

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Ellen and George Brown
Zoning Permit No. 3025
Decided on March 31, 2021
Memorialized on April 28, 2021
Approval for Bulk Variance Relief

WHEREAS, Ellen and George Brown (hereinafter the “Applicants”) have made an application to the Borough of Union Beach Planning Board for bulk variance relief to permit the construction of a shed at 18 Johnson Avenue, also known as Block 110, Lot 1.03 on the Tax Map of the Borough, in the R-8 Residential Zone; and

WHEREAS, a public hearing was conducted on March 31, 2021 remotely by Zoom as per DCA regulations and guidelines issued by DLGS; and

WHEREAS, the Applicants were not represented by counsel;

NOW THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at its public hearing which was conducted remotely in accordance with DCA/DLGS guidelines, at which a record was made. The Applicants are before the Board seeking bulk variance relief to build a second shed at a single-family home on property in the R-8 Residential Zone.

The Applicants require two (2) bulk variances as follows:

1. Section 13-5.8 maximum square footage for proposed accessory building exceeds 180 sq. ft.
2. Section 13-8.13 fences which are not open fences located in the front yard shall not exceed 36 inches in height.

The bulk variance relief sought was reflected in a letter from Dennis Dayback, Zoning Official, dated December 29, 2020 and revised as of January 27, 2021, February 26, 2021 and March 1, 2021 that is part of the administrative record before the Board.

Ellen Brown was sworn in and gave testimony appearing virtually. Board Counsel referred the Applicants to Mr. Daybacks letter. He explained the reason for her application before the Board, noting that she is looking to construct a second shed, 12 x 16 feet, and relocate an existing fence so that the shed will be located behind it. Two bulk variances are needed which she explained. Ms. Brown also testified that she gave legal notice as required and spoke to a number of neighbors. She had not heard back from any of them. One resident, Ms. Laurie Gress, of 14 Johnson Avenue, was sworn in and inquired as to why she had not been approached personally about this application, but she did acknowledge that she did receive the certified legal notice from the Applicants. Questions were then raised with regard to the size of the fence and Ms. Brown advised that she has a pool and the fence needs to be that high to comply with Borough ordinance. Mr. Murray inquired about the distance between the shed and Ms. Brown advised that they also met the ordinance requirement. She noted that the shed has been positioned to preserve a vegetable garden which is already located in the rear of the property. There were no other members of the public wishing to express an opinion for or against the application or asking to question the Applicants or the Board's professionals.

Several members of the Board spoke in favor of the application with the conditions as agreed to by the Applicants.

NOW THEREFORE, the Planning Board makes the following conclusions of law, based upon the findings of fact. The Applicants are before the Board seeking approval for bulk variance relief to allow the construction of a new shed in the yard of a single-family house at 18

Johnson Avenue in the R-8 Residential Zone. The use is permitted in the zone. There is the need for two (2) bulk variances as described previously.

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 satisfy 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. 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, Applicants 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 Applicants 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 clearly outweigh any detriments. The accessory use is one that is permitted in the R-8 Residential Zone. As noted, the bulk variance relief sought will permit the shed to be installed in a suitable location on the Lot in question. Based on the record before the Board, the benefits outweigh the minimal detriments from granting this relief. Furthermore, the evidence before this Board indicates there will be no detriment to the public good and no substantial impairment to the intent and purpose of the zoning ordinance or Master Plan by granting this bulk variance relief in this particular case.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Ellen and George Brown for property located at 18 Johnson Avenue in the R-8 Residential Zone, requesting two (2) bulk variances as listed above is determined as follows:

1. The two (2) bulk variances, as recited herein, are approved pursuant to N.J.S.A. 40:55D-70(c) (1) and (2).

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

1. The development of this parcel shall be implemented strictly in accordance with the plans submitted and approved.
2. The Applicants shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications. Any relocation of the proposed shed shall require the Applicants to return to this Board for amended bulk variance approval.

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. The Applicants will arrange for the proposed shed to be inspected and permits issued by Borough Code Officials.

6. The location of this shed shall be in accordance with the plans submitted to the Planning Board and its professionals and approved by the Borough Engineer.

7. The Applicants shall comply with all directives of all Borough Code Officials.

8. The Applicants must post performance guarantees and inspection fees with the Borough, as requested, before starting construction on the shed.

9. The Applicants shall take all appropriate dust control during the construction of the shed.

10. 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 March 31, 2021 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on April 28 2021.


Madeline Russo, Planning Board

FOR: 8

AGAINST: 0

ABSTAIN: 0

Board Member(s) Eligible to Vote:

*Connors, Wells, Coffey, Wade, Devins,
Sweeney, Andruzzetti + Cavallo*