

**RESOLUTION**  
**Borough of Union Beach**  
**Planning Board**  
**In the Matter of Dubleski Custom Homes**  
**204 Morningside Avenue**  
**Block 139, Lot 19 and 20**  
**Decided on April 26, 2023**  
**Memorialized on May 31, 2023**  
**Settlement Agreement to Hear and Approve of Application for minor subdivision and (c)**  
**Variances**

**WHEREAS**, (the “Applicant”) has made an application to the Borough of Union Beach Planning Board as part of the settlement of a lawsuit, for minor subdivision and bulk (c) variances, to demolish the existing structure and build two new single-family homes to be located at 204 Morningside Avenue, also known as Block 139, Lot 19 and 20 as shown on the tax map of the Borough, located in the R-8 Residential Zone pursuant to the terms of a Settlement Agreement between the parties; and

**WHEREAS**, the Applicant was represented by Arthur Owens, Esq.; and

**WHEREAS**, a public hearing was conducted in accordance with NJDCA and DLGS regulations for a public meeting on this application on April 26, 2023 after the Board determined it had jurisdiction and that notice had been effectuated by the Applicant; 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 Application is being heard pursuant to the terms of a Settlement Agreement between the Board and the Applicant. This hearing is being conducted as a “Whispering Woods” hearing as per the Settlement Agreement. The form of application was submitted by counsel on behalf of the Applicant. The Applicant before the Board seeks approval for minor subdivision and bulk variance relief which is needed since a minor subdivision creating undersized lots is not permitted in the R-8 Zone.

In addition Andrew Denbigh , Caroline Reider, and Dennis M. Dayback, Zoning Official, with T&M Associates., were all sworn in and qualified.

At the outset of the hearing counsel for the Board explained the Whispering Woods process, putting the relevant section of the Settlement Agreement on the record. Board Counsel proceeded to describe the established case law governing the process involving a Whispering Woods hearing such as the one taking place tonight. It is required under case law established in New Jersey to do such a hearing on notice to the public so that the public is aware of the terms of the settlement. In the record. Mr. McNamara noted that the hearing is open to the public but it is only what the changes that have been made subsequent to the initial plan having been presented to the board. It is not a hearing from scratch all over again with multiple witnesses.

Mr. Robert Kee was sworn in and qualified as a civil engineer. Mr. Kee prepared the most recent version of the minor subdivision map being presented to the Board. Mr. Kee testified as to the changes to the plans in the initial decision of the Board. Mr. Kee testified that the new driveway will be where the existing crosswalk is located. The crosswalk is being relocated closer to the intersection with Wilson Avenue. The intersection crosswalk will be ADA compliant. The drawing has been updated to show the relocation of the walkway,. The plan will also show the new crosswalk at Morningside and Wilson. The existing brick pavers that are utilized as a crosswalk on Morningside will remain as a speed control bump. He noted the existing utility pole will have to be relocated on Morningside Avenue. All of the cost of these improvements are being borne by the applicant. Mr. Wells asked as to the status of the lawsuit. The board attorney noted that the court had strongly urged the parties to resolve the matters without the need for going to trial;. The judge in question has many years experience in municipal and land use related work. The Board had previously approved the settlement agreement and also the

resolution memorializing that approval was previously adopted by the Board. Mr. Kee stated that the lots would be 100 by 75 along Morningside and the other interior lot would be 100 by 65'. The houses would need to be elevated to 21 feet to meet flood elevation requirements.

At this point the hearing was opened to the public. Miss Elizabeth Nigro 44 Scholer drive, asked about the placement of the garage and the crosswalk. Mr. Kee responded that the garage would be attached to the house. Mr. Kee responded that the garage would be attached to the house and the crosswalk could be straight across and not diagonal in nature. She expressed her concerns about traffic flow at the school and the public notice means additional changes could be made to the plan. The board attorney explained that the notice contained standard language and that the revised plans contain all of the changes that were agreed to us part of the settlement agreement. Mr. Eric Ochs, 220 Morningside Avenue, expressed concerns regarding safety with the crossword location and the overall height of the houses. Mr. Kee responded that they will work with the board engineer on all changes. Mr. Stephen Prestia of 202 Wilson Avenue asked about the height restrictions and the traffic during certain times of the day during school hours. Mr. Andrew Ropel, 43 Scholar Drive, questioned the subdivision. Mr. Ropel expressed his concerns in requesting that the board reconsider. Mr. Stephen Wilson, 44 Scholer Drive voiced his concerns about the proposal.

