

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Dubleski Custom Homes, LLC
204 Morningside Avenue
Block 137, Lots 19 and 20
Decided on November 23, 2021
Memorialized on December 20, 2021
Denial of Application for (c) Variances and Minor Subdivision

WHEREAS, Dubleski Custom Homes, LLC (the "Applicant") has made an application to the Borough of Union Beach Planning Board for a use variance and numerous bulk (c) variances, located at 204 Morningside Avenue, also known as Block 137, Lots 19 and 20 as shown on the tax map of the Borough, located in the R-8 Residential Zone; and

WHEREAS, the Applicant was represented by Mark Breitman Esq., and

WHEREAS, a public hearing was conducted in accordance with NJDCA and DLGS regulations for a hybrid public meeting on this application on November 23, 2021 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 application before the Board seeks minor subdivision and approval for a combination of five (5) bulk variances which are as follows:

Scenario No. 1 – 140 Foot Frontage along Morningside Avenue. T
Proposed Lot 19

1. Section 13-10.4 f.1.(b)- Minimum lot area of 7,500 sq ft were 10,000 sq ft is required
2. Section 13-10.4 f.2.(b) - Minimum lot width of 75 feet where 100 feet is required
3. Section 13-10.4 f.3.(a) – Minimum lot frontage of 75 feet where 100 feet is required

Proposed Lot 20

1. Section 13-10.4 f.1.(a) - Minimum lot area of 6,500 sq ft were 7,500 sq ft is required.
2. Section 13-10.4 f.2.(a) - Minimum lot width of 65 feet where 75 feet is required.
3. Section 13-10.4 f.3.(a) - Minimum lot frontage of 65 feet where 15 feet is required

Scenario No. 2 – 150 Foot Frontage along Morningside Avenue

Proposed Lot 19

1. Section 13-10.4 f.1.(b) - Minimum lot area of 7,500 sq ft were 10,000 sq ft is required
2. Section 13-10.4 f.2.(b) - Minimum lot width of 75 feet where 100 feet is required
3. Section 13-10.4 f.3.(a) – Minimum lot frontage of 75 feet where 100 feet is required

In addition to the application, the Board had before it the October 22, 2021 letter from Dennis M. Dayback, Zoning Official, with T&M Associates. The letter of October 22, 2021 identified the five (5) bulk variances that would be needed.

The hearing on this application took place before the Board at its regular meeting on November 23, 2021. The Applicant is proposing to subdivide a corner lot which would, with the proposed configuration, make the lots smaller than the minimum required in the R-8 Zone, which specifies that corner lots must be no less than 100 by 100 feet. Based on the discussion at the October meeting of the Board as to whether the lot dimensions were correct, in coming back before the Board the Applicant represented, through its counsel, Mark Breitman, that the lot dimensions as set forth in the application package and survey are accurate. As such the proposal would create a 75 by 100 foot corner lot and 65 by 100 foot interior lot. The proposed minor subdivision map was prepared by Robert Kee Jr., professional engineer and land surveyor, dated May 21, 2021. The Applicant also presented an alternative as noted in Mr. Dayback's report of

October 22, 2021 where proposed Lot 19 required three different types of variance relief as opposed to the scenario number one as set forth in Mr. Dayback's letter.

The first witness on behalf of the Applicant was Mr. Dubleski. He testified, after having been sworn in, that his proposal called for new single-family homes to be built on each lot. He testified that the structures to the rear of the current property are in poor condition and would be removed.

The next witness of behalf of the Applicant was Mr. John McDonough, licensed professional planner and professional landscape architect, who was sworn in and qualified before the Board as an expert in his fields. He proceeded to go through a PowerPoint presentation, and provided copies to the Board. Mr. McDonough testified that in his opinion that the proposed homes would comply with the zoning accepting lot dimensions as had been noted in Mr. Dayback's report. He testified the Applicant is relying strictly on the (c)(2) criteria under Section 70 to justify the Applicants request for relief of the bulk variances being sought. He noted most of the lots in the general vicinity of the property were smaller in nature and would further support granting variance relief in this instance. He also testified that in his opinion, there would be no adverse impact and homes would be on scale with additional property in the area. Mr. Andrew Denigh of T&M Associates, when asked by the Board, merely referred that Mr. McDonough presented his case.

Prior to opening the floor to the general public, the Board chairman opened the floor for members of the Board to express their comments and concerns. Commissioner Frank Wells spoke out against the application, saying he was concerned about public safety in the proximity to the school to the proposed lot. Councilman Andruzzi also expressed his opposition. He noted there were no corner lots used in the presentation by the Applicant's planner. All of the other

corner lots in this area are dimensioned in accordance with Borough Ordinance. Mr. Andruzzi also pointed out that the application did not conform to the master plan.

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.

Ms. Elizabeth Nigro of 44 Scholer Drive spoke against the application. She felt the design did not provide adequate yard space particularly the rear yard and that there's a lack of parking in the area, albeit in part the school proximity across the street. She also noted that there would be little on-street parking available. Mr. Stephen Wilson of 44 Scholer Drive spoke against the application. He said there were no 75-foot corner lots, and he felt the lot should be left at the current configurations size. He also asked about the height. He was also concerned having two homes here would cause additional difficulty with regard to traffic and parking. Mr. Tom Vorrius of 41 Scholer Drive, stated he lived across the street from the subject property. He spoke against the application. He felt that a two-story house would deny adjacent property owners the privacy they would like to have in their own backyards. Mr. Andrzej Robel of 43 Scholer Drive said the children's security is the biggest concern he had. He also expressed concerns about lack of privacy in adjacent lots from a two-story house, lack of privacy, and adequacy on-street parking given the location across the street from the school. Mr. Peter Isaldo of 212 Morningside Drive noted he lives directly across from the school. He noted that it has very busy AM and PM peaks of traffic to the point where he won't go out at those times just to sit in a lot of traffic. He felt that the proposed development would do nothing for the benefit of the community and also asked whether the Applicant would be lifting the homes.

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 afforded the opportunity to express its concerns. Five additional members of the Board spoke against the application, noting that it would create undersized lots contrary to the Master Plan and zoning ordinances, and could see no benefit in terms of creating a process to start subdividing these lots as being 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 and extensive bulk variance relief, as described above, in order to separate the property and build two new houses on two proposed undersized lots construct a single-family dwelling on the property at 204 Morningside Avenue in the R-8 Zone.

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. Further, the Applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a 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).

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 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.

Finally, an Applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the Applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

Based upon the application, plans, reports and testimony before it, the Board finds that 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 proposed minor subdivision and 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).

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

The Board finds that the testimony offered cannot allow the Board to rule in favor of the Applicant, since the evidence before the Board failed to demonstrate that the need for 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 minor subdivision 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 Mr. McDonough’s testimony not persuasive.

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 create two substandard size lots clearly outweighs any benefit to the Borough. The Board finds that the testimony offered by Mr. Truscott highlighted the direct inconsistency between the relief sought by the Applicant and how it ran contrary to the Borough Master Plan. To the contrary, the Applicant has failed to offer persuasive testimony that the numerous 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 does not approve creating undersized lots. To the contrary, the evidence clearly shows the Applicant wants the Board to ignore the fact that the Applicant wants to create two new undersized lots. 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 Board explicitly noted that this proposal was in direct contravention

of the Master Plan and zoning ordinances of the Borough. The Applicant has not met the burden of proof with regard to satisfying the positive and negative criteria as required to secure the numerous bulk variances sought in this application as set forth above. In making these finding the Board voted unanimously against the application. The request for the numerous bulk variance and minor subdivision is denied.

NOW THEREFORE, BE IT RESOLVED by the Planning Board that the application by Dubleski Custom Homes, for property located at 204 Morningside Avenue in the Borough of Union Beach requesting numerous bulk variances, and minor subdivision 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 November 23, 2021 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 20, 2021.


Madeline Russo, Planning Board

TO DENY THE APPLICATION
FOR: (8)
AGAINST: (0)
ABSTAIN: