4.2 of the Borough ordinance. He asserted that regardless of the Sandy rules, this should be applied in this particular instance.

Mr. Leder then went on to testify regarding other properties in the Borough where there were homes on either 25-foot-wide lots or some that were only 50 feet wide, often in mid-block. Mr. Leder acknowledged that the applicant agreed that if the subdivision is granted, he would demolish the existing house and rebuild a new one. He noted that the building footprint for the proposed dwelling would match the front yard setback to the neighboring house owned by Mr. Smith. He also testified that in his professional opinion, this should not be treated as if this was a vacant 25-foot-wide lot, where someone was seeking to place a new improvement or home.

At this point, Mr. Malcolm Truscott was sworn in and qualified as a professional planner from T&M Associates. At the onset of his testimony, he noted, in response to the potential for rehabilitating the existing home, he noted the record contained a letter from the Borough Code Enforcement Officer that there was no Certificate of Occupancy and that the home should be demolished. Mr. Kantor, on behalf of the applicant, objected, stating that the applicant believed that the better alternative would be to subdivide the property and construct a new structure, and that is a better alternative than rebuilding the old one. Mr. Truscott noted that the December 12,

2018 letter stated in part that applicant had represented that if the subdivision was not approved, he could not rent the structure out since no Certificate of Occupancy could be approved by that office for the second structure. Mr. Kantor again disagreed with the assertions in the correspondence from the Zoning Officer. In response to questions from the Board's engineer, Mr. Kantor acknowledged that his client acquired the property in 2017.

Mr. Truscott then proceeded to review his report to the Board and testify with regards to its contents and his analysis with regard to the property in question. Mr. Truscott testified that in his understanding, and the testimony given by Mr. Higgins, as the prior planner on behalf of the applicant, the nine bulk variances should be considered as C-2 variance in type, since none of them constitute a hardship variance. According to Mr. Truscott, the applicant is required to show that what is being proposed is a better zoning alternative and weight the positive and negative benefits of granting the relief being sought, and in particular looking at the negative criteria, what detriment is there from the impact of the application. He referred to the State Supreme Court decision of Kaufman vs. Planning Board of Warren *110 N.J. 551 (N.J. 1988)* where the State Supreme Court ruled that no C-2 variance should be granted where merely the purposes of benefits of the owner would be advanced. He stated that according to Kaufman, the grant of the approval must actually benefit the community and that it represents a better zoning alternative for the property.

Mr. Truscott testified that it is his opinion that the only real benefit is just for the owner creating a subdivision to sell another lot and another property. Other than the presence of a small house that would be a little more reasonable in price that could be sold, beyond that Mr. Truscott did not see a benefit with the minor subdivision and the numerous bulk variances being requested, especially considering the impact on the immediate neighborhood. Mr. Truscott

disagreed with Mr. Leder's analysis regarding density and intensity since this is a vacant bungalow more or less, and the proposed structure would be 2-3 stories high and would have a lot more floor area, so it would increase the density and intensity. He testified that in his opinion it was not consistent with the character of the area.

Mr. Truscott went on to testify that another goal and objective in the Borough Master Plan Residential Element is to limit new development in developed areas and also limit development that increases the intensity of use in the neighborhood of the property in question. He stated that the planning principle is to discourage development that does not meet minimum frontage requirements of public or private roads and create frontage for both lots that does not meet the zoning ordinance. He testified that part of the goal of this section of the Master Plan is to discourage these types of uses; he saw this application as perpetuating a non-conformity in the neighborhood. Moving on, Mr. Truscott, referring to page 3 of his report, had additional comments. He noted that he had not seen architectural elevations for floor plans and was concerned about how to evaluate that in terms of the overall impact on the neighborhood.

Mr. Truscott then raised concerns relative to Section 13-4.2 of the Borough land use ordinance, which holds that a non-conforming use of a building shall be presumed to be abandoned when there occurs a cessation or use of activity by a failure on the part of the tenant or owner to reinstate such use with a period of one year from date of cessation or discontinuances. As far as he could determine, no action had been taken on the property in several years. He noted the last certificate of occupancy had been issued in 2014.

