

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Santopadre Enterprises, LLC
137 Henry Street
Block 63, Lot 14
Decided on July 27, 2022
Memorialized on August 31, 2022
Denial of Application for Minor Subdivision and (c) Variances

WHEREAS, Santopadre Enterprises, LLC (the “Applicant”) has made an application to the Borough of Union Beach Planning Board for minor subdivision and numerous bulk (c) variances, located at 137 Henry Street, also known as Block 63, Lot 14 as shown on the tax map of the Borough, located in the R-8 Residential Zone; and

WHEREAS, the Applicant was represented by Michael Laffey, Esq.; and

WHEREAS, a public hearing was conducted on this application at Borough Hall in the Council Chambers on July 27, 2022, 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 hearing, at which a record was made. The Applicant before the Board seeks approval for minor subdivision to create two new undersized lots to build a new single-family home, each containing four (4) bedrooms, on each lot. The use is permitted in the R-8 Zone. As for the bulk variances needed, they are as follows:

1. Section 13-10.4.f.1(a) of the Ordinance requires a minimum lot area of 7,500 square feet. The applicant proposes two lots of 6,250 square feet.
2. Section 13-10.4.f.2(a) of the Ordinance requires a minimum lot width of 75 feet. The applicant proposes two (2) lots with a lot width of 62.50 feet.
3. Section 13-10.4.f.3(a) of the Ordinance requires a minimum lot frontage of 75 feet. The applicant proposes two (2) lots with a lot frontage of 62.50 feet.

4. Section 13-5.S(d) of the Ordinance requires the total lot coverage of the square footage of the ground floor of all buildings located on a lot in any residential zone shall be less than 25% of the total square footage of the lot. Since the proposed rear deck is covered, it is considered part of the principal structure. Therefore, the building coverage is 26.4%.

In addition to the application, the Board had before it an April 19, 2021 letter updated as of November 29, 2021 from Dennis M. Dayback, Zoning Official. The letter identified the proposed minor subdivision and three bulk variances that would be needed by the Applicant. The hearing on this application took place before the Board at its regular meeting on July 27, 2021. The Applicant is proposing to subdivide the property into two under sized lots, a one-family house, on each of the lots.

Mr. Michael Laffey, represented the Applicant as legal counsel. The Applicant is proposing a minor subdivision of property at 137 Henry Street, as well as three bulk variances. Testifying on behalf of the Applicant would be Mr. Alexandro Padre, Mr. Patrick Lesbriel, licensed professional architect, and Mr. James Higgins, professional planner. Kendra Lelie, PP, AICP, LLA, Board Planner and Dennis Dayback, Zoning Officer, appearing on behalf of the Board. All of these witnesses were sworn in at the start of the hearing.

Mr. Lesbriel started to testify with regard to the plans that had been prepared by his office to create two single-family homes of approximately 2,100 square feet, raised with parking below and four bedrooms. The homes would have two decks, one above the other with no roof on the top deck. The proposed houses would be mirror images of each other. There were no members of the Board asking any questions of this witness at this time in the proceedings.

The next witness on behalf of the applicant was Mr. James Higgins, licensed professional planner who was sworn in and qualified at the outset of his testimony. He described the nature of the proposed minor subdivision and that the lots would be smaller in nature than was required under the R-8 Zone. The lots are supposed to be 7,500 square feet with 75-foot lot frontage and width, whereas the Applicant is proposing 6,250 square feet and frontage and width of 62.5 feet. Mr. Higgins testified that the proposed development would create two homes of similar characteristics and size to that of the surrounding neighborhood. He testified that some of the lots in the area are conforming, but others are not, having lot dimensions as small as 45 or 50 feet. Mr. Higgins testified that the other option for the Applicant would be to create a large detached single-family home. He stated that proposed lots with the two smaller homes was far more attractive than creating one single-family dwelling that would be larger than the other homes in the neighborhood on the property in question. He testified in his professional opinion he did not believe that the proposed development would have an adverse impact on the use and enjoyment of the surrounding properties and provided more than enough light, air and open space to help justify a (c)(2) bulk variance relief.

At this point, Mr. Higgins was asked by members of the Board if there were any 45-foot-wide lots on Henry Street. Mr. Higgins responded there were two; one at the end of the street that is 45 foot wide and one that is 37 ½ foot wide. Mr. Andruzzi asked how many homes were on the lot prior; Mr. Higgins stated just one. Ms. Lelie then asked him questions with regard to the percentage of conforming lots and not just on this street, but in the area of the neighborhood in question. Mr. Higgins responded that approximately 50% to 70% of the neighborhood is conforming according to his testimony. Ms. Lelie then asked whether or not this would meet the objectives of the Master Plan. Mr. Higgins responded he felt that it did since this was less intense

in his view than if one large home was constructed. Councilman Andruzzi asked if one house could be built that would fit into the neighborhood without building an 8-to-10-bedroom home, to which Mr. Higgins answered yes. Ms. Lelie then asked the Applicant whether he had approached the neighbors to buy a small 25 by 100 foot lot next door to be able to make two conforming lots. The Applicant stated that he did and they declined. Ms. Lelie then asked additional questions of Mr. Higgins with regard to the difference if two four-bedroom homes were constructed compared to a large-scale house that could have eight, nine or more bedrooms. Mr. Higgins noted that conceivably you could build a house with 10- or 11-bedroom units. Ms. Lelie asked Mr. Higgins if he had looked at recent listing of sales of homes in Union Beach and would it surprise him to learn that none of them are larger than five bedrooms. Ms. Lelie then asked Mr. Higgins whether it would be likely to build a house that is out of character with the neighborhood just because you had this the opportunity? Mr. Higgins responded that he had seen it many times, but conceded he had that he had not seen it in Union Beach.