At this point in the proceedings the Board, upon resolution duly adopted, went into closed session for the specific purpose of discussing this ongoing litigation and that action would be taken after the closed session. Thereafter the board resumed to meeting to the public and entertained and adopted a motion to approve the revised design of the minor subdivision as part of the overall settlement of this litigation.

The Applicant agreed that both of the proposed homes would have two car garages and space for additional two cars in their respective driveways; the garages cannot be converted into a separate residence.

**NOW THEREFORE**, the Board hereby makes the following conclusions of law based upon the foregoing findings of fact. The Applicant, pursuant to the Whispering Woods process and the Settlement Agreement entered into between the Board and the Applicant, is seeking minor subdivision and bulk variance relief, as described above, in order to demolish the house and build a new single-family house on each of the two new lots at 204 Morningside Avenue in the R-8 Zone.

With respect to 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 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. The Applicant has to supply 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.

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 bulk 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.

Based upon the application, plans, reports and testimony before it, the Board finds that the Applicant has met the minimum requirements of the Municipal Land Use Law, case law, the

Settlement Agreement and Borough ordinances to approve the application for the minor subdivision and bulk variance relief. The evidence before the Board indicates that in this particular circumstance, relief can be granted consistent with the Settlement Agreement. This Board concludes that the Applicant has presented sufficiently persuasive testimony to justify the and relief sought in this application.

The testimony offered before the Board demonstrated that the bulk variance relief requested by the Applicant in order to proceed with the proposed minor subdivision met the required proofs and conforms to the Settlement Agreement so as to grant the relief sought. The proofs offered by the Applicant meet the requisite standard. More importantly, with regard to the (c)(1) and (c)(2) criteria, the Board specifically finds that the Applicant has 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. Removing the existing structure is to the benefit of the Borough.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Union Beach that the application of Dubleski Custom Homes for minor subdivision and bulk variance relief as described above for property located at is approved as follows:

1. Minor subdivision is approved pursuant to N.J.S.A. 40:55D-47,; and
2. Bulk variance relief as described herein, is approved pursuant to N.J.S.A. 40:55D-70(c).

**BE IT FURTHER RESOLVED** by the Planning Board of the Borough of Union Beach that the application approved herein is subject to the following terms and conditions.

1. Certificate that taxes are paid to date of approval. All escrow accounts are to be kept current, as are the property taxes for the property.

2. Prior to the issuance of any construction permit, the Applicant shall file with the Board and with the Borough construction official or his designee an affidavit verifying the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply copy of any approvals received.

3. The Applicant shall see to the payment of all fees, costs and escrows due or to become due; any and all monies are to be paid within 20 days of said request by the Secretary to the Planning Board. All escrow accounts must remain current, and all property taxes are to be kept paid.

4. The Applicant shall prepare and submit to the Board for the Borough Engineer's review and approval legal metes and bounds descriptions of any roadway dedications, utility easements and or any drainage easement grants that are necessitated by this approval.

5. Monmouth County Soil Conservation District approval and Monmouth County planning board approval.

6. The Applicant shall take appropriate dust control, noise control and vermin control measures during any demolition and construction work done on the site.

7. At least one week before any construction, a pre-construction meeting shall be held including municipal representatives, the Applicant, its engineers and contractors. The meeting shall be held only after the engineer's opinion of probable cost has been submitted to the municipality for computation of engineering and inspection fees, the form of which is to be approved by the Borough Engineer. The Board of education shall also be notified.

8. The Applicant shall comply with all directives of the Borough Fire, Health and Construction Officials, or their designees.

9. The Applicant shall satisfy the conditions set forth in the minutes and the numerous reports issued by T&M Associates, all of which are incorporated herein by reference.

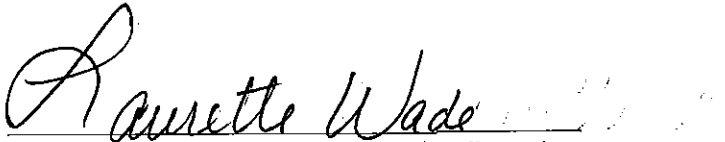
10. The Applicant must post performance guarantees and inspection fees with the Borough prior to the beginning of any onsite construction activities, and they must remain paid through issuance of a CO.

11. The construction of the new houses may not proceed until the existing structure is demolished and the lot cleared.

12. There shall be a deed restriction on each lot prohibiting the conversion of the garage into a separate residence.

13. 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 resolution was adopted by this Board on April 26, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 31, 2023.

  
Laurette Wade, Secretary, Planning Board

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

Sweeney  Connors  Andreuzzi  Cavallo  Wells

Coffey  Hoadley  Devino  Hallam  Murray