

**RESOLUTION**  
**Borough of Union Beach**  
**Planning Board**  
**In the Matter of Harry Hoff**  
**430 Aumack Avenue**  
**Block 165, Lot 4.01**  
**Decided on January 31, 2024**  
**Memorialized on February 28, 2024**  
**Application for Bulk (c) Variances**

**WHEREAS**, Harry Hoff (the “Applicant”) has made an application to the Borough of Union Beach Planning Board for several bulk (c)(1) hardship variances, located at 430 Aumack Avenue, also known as Block 165, Lot 4.01 as shown on the tax map of the Borough, located in the R-8 Residential Zone; and

**WHEREAS**, the Applicant was represented by Paul Mirabelli, Esq.; and

**WHEREAS**, a public hearing in conformance with the Open Public Meetings Act and applicable DCA Regulations was conducted on January 31, 2024; and

**NOW THEREFORE**, the Board makes the following findings of fact based upon evidence presented at the aforesaid public hearings, at which a record was made. The Applicant before the Board seeks approval for three (3) (c)(1) hardship variances, since this is an undersized lot for the R-8 Zone. As for the three (3) bulk variances needed for a single-family residence, they are as follows:

1. Section 13-10.4 f.1.(a) – Minimum lot area of 4,000 sq. ft. were 7,500 sq. ft. is required;
2. Section 13-10.4 f.2.(a) – Minimum lot width of 40 feet on Aumach Avenue where 75 feet is required; and
3. Section 13-10.4 f.3.(a) – Minimum lot frontage of 40 feet of Florence Avenue where 75 feet is required.

By way of background, in 2022, the Applicant submitted essentially the same application to the board seeking bulk variance relief. At the time, the Board had been involved in prior litigation involving the same property and had resulted in two Superior Court decisions by Judges O'Hagan and Judge Lawson, finding that the minor subdivision in question was illegal. The Applicant was allowed to proceed and make a detailed presentation to the Board explaining the long and tortured history of the property and the need for variance relief. Those hearings occurred in January, March and April of 2022. Ultimately, the Board determined that it was still bound by the rulings of Judge O'Hagan, and Judge Lawson and declined to take action on the application.

The Applicant then filed an appeal to the Superior Court of New Jersey. The case was ultimately decided in favor of the Applicant via Order of the Court dated December 29, 2023. The delay in adjudicating the case was due in part to the untimely death of Judge Lisa Thornton. Judge McCarthy ruled that the decision of the Board to adhere to the decisions of Judge Lawson and Judge O'Hagan was reversed and the matter remanded to the Board for a hearing on the merits. Judge McCarthy made no finding as to the merits of the application.

The first witness to testify was the Applicant. Mr. Hoff briefly reiterated the long history of the property and noted that there was no response to the request sent out by mail to the adjacent property owners to see if they were interested in acquiring the property. The Exhibits are as follows:

- A-1: Lawsuit Decision;
- A-2: Application;
- A-3: Plans & Elevations by Jason Peist, AIA;
- A-4: )2) Site Plans, dated 10/18/2022 & 11/09/2023;
- A-5: Letter to neighbors regarding purchasing property;
- A-6: Mr. Hoff Statement;
- A-7: Copy of pages 24, 25 of tax map with properties highlighted in yellow and yellow with green strips.

Mr. Mark Leber, Professional Engineer and Planner, was then sworn in and qualified as an expert in his respective fields. The witness testified that the vacant lot is located in the R-8 zone, where the standards require a lot be 75 ft. by 100 ft. and 7500 square ft. of property. The lot in question is undersized compared to those requirements. However, it was noted the design of the home does meet the respective setbacks as required in the zone. He also noted that the lot coverage complied. He noted that there would be two parking spaces in the driveway.

Mr. Leber said the Applicant will be able to connect into water and sewer service. He noted that the lots in the area of other single-family dwellings are of various lot sizes. He testified there was no land available for the Applicant to acquire to enlarge the size of the lot. From a planning perspective, he saw no detriment from the development of the site since it is a permitted use. He's testified in his professional opinion, that the variance relief was minimal in nature. He saw no detriment to the public good. He noticed several adjacent lots were also 40 ft. by 100 ft. in size. He noted a number of the lots in the immediate vicinity did not comply with the current ordinance. He further testified that the proposed house was a permitted use in the zone and that the property was not in a flood hazard area. In his professional opinion the proposed single-family home was not infringing on light and air of adjacent properties. He agreed with the Board that if the Applicant or Owner wanted to place a shed in the backyard, it would require the Owner to come back before the Board to seek bulk variance relief. He noted that all of the prior applications for development of Lots 63 and 64 required the same bulk variances, lot size, lot frontage and lot width. The R-8 Zone requirements for these lots have remained the same since 1963 for lot size, lot frontage and lot width.

There were no members of the public seeking to address the Board or ask any questions of the witness, the Applicant, or the Board and its professionals.

**NOW THEREFORE**, the Board making the following conclusions of law based upon the evidence presented at the aforesaid public hearing together with the documents received in evidence and the Board's records for this matter.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variance 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. 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 in order 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 have 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 placed before the Board, the Board finds that the Applicant has met the minimum requirements of the Municipal Land Use Law, case law and Borough ordinance so as to grant the relief requested. The use is permitted in this zone. As it pertains to the bulk variance relief being sought, there is no evidence before the Board indicating that granting the bulk variance relief in this particular case would cause substantial detriment to the public good or would substantially impair the intent and purpose of the Master Plan or the zoning Ordinance of the Borough. The relief requested related only to lot width and frontage is relatively de minimis. The benefits of granting this relief outweigh any detriment to the public good. Granting this relief will permit the appropriate utilization of the tract for the proposed single-family house.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board that the application by Harry Hoff, for property located at 430 Aumack Avenue in the Borough of Union Beach requesting (c)(1) hardship bulk variances is approved as follows for the reasons set forth herei:

1. The three (3) bulk variances, as recited herein, are approved pursuant to N.J.S.A. 40:55D-70(c) (1) and (2).

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

1. The construction of the proposed single-family house shall be implemented strictly in accordance with the plans submitted and approved.

The undersigned secretary certifies the within resolution was adopted by this Board on January 31, 2024 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on February 28, 2024.

  
Laurette Wade, Planning Board

TO APPROVE THE APPLICATION

FOR: ( )

AGAINST: ( )

ABSTAIN: ( )

<input checked="" type="checkbox"/> Chairman Connors	<input type="checkbox"/> Sweeney	<input checked="" type="checkbox"/> Murray	<input checked="" type="checkbox"/> Hallam
<input checked="" type="checkbox"/> Councilman Andreuzzi	<input checked="" type="checkbox"/> Wells	<input checked="" type="checkbox"/> Devino	<input type="checkbox"/> Dwyer
<input checked="" type="checkbox"/> Councilwoman Roche	<input checked="" type="checkbox"/> Coffey	<input type="checkbox"/> Hoadley	