Moving on, Mr. Truscott then testified with regard to whether the variance relief qualified under N.J.S.A. 40:55D-70(c)(2). While he noted that this could be considered, for arguments sake, a specific piece of property, he testified that in his opinion the purposes of the

Borough Ordinance and land use law were not being advanced by the proposed application and did not see that there was any planning purpose being advanced by it. He also testified that any benefit from the numerous deviations from the ordinance were substantially outweighed by the detriment in this particular case. He stated that he saw very limited benefit to allowing the numerous variances requested for the proposed minor subdivision. The detriment is an increase in intensity of development in the neighborhood and that it is corrosive in nature to permit additional 25-foot lots that are 2500 square feet, which is only 1/3 of the requirement, and that the corner lot would also be further undersized compared to its current configuration. Mr. Truscott also then went on to testify that the proposed subdivision and bulk variance relief was contrary to the intent and purpose of the Borough zoning ordinance.

At this point there was an extended colloquy between members of the board and Mr. Truscott regarding his testimony, and the impact of the variance relief of surrounding properties.

Following that, testimony was taken from both Mr. Truscott and Mr. Leder in response to various questions from members of the Board and counsel for the applicant. Much of the questioning focused on the creation of another undersized lot and the (c)(2) bulk variance relief being sought by the applicant. Questions were also asked of the applicant's witnesses with regard to the tax records of the property dating back again to the 1950s.

At this point the Board chair requested that testimony be provided by Mr. Joseph McGrath, code enforcement officer, who was sworn in and qualified. He proceeded to address the issue of abandonment, noting that there had been prior foreclosure proceedings on the property. He considered it an act of abandonment by a prior owner of the property. He also noted that the zoning officer in February 2018, with regard to the construction of the other house on the property, which is still ongoing, meant that the other property was being abandoned.

Counsel for the applicant then engaged in a series of questions cross examining Mr. McGrath with regards to his interpretation of whether the property had been abandoned and whether the Borough could still issue any type of certificate of occupancy, given that the property clearly was not in compliance with Borough ordinance. Mr. McGrath commented in response to questions from the Board, stated that the zoning officer's decision, if the structure is no longer permitted, it needed to be demolished. He felt a certificate of occupancy of the second house could not be issued. Mr. McGrath stated that even if the applicant was to apply for building permits, the building department would then refer them to the zoning officer, who if he issued an adverse decision that decision could then be appealed. Following Mr. McGrath's testimony, there was an extensive exchange between members of the Board as to the merit of the applicant's position and its interplay with whether the bulk variance relief being sought could be granted.

Counsel for the applicant then offered closing remarks where he again asserted that legislation adopted following Hurricane Sandy would continue to allow the house to be lifted, even though it had been unoccupied by the current and prior owners. He also restated his argument that the prior action of the tax accessor to merge the lots could be undone or arguing in a court would find that the merger never should have occurred in the first instance. Mr. Kantor asserted that there was a possibility a court would find that a subdivision was not required, these were improperly merged lots and should be considered as separate lots.

NOW THEREFORE, the Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The applicant is seeking extensive bulk variance relief, one design waiver, and minor subdivision approval, as described above.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from strict bulk and other non-use related issues 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 or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any 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. Undue hardship refers solely to particular physical conditions of the property and does not refer to personal hardship, financial or otherwise. Commercial Realty v. First Atlantic, 122 N.J. 526 (1991); Smith v. Fair Haven Zoning Bd., 335 N.J. Super 111, 122 (App. Div. 2000).

Additionally, 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 purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance. Those categories specifically enumerated above constitute the affirmative proofs necessary to obtain "bulk" or (c) variance relief.

Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

Based upon the application, plans, reports and testimony before it, the Board finds that the applicant has not met the minimum requirements of the Municipal Land Use Law, case law and City ordinances, and as such must deny the application. In this particular instance the applicant, by the very nature of the application itself, is creating the need for all of the bulk variance and design waiver relief. This runs contrary to established case law which determines that self-created hardship may be considered by a land use board reviewing an application as a proper basis for denial of such relief. Commons v. Westwood Zoning Board of Adjustment, 81 N.J. 597, 606 (1980); Chirichello v. Zoning Board of Adjustment of Monmouth Park, 78 N.J. 544 (1979).

