

**RESOLUTION**  
**Borough of Union Beach**  
**Planning Board**  
**i/m/o Doug Brown and Hansa Dorwani**  
**Decided on July 27, 2022**  
**Memorialized on August 31, 2022**  
**Bulk Variance Relief**

**WHEREAS**, Doug Brown and Hansa Dorwani (hereinafter the “Applicants”) have made an application to the Borough of Union Beach Planning Board for bulk variances on property located at 716 Second Street, also known as Block 7, Lot 4 on the Tax Map of the Borough, in the R-8 Residential Zone; and

**WHEREAS**, a public hearing was conducted on July 27, 2022;

**WHEREAS**, the Applicants were represented by Lawrence Kantor, Esq.; and

**WHEREAS**, the Application was deemed complete and evidence of compliance with the notice requirements was presented establishing that the Board has jurisdiction over the Application.

**NOW THEREFORE**, the Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made.

The Applicants propose to construct a new two-story single-family home. The application requires the following bulk variances:

- a. Section 13-10.4 f.2.(a) – Minimum lot width of 37.50 feet along Second Street and Third Street where 75 feet is required. (\*pre-existing condition)
- b. Section 13-10.4 f.3.(a) – Minimum lot frontage of 37.50 feet along Second Street and Third Street where 75 feet is required (\*pre-existing condition)
- c. Section 13-10.4 f.7.(a) – Minimum side yard setback of 6 .25 feet on both sides where a minimum of 8 feet with a total of 20 feet is required

- d. Section 13-4 – The proposed structure is larger than the previous structure that has been demolished, therefore increasing the nonconformity.

Counsel for the Applicants provided a brief synopsis of the application and the bulk variance relief that was being sought by the Applicant. Mr. Brown was sworn in and testified that he would not be residing in the proposed residence. Mr. Brown proceeded to describe the proposed two-family home of approximately 2,100 square feet that he is looking to construct on the property with a single parking space underneath the proposed residence. Mr. Dayback, the Zoning officer, was sworn in, as was the Applicant's planner, James Higgins. Mr. Dayback noted that the proposed structure is larger than the one that was located on the property. He noted that the lot has a different type of configuration in that it is 37.5 feet wide but 200 feet deep; it runs from Second Street to Third Street. The existing house is proposed to be set back from Second St. Mr. Dayback inquired of the Applicant as to whether he intended at some point in time to subdivide the property to attempt to get another residence built fronting on Third Street. Mr. Kantor, on behalf of his client, stated the Applicant would agree as a condition of any approval granted that the lot cannot be subdivided. Counsel for the Board advised counsel for the Applicant that this would require a deed restriction, not just a condition in the resolution. Mr. Kantor and his client both agreed.

At this point Mr. James Higgins, professional planner, proceeded to testify on behalf of the Applicant. Mr. Higgins was sworn in at the outset of the proceedings and qualified as an expert in professional planning. He testified that the Applicant has a 70 (c)(1) hardship variance. He noted that variance is needed to meet the requisite side-yard setbacks which leaves a 28-foot-wide house. He did not believe that the proposed bulk variance relief would cause substantial detriment to the use and enjoyment of surrounding properties. He stated that the density of the

development does meet the R-8 zone requirements. Mr. Higgins testified that if the Applicant tried to comply with all of the code setbacks the proposed house could only be 17 feet wide. Mr. Murray asked if the applicant could reduce the width of the house by 1 foot and make the setbacks equal at 5 1/4 feet. Mr. Brown stated he would do that if it was a requirement of approval, but he would like to make it a foot longer to make up for the loss of square footage. There was no objection to Mr. Brown's suggestion from the Applicant or the Board. There were no members of the public wishing to ask any questions of the Applicant or its witnesses, or to speak for or against the application.

**NOW, THEREFORE**, the Board makes the following conclusions of law based on the foregoing findings of fact. The Applicants are seeking approval to build a new residence that requires bulk variance relief as described above. The use is permitted in the R-8 Zone.

Under the Municipal Land Use Law, N.J.S.A. 40:55D-70(c), the Board has 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. Applicants may show that exceptional topographic conditions, physical features, or other extraordinary circumstances exist which uniquely affect the specific piece of property and limited 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 Applicants have 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 Applicants 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 have met the requirements of the Municipal Land Use Law, case law and Borough 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 from granting the relief requested clearly outweigh the detriments. The use is permitted.

The Applicant has demonstrated that the proposed variance relief is not going to significantly impact in an adverse manner the use and enjoyment of surrounding properties. The proposed house is of a size and dimension that roughly fits the adjacent area and is comparable with other homes. The deed restriction will help prohibit over intense development of the property by way of proposed further subdivision, which is now prohibited. The Applicant has agreed to a deed restriction to preserve and enforce that restriction. A copy of this resolution shall be attached to the deed restriction so as to give further guidance to any potential purchaser in the future.

The evidence before the Board indicates that in this particular instance, bulk variance relief can be granted given that some of the variances requested are for existing conditions that are not being significantly exacerbated by the proposed residence. The Board hereby finds that granting this relief will allow for the proposed house to be built and occupied without any

substantial detriment to the public good or in a manner that is contrary to the intent and purpose of the Master Plan or Zoning Ordinance of the Borough.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Union Beach that the application of Doug Brown and Hansa Dorwani for property located at 716 Second Street, also known as Block 7, Lot 4 on the Tax Map of the Borough, is determined as follows:

1. Bulk variances as recited herein 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 implementation of the plan shall be implemented strictly in accordance with the plans submitted and approved by the Board.

2. The Applicants 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 construction permit, the Applicants shall file with the Board and Construction Official, an affidavit verifying that the Applicants 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 pre-construction meeting shall be held by the Applicants and the Borough officials at least one week prior to the start of construction to ensure all permits, approvals and documents are in order.

7. The Applicants shall seek approval or letter of no interest from the Monmouth County Planning Board.

8. The Applicants shall take all appropriate measures to control any dust, dirt and any vermin during construction/work conducted on the premises.

9. The Applicant shall record a deed restriction, attacking this Resolution prohibiting the subdivision of this property, and shall submit same for approval before starting any construction work on the property.

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 July 27, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on August 31, 2022.

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Laurette Wade, Secretary, Planning Board

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

\_\_\_ Sweeney \_\_\_ Cavallo \_\_\_ Andreuzzi \_\_\_ Connors \_\_\_ Wells

\_\_\_ Coffey \_\_\_ Hoadley \_\_\_ Devino \_\_\_ Hallam \_\_\_ Murray