

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Tony Medina
734 Second Street
Block 7, Lot 11
Decided on February 21, 2023
Memorialized on March 29, 2023
Settlement Agreement to Hear and Approve of Application for (c) and (d) Variances

WHEREAS, Tony Medina (the “Applicant”) has made an application to the Borough of Union Beach Planning Board for a (d)(1) use variance and numerous bulk (c) variances, to demolish the existing structures and build a new two-family home to be located at 734 Second Street, also known as Block 7, Lot 11 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 Paul Mirabelli, Esq.; and

WHEREAS, a public hearing was conducted in accordance with NJDCA and DLGS regulations for a public meeting on this application on February 21, 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 dated February 3, 2023 was submitted by counsel on behalf of the Applicant. The Applicant before the Board seeks approval for a (d)(1) use variance which is needed since two-family homes are not permitted in the R-8 Zone. As for the bulk variances needed, the original application called for the following:

1. Section 13-10.4 f.1.(a) – Minimum lot area of 5,000 sqft were 10,000 sqft is required. **pre-existing*
2. Section 13-10.4 f.2.(a) – Minimum lot width of 50 feet on Florence Avenue where 100 feet is required. **pre-existing*
3. Section 13-10.4 f.3.(a) – Minimum lot frontage of 50 feet of Florence Avenue where 100 feet is required. **pre-existing*
4. Section 13-10.4 f.4.(a) – Minimum lot depth of 50 feet on Second Street where 100 feet is required. **pre-existing*
5. Section 13-5.5 d – The total lot coverage of the square footage of the ground floors of all buildings located on a lot in any residential zone shall not exceed 25% of the total square footage of the lot as shown on the survey provided. The proposed lot coverage is 26.4%.

In addition to the application, the Board had before it an October 14, 2021 letter from Dennis M. Dayback, Zoning Official, with T&M Associates. The letter identified the (d)(1) variance and five bulk variances that would be needed by the Applicant.

The hearing on this application took place before the Board at its regular meeting on February 21, 2023. The Applicant plans to demolish the existing three-family house and construct a two-family house, which is not permitted in an R-8 Zone, thus requiring a (d)(1) use variance.

The witness on behalf of the Applicant was Mr. Mark Leber, professional engineer and planner who was sworn in and qualified as an expert in both areas.

At the outset of the hearing counsel for the Board put the relevant section of the Settlement Agreement on the record. The settlement requires the demolition of all existing

structures on the property and the construction of a new two-family dwelling. Two family homes are not permitted in the R-8 zone. This is being permitted under the terms of the Settlement Agreement entered into between the Parties. The complaint will be dismissed with prejudice once this hearing is completed and the resulting memorialized Resolution adopted. The Court will retain jurisdiction if necessary. There were four exhibits entered into the record Exhibit A-1, General Information, Exhibit A-2, Topographic survey dated October 17, 2022., Exhibit A-3, Floor Plan Elevations dated September 20, 2019, revised September 22, 2022, and Exhibit A-4, Location Survey existing conditions Section 18-96. Counsel for the Board stipulated that the application package was deemed complete and satisfied the parameters of the settlement at this point.

Mr. Leber, who had been sworn in qualified, proceeded to describe the new reconfiguration of the property and the proposed construction of the two-family house which would have garages and driveways. Mr. Mirabelli, on behalf of his client, agreed to a stipulation that a deed restriction would be signed preventing the garages from being converted into separate residences. It was also agreed to as a separate condition that all of the structures on the property must be completely demolished prior to new construction of the proposed two-family house beginning on the premises. The Applicant will also be responsible for taking all measures with regard to noise control, dust control and vermin control during the demolition of the structures and the construction of the new two-family house.

At this point in time the Chairman opened the floor for members of the public to express any questions or concerns or to ask any questions of the witnesses proffered by the Applicant. At this point the Board permitted redirect by the Applicant. The Applicant noted that both of the

proposed homes would have two car garages and space for additional two cars in their respective driveways.

At this point the public hearing was closed and the Board took the opportunity to express its concerns.

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 (d)(1) use and bulk variance relief, as described above, in order to demolish the three-family house and build a new two-family house on the property at 734 Second Street in the R-8 Zone. Bulk variance relief is also needed as described herein.

Under the Municipal Land Use Law, a Zoning Board of Adjustment, when considering a typical (d) variance, cannot grant relief unless sufficient special reasons are shown, there is no substantial detriment to the public good and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance. The burden of proof is on the applicant to establish that these criteria have been met. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law, and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute a special reason. Courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special

reasons have been found where a variance would serve any other purposes of zoning set forth in N.J.S.A. 40:55D-2. However, in the final analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interest of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the zone or the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the impact of the proposal on the public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect would be substantial. Furthermore, in most (d) variance cases, the applicant must satisfy an enhanced quality of proof and support by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

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 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 (d) variance subdivision and numerous bulk variances as listed above. The evidence before the Board indicates that in this particular circumstance, (d) variance relief can be granted under the Settlement Agreement on the basis of the downsizing the historical use of the property. This Board concludes that the Applicant has presented sufficiently persuasive testimony to justify the use variance and the numerous bulk variances relief sought in this application.

The Board finds that the testimony offered can justify the Board voting in favor of the Applicant, since the evidence before the Board demonstrates that the need for use and bulk variances sought would not have a substantial detriment to the public good. The testimony offered before the Board demonstrated that the use and bulk variance relief requested by the Applicant in order to proceed with the proposed two-family house 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. The Board finds that the testimony offered by Mr. Leber highlighted the need

for the relief sought by the Applicant in this particular instance. 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 Tony Medina for (d)(1) and bulk variance relief as described above for property located at 734 Second Street is approved as follows:

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

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.

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.

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 two-family house may not proceed until the existing structures are demolished and the lot cleared.

12. There shall be a deed restriction prohibiting the conversion of either 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 February 21, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on March 29, 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