This Board concludes that the applicant has failed to present sufficiently persuasive testimony to justify the numerous bulk variances and design waiver relief sought in this application. There are no exceptional or extraordinary circumstances uniquely affecting this piece of property or that the strict application of the zoning ordinance would result in peculiar or exceptional practical difficulty or undue hardship being visited upon the proposed developer of the property.

The Board finds that the testimony offered cannot allow the Board to rule in favor of the applicant, since the evidence before the Board did not demonstrate that the need for nine bulk variances and design waiver sought would not have a substantial detriment to the public good or, more importantly, substantially impair the intent and purpose of the Master Plan and zoning ordinance of the Borough. The testimony offered before the Board did not demonstrate that the bulk variance relief requested by the applicant in order to proceed with the development met the required proofs so as to grant the relief sought. The proofs offered by the applicant do not meet the requisite standard. The Board has the choice of accepting or rejecting the testimony of

witnesses where reasonably made. Kramer v. Bd. Of Adjust., Sea Girt, 45 N.J. 268, 288 (1965); Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2014), Chapter 27-7.2 and cases cited therein. In this case the Board finds Mr. Truscott's testimony to be more persuasive than that of the applicant's experts.

More importantly, with regard to the (c)(2) criteria, the Board specifically finds that the applicant has not met the appropriate burden of proof necessary to demonstrate that the overall purposes of the Municipal Land Use Law will be advanced by allowing the bulk variances sought. The Board finds that the detriment requiring the granting of the numerous bulk variances clearly outweighs any benefit to the Borough. The Board finds that the testimony offered by Mr. Truscott highlighted the inconsistency between the relief sought by the applicant and how it ran contrary to the Borough Master Plan. To the contrary, the applicant has failed to offer a persuasive testimony that the numerous proposed deviations from the prevailing standards for the nine bulk variances and design waiver sought can be justified.

As has been stated by the New Jersey Supreme Court,

> "by definition, then, no (c)(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a (c)(2) case, then, will not be on the characteristics of the land that, in light of current zoning requirements, create a 'hardship' on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community."

Kaufman v. Planning Board for Warren Township, 110 N.J. 551, 563 (1988).

As has been noted by the courts, "generally speaking, more is to be feared from a breakdown of a zoning plan by ill-advised grants of variances than by refusals thereof." Cummins v. Board of Adjustment of Leonia, 39 N.J. Super 452, 460 (App. Div.) certif. denied,

21 N.J. 550 (1956). In the case before the Board, the applicant has not demonstrated that the proposed nine variances and design waiver present an opportunity for improved zoning and planning that will benefit the Borough or would effectuate the goals of the Borough as reflected in its zoning ordinance and Master Plan. Any economic benefit to the applicant cannot outweigh the detriment by this application in a manner that would adversely affect the community as a whole. The applicant has not met the burden of proof with regard to satisfying the positive and negative criteria as required to secure the myriad of bulk variances sought in this application as set forth above. Without the bulk variances and the design waiver, and given the substantive concerns repeatedly expressed throughout the hearings by the Board about the proposed reconfiguration of this property, the request for the minor subdivision fails, and accordingly is also denied.

NOW THERFORE, BE IT RESOLVED by the Planning Board that the application for property located at Lorillard Avenue in the Borough of Union Beach requesting nine bulk variances, one design waiver and minor subdivision approval as set forth above, is denied for the reasons set forth herein.

The undersigned secretary certifies the within resolution was adopted by this Board on February 27, 2019 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 22, 2019.

Madeline Russo

FOR DENIAL: Steiner, Moxiz, Connors, Hoadley, Wade

AGAINST DENIAL: Wells and Darino

ABSTAIN:

Board Member(s) Eligible to Vote: Steiner, Wells, Moxiz, Darino, Connors, Hoadley and Wade