

**RESOLUTION**  
**Borough of Union Beach**  
**Planning Board**  
**In the Matter of 704 Florence, LLC**  
**704 Florence Avenue**  
**Block 44, Lot 3**  
**Decided on April 24, 2024**  
**Memorialized on May 29, 2024**  
**Denial of Application for (c) Variances and Minor Subdivision**

**WHEREAS**, 704 Florence, LLC (the “Applicant”) has made an application to the Borough of Union Beach Planning Board for a minor subdivision and numerous bulk (c) variances, located at 704 Florence Avenue, also known as Block 44, Lot 3 as shown on the tax map of the Borough, located in the R-8 Residential Zone; and

**WHEREAS**, the Applicant was represented by Michael L. Collins, Esq.; and

**WHEREAS**, a public hearing was conducted in accordance with NJDCA and DLGS regulations for a public meeting on this application on April 24, 2024 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 approval to create two undersized lots of 50’ by 100’ plus a combination of bulk variances for each proposed lot, which are as follows:

**Proposed Lot 3.01**

1. Minimum lot area of 5,000 SF where 10,000 SF is required.
2. Minimum lot width of 50 feet where 100 feet is required.
3. Minimum front yard setback of 10 feet where 20 feet is required. Since the proposed lot is a corner lot with two fronts and the 20-foot setback reduces the buildable width to less than 50% of the width, side yard setback of 12 feet for the secondary front (Florence Ave) will be considered for this lot.
4. Total lot coverage shall not exceed 25% of the total square footage.

5. Total SF of proposed structure of 1600 SF where 1250 SF is required.

**Proposed Lot 3.02**

1. Minimum lot area of 5,000 SF where 7,500 SF is required.
2. Minimum lot width of 50 feet where 75 feet is required.
3. Minimum lot frontage of 50 feet where 75 feet is required.
4. Minimum side yard setback of 8 feet where 8 feet is required with two combined side yards of not less than 20 feet is required.
5. Total lot coverage shall not exceed 25% of the total square footage of the lot.
6. Total SF of proposed structure of 1700 SF where 1250 SF is required.

In addition to the application, the Board had before it the report dated March 22, 2024 letter from Andrew Denbigh, P.E., T & M Associates. The letter from T & M Associates identified the bulk variances that would be needed for each of the two proposed lots.

The hearing on this application took place before the Board at its regular meeting on April 21, 2024. The Applicant is proposing to subdivide a corner lot which would, with the proposed configuration, make the lots non-conforming since they would be less than the minimum required in the R-8 Zone, which specifies that corner lots must be no less than 100 by 100 feet.

At the onset of the hearing, there was a brief synopsis of the application provided by counsel for the Applicant. Mr. Collins went over the dimensions of the property and the bulk variance relief that would be needed for the two lots in the contemplated minor subdivision. The first witness called was Mr. Rabi Darwiche. He testified, after having been sworn in, that his proposal called for a new single-family home to be built on each new lot. The Applicant would also be providing engineering testimony from Mr. Soufani El Moussi, Professional Engineer, and Kate Keller, Professional Planner. They were both sworn in and then qualified during the proceedings. Andrew Denbigh, Professional Engineer with T&M Associates and Caroline Reiter,

Professional Planner with T&M Associates, were also sworn in and qualified in their fields, during the course of the proceedings. Mr. Darwiche proceeded to describe the condition of the property, which he purchased in 2023. He testified that his sister currently resides there. He stated the property is in poor condition, that the ceiling and roof are leaking, and it has multiple plumbing issues. His intention is to demolish the existing dwelling and build a new single-family home on each of the two proposed lots. He testified his sister will continue to live in one of the houses, and that they would lease out the other home.

Testimony was then heard from the applicant's engineer. The witness testified that he had been on the site and inspected the home and saw that it was in poor condition. He stated the chain link fence would be replaced. He testified that by relocating the frontage of the house, it would allow for more of a private parking entrance for the homeowners. He noted that on the proposed lot 3.01, which would be the corner lot, the Applicant would construct a 1600 square foot home fronting 6th Street with the driveway on Florence Ave. and the garage to the back side of the home. He then proceeded to recite the bulk variance relief that is being sought for each of the 2 proposed undersized size lots. He acknowledged that the Applicant would require County Planning Board approval for the project. He stated that the Applicant would install drywells on each of the 2 properties in question. The Applicant would agree to pay into the sidewalk fund since there was no sidewalk on that section of 6th Street. The witness had proceeded to review and comment on certain items raised in the March 22, 2024 report from T & M Associates. In response to the issue about drywells, Mr. Denbigh had requested whether soil borings had been taken, to which the engineer for the object responded that they had not. Mr. Debig raised his concern that based on his experience drywells would probably not work properly. He also stated that 6th Street should need new paving to which the Applicant's engineer agreed.

The next witness to testify on behalf of the Applicant was Ms. Keller, licensed Professional Planner who was sworn in and qualified. She testified she had been to the site on a

number of occasions and had reviewed the Master Plan and Borough land use ordinances and the application package. She asserted that there is the diversity of lot sizes in the general vicinity. She testified that the proposed lots would be technically nonconforming, but would be conforming to other lots in the area. She referred to Exhibit A2 which was the tax map with the property in question and then Exhibit A3, which showed undersized lots in the area. Both were prepared the day of the hearing by the witness. Exhibit A2 showed the property is significantly larger. She did note that the property is a permitted use in the zone in question. There were rebuttal comments from the Board Planner in which Ms. Reiter stated that the proposed lots was not a better planning alternative. Ms. Keller testified that this was not a better alternative and that it should not be considered an anomaly. Ms. Keller acknowledged that zoning by variance was undesirable.

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. Councilman Andruzzi expressed his objections to the proposed creation of undersized lots. 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. Madeline Russo, 801 Sixth St., spoke against the application. She has lived across the street from this property for 50 years and never saw that driveway on Florence used. Florence has cars parked on it there. She worked for the police department over 30 years and was Secretary to the Planning Board for 37 years and that corner is one of the worst in town. She was not sure how pulling out onto Florence is safer than Sixth St. with a side yard setback of 10' with the 2 houses. She opposed putting houses so close to Florence Ave. She stated that creating undersized lots of these dimensions on a corner has not been approved since the ordinance was created in 1962.

At this point the public hearing was closed and the Board afforded the opportunity to express its concerns. 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 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 into two undersized lots to construct a single-family dwelling on each proposed property at 704 Florence 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 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 for each proposed lot. 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 is no evidence providing any 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 size lots

does not in and of itself meet the “special reasons” to justify the numerous 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 Ms. Keller’s testimony not persuasive.

More importantly, with regard to the (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. Keller 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 evidence clearly shows the Applicant wants the Board to all but 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 704 Florence Avenue, for property located at 704 Florence 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 April 24, 2024 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 29, 20214

  
Laurette Wade, Planning Board

TO DENY THE APPLICATION

FOR: Wells, Coffey, Devino, Sweeney, Andreuzzi, Roche Murray Dwyer

AGAINST: —

ABSTAIN: —

\_\_\_ Wells \_\_\_ Devino \_\_\_ Coffey \_\_\_ Hallam \_\_\_ Hoadley \_\_\_ Sweeney

\_\_\_ Murray \_\_\_ Conners \_\_\_ Dwyer \_\_\_ Roche \_\_\_ Andreuzzi