

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Anthony Vinciguerra
Application No. 2224
Decided on October 31, 2018
Memorialized on November 28, 2018
Approval for Bulk Variance Relief

WHEREAS, Anthony Vinciguerra (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for bulk variance relief to construct a new 10’ x 20’ deck in front of a house at 1126 Poole Avenue, also known as Block 81, Lot 3, on the Tax Map of the Borough, in the R-8 Zone; and

WHEREAS, a public hearing was conducted on September 26, 2018; and

WHEREAS, the Applicant appeared *pro se*.

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 Applicant is seeking retroactive approval for the construction of a 10’ x 20’ foot deck in the front of the existing single-family dwelling. Pursuant to the R-8 zone, unroofed entrance, porches, terraces, ADA ramps, stairs and landings which do not rise above the height of the floor level of the ground floor may extend up to ten (10) feet into any required front yard. In a letter dated August 17, 2018, the Zoning Official issued a denial of the permit and directed the applicant to come before this Board for bulk variance relief. The Applicant requires the following bulk variance relief:

1. Section 13-10.4 f.2.(a) – Minimum lot width of 50 feet where 75 feet is required. **pre-existing*
2. Section 13-10.4 f.3.(a) – Minimum lot frontage of 50 feet where 75 feet is required **pre-existing*

3. Section 13-10.4 f.7 – Minimum side yard setback of 6/8 feet where 8 feet, with two combined side yards of not less than 20 feet are required.
4. Section 13-5.5 – Yard Areas, unroofed entrance porches, terraces, ADA ramps, stairs and landings which do not rise above the height of the floor level of the ground floor may extend up to ten (10) feet into any required front yard.

The Applicant was the sole witness, appearing without benefit of counsel. He described the deck in question and that it had replaced the existing deck that was 4 feet by 12 feet. There had been no Certificate of Occupancy issued given that it was constructed without benefit of permits in advance. The Applicant testified that he is finishing renovations to the house and is preparing to move his family into the building. It was determined that the proposed deck would not block any line of sight for other driveways.

There were no members of the public or residents wishing to speak for or against the subject application.

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 as described above to retroactively approve the construction of a deck in the front yard of his home at 116 Poole Avenue in the R-8 Zone. The use is permitted in the zone.

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 outweighs any detriments. The use is one that is permitted in the R-8 Zone. As noted in the report of the zoning official, two of the four bulk variances that are being sought are pre-existing conditions which are not being significantly exacerbated. 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.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Anthony Vinciguerra for property located at 116 Poole Avenue, known as Block 81, Lot 3 on the Tax Map of the Borough is determined as follows:

1. The requested bulk variances as recited herein for retroactive approval of a new deck are approved pursuant to N.J.S.A. 40:55D-70(c).

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

1. The plan shall be implemented strictly in accordance with the plans submitted and approved by the Board.
2. The Applicant shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications from the Board's professionals.
3. 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.
4. Certification of taxes have been paid to the date of approval.
5. Prior to the issuance of any Certificate of Occupancy or other 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.
6. A meeting shall be held by the Applicant and the Borough officials to ensure all permits, approvals and documents are in order.
7. 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 October 31, 2018 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 28, 2018.


Madeline Russo, Planning Board

FOR: *Mr. Wells, Second - Counselman Cavallo*

AGAINST: 0

ABSTAIN: 0

Board Member(s) Eligible to Vote:

Steiner Wells Moniz Devino Farese Andreuzzi Cavallo
 Wade Coffey Connors Hoadely