

RESOLUTION
Borough of Union Beach
Planning Board
In the Matter of Ted Koch
Application No. 2090
Decided on September 26, 2018
Memorialized on October 31, 2018
Approval for Bulk Variance Relief

WHEREAS, Ted Koch (hereinafter the “Applicant”) has made an application to the Borough of Union Beach Planning Board for bulk variance relief to construct a new single-family dwelling at 710 Morningside Avenue, also known as Block 176, Lot 9, on the Tax Map of the Borough, in the R-8 Zone; and

WHEREAS, a public hearing was conducted on September 26, 2018; and

WHEREAS, the Applicant was represented by Kerry Higgins, Esq.

NOW THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at its public hearing, at which a record was made. The Applicant is the owner of the subject property. He testified that he is proposing to build a new residence to be constructed on the pre-existing 25’ by 100’ non-conforming residential interior lot located in the R-8 Zone. The pre-existing home was damaged beyond repair by Superstorm Sandy and was demolished. The Applicant is requesting bulk variance relief which is as follows:

1. Section 13-10.4 f.1.(a) — Minimum lot area of 2,500 square feet where 7,500 square feet is required **this is a pre-existing condition*
2. Section 13-10.4 f.2.(a) — Minimum lot width of 25 feet where 75 feet is required **this is a pre-existing condition*
3. Section 13-10.4 f.3.(a) — Minimum lot frontage of 25 feet where 75 feet is required **this is a pre-existing condition*

4. Section 13-10.4 f.5 — Minimum front yard setback of 13.5 feet where 20 feet is required **pre-existing setback of 9.5 feet*
5. Section 13-10.4 f.7 — Minimum side yard setback of 1.8 feet where 5.7 feet with two combined side yards of not less than 20 feet is required **pre-existing setback of 1.8 feet* and 6.7 feet
6. Section 13-5.5 d. — All buildings on a residential lot shall not exceed 25 percent of the total lot square footage of the lot, 838 square feet proposed where 625 square feet is required **pre-existing building 883 square feet*

After establishing proof of service was in order, the Applicant, and Mr. Eric Dallas, both of Middletown, were sworn in. Documentation was given that Applicant's brother, Jim McCree, who is 40% owner of the LLC that owns the property (whereas the Applicant is 60% owner), had given his consent to allow the application. The first witness was the Applicant. Ms. Higgins, Applicant's attorney, submitted architectural plans prepared by Richard Stockton dated August 21, 2018 , as well as the Zoning Officer's review letter of August 23, 2018 and advised of the changes.

The Applicant testified