At this point the Chair opened the floor to members of the public to ask questions or raise concerns regarding the proposed application. Mr. Russell Nalick of 111 Henry Street expressed his concerns regarding tidal flooding in the area and claimed that there was only one non-conforming lot on the street. Mr. Nalick also complained with regard to traffic conditions and asked where the additional cars that would be generated from this development would go when flooding requires people to move their cars. Gus Young of 120 Henry Street was sworn in and stated that the property is vacant it's permeable and it won't be with two houses on it and that additional homes would make flooding worse. Josh Intermassoli of 138 Henry Street stated he's concerned about traffic and safety given that it is a quiet dead-end street and children play out in the area. Mr. Joe Savi of 117 Henry Street expressed concerns regarding parking and traffic.

Kerry Swartz of 120 Henry Street presented a collage of photographs showing flooding of the street and houses and was marked as Exhibit A-1. There were no objections to it being made part of the record by the Applicant. She testified that a prior owner the property had been denied an application to build a mother daughter house on the property. Ann Marie Fitzgerald of 701 Edmonds expressed concerns regarding flooding, tidal and snow and the creek flooding the area in question. Frances Fitzgerald of 701 Edmond St was also sworn in and expressed his concerns regarding traffic. At this point the hearing was closed to the public.

Ms. Lelie advised the Board of the criteria that would have to be met for the (c)(2) variance relief being sought by the Applicant and she raised the following points: is there any purpose within the Municipal Land Use Law that will be advanced. In her opinion the Applicants planner it's hypothetical is what could be and not necessarily where a one family home would be built. She stated that she did a quick check of the vicinity about one block of the area and there are at least three oversized lots with one house on them. In terms of the benefits outweighing the detriments, Mr. Higgins thought so. However, Ms. Lelie indicated that the zoning benefits were not necessarily to just that particular property owner and that it had to be to the community as a whole.

After a brief recess Mr. Laffey was provided the opportunity to make a closing statement on behalf of the Applicant. Following that several members of the Board expressed their concerns regarding the proposed development. There were concerns raised about it not being consistent with the Master Plan, the creation of undersized lots, and that the Master Plan updates were designed to stop lots from getting smaller and that runs against the Master Plan. Councilman Andreuzzi asked the Applicant when he purchased the property whether he knew

the zoning laws and requirements; Mr. Santoparde responded that he knew it was residential but did not know the exact requirements other than he knew he could build a house.

At this point the public hearing was closed and the Board took the opportunity to express its concerns. Several members of the Board spoke against the application, noting that it would create an undersized lot that is not permitted and contrary to the Master Plan and zoning ordinances, and could see no benefit in terms of overdeveloping these lots as proposed by the Applicant.

NOW THEREFORE, the Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicant is seeking minor subdivision with three bulk variances, as described above in order to build a new one-family house on the property at 734 Second Street in the R-8 Zone. Bulk variance relief is also needed 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.

The Applicant has not supplied sufficient evidence that exceptional or extraordinary circumstances exist which uniquely affect this 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).

Based upon the application, plans, reports and testimony before it, the Board finds that in this particular instance the Applicant has not met the minimum requirements of the Municipal Land Use Law, case law and Borough 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 the (c) variance relief by proposing to create two undersized lots, triggering the need for numerous bulk variances. 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). The evidence before the Board indicates that in this particular circumstance, (c) variance relief cannot be granted to create two undersized lots.

This Board concludes that the Applicant has failed to present sufficiently persuasive testimony to justify the numerous bulk variances relief sought in this application. There are no exceptional or extraordinary circumstances uniquely affecting this piece of property. The strict application of the zoning ordinance would not result in peculiar or exceptional practical difficulty or undue hardship being visited upon the proposed developer of the property. The presence of one-family homes on similar lots in the Borough does not in and of itself meet the “special reasons” test to justify the relief being sought.

The Board finds that the testimony offered cannot justify the Board voting in favor of the Applicant, since the evidence before the Board failed to demonstrate that the need for the bulk variances 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 proposed two lots 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). In this case the Board finds the testimony not persuasive, and finds the issues raised by Ms. Lelie to be right on point.

More importantly, with regard to the (c)(1) and (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 bulk variances to build two one-family houses on two undersized lot clearly outweighs any benefit to the Borough. The Board finds that the questions and testimony offered by Ms. Lelie highlighted the direct inconsistency between the relief sought by the Applicant and how it runs contrary to the Borough Master Plan and Zoning Ordinance. The Applicant has failed to offer persuasive testimony that the proposed deviations from the prevailing standards for the numerous bulk variances 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 numerous bulk variances 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. The Board noted it generally does not approve creating undersized lots to build two new houses. To the contrary, the evidence clearly shows the Applicant wants

the Board to ignore the fact that the Applicant wants to create undersized lots in the R-8 Zone. The 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 numerous (c) bulk variances sought in this application as set forth above. As such, the request for the minor subdivision also fails.

NOW THEREFORE, BE IT RESOLVED by the Planning Board that the application by Santopadre Enterprises, LLC, for property located at 137 Henry Street in the Borough of Union Beach requesting minor subdivision and numerous (c) bulk variances 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 July 27, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on August 31, 2022.

Laurette Wade, Secretary, Planning Board

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

Sweeney Cavallo Andreuzzi Connors Wells

Coffey Hoadley Devino Hallam Murray