

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Christine DeBellas
Zoning Application No. 3454
Decided on October 26, 2022
Memorialized on November 30, 2022
Approval for Bulk Variance Relief

WHEREAS, Christina DeBellas (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for bulk variance relief to permit the construction of a six-foot-high vinyl fence around the property at 122 Dock Street, also known as Block 5, Lot 21 on the Tax Map of the Borough, in the R-8 Residential Zone on the east side of Dock Street; and

WHEREAS, a public hearing was conducted on October 26, 2022 at the Borough Hall Council Chambers after the Board determined it had jurisdiction; 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 which was conducted in person, at which a record was made. The Applicant is before the Board seeking bulk variance relief to build a six foot fence around the property with a single-family home at 122 Dock Street in the R-8 Residential Zone. The use is permitted. Fences are regulated by Borough Ordinance.

Fences exceeding 36 inches in height, which are not open fences, are not permitted in the front yard. As noted in the report of the Zoning Officer, the proposed fence has to meet the following requirements as outlined in Borough Ordinances:

1. Under Section 13-8.1 J(b), All fences must be erected within the property lines, and no fence shall be erected so as to encroach upon a public right-of-way.
2. Under Section 13-8.13(d) All supporting members of a fence shall be located on the inside of the fence, and if erected along or adjacent to a property line, the supporting members

'of the fence shall face the principal portion of the tract of land of the property upon which the fence is erected.

3. Section 13-8.13 (a) 1 -Hedges, walls, and fences, which are not open fences as defined in subsection 1 3-2.3(a), located in a front yard or within five feet of a side (secondary front) yard of a corner lot fronting on a street shall not exceed 36 inches in height. Fences, hedges, and walls which are set back greater than five feet from the side property line corner lot fronting on a street shall not exceed six feet in height.

The relief for the proposed fence and the bulk variance relief sought are set out in a letter from Dennis Dayback, Zoning Official, dated May 3, 2022, that is part of the administrative record before the Board.

Ms. DeBellis appeared without legal counsel and was the only witness to this application. She was sworn in. She stated the existing house is a single-family home. The Applicant is seeking to build a six foot privacy fence. The property has an unusual configuration. Ms. DeBellis stated that the majority of her yard is to the right of her house so she wants to extend her fence past the front of her house which would still be about 30 feet from the curb. She testified that her neighbor has a fence and her fence would align perfectly with it. Mr. Denbigh testified that Dock Street is unique in that the right of way is about 31 feet from the curb to the property line. Typically in the Borough the right of way is about 6 ft from the curb. So even though they are technically in the front yard it is 31 feet back from the edge of the roadway and the Applicant needs a bulk variance for a fence in the front yard but from a practicality standpoint there is no issue with sight triangle and no comments from an engineering standpoint.

There were no members of the public expressing an interest in asking any questions of the Applicant, members of the Board, or wishing to express an opinion for or against the proposed application.

NOW THEREFORE, the Planning Board makes the following conclusions of law, based upon the findings of fact. The Applicant is before the Board seeking approval for bulk variance relief to allow the construction of a fence around an existing single-family house at 122 Dock Street in the R-8 Residential Zone. The use is permitted in the zone. There is the need for one bulk variance as described above.

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. The 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 in this particular case 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 outweigh any detriments. As noted, the bulk variance relief sought will permit the proposed fence to be constructed in a suitable location on the lot in question. Based on the record before the Board, in this particular circumstance the benefits outweigh the detriments from granting this relief. The bulk variance is triggered by the unusual shape of the lot. It is a pre-existing condition that cannot be minimized. 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. Since the property does not have a conventional back yard, the fence provides some privacy for the Applicant.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Christina DeBellas for the property located at 122 Dock Street in the R-8 Residential Zone, requesting bulk variance as listed above is determined as follows:

1. The bulk variance for the location and height of the proposed fence as recited herein, is 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 installation of the fence shall be implemented strictly in accordance with the revised plans submitted and approved by the Zoning Officer and Code officials.

2. The Applicant shall comply with all requirements and any subsequent reports with respect to this application or subsequent applications. Any relocation of the fence shall require the Applicant 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. This is an ongoing obligation of the Applicant.

4. Certification of taxes have been paid to the date of approval.

5. The Applicant will arrange for the fence to be inspected during installation which shall not commence until a permit is issued by Borough Code Officials.

6. The Applicant shall comply with all directives of all Borough Code Officials.

7. The Applicant must post inspection fees (if any) with the Borough, as requested, before starting construction on the fence.

8. 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 26, 2022, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 30, 2022.

Laurette Wade, Secretary, Planning Board

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

Sweeney Cavallo Andreuzzi Connors Wells

Coffey Hoadley Devino Hallam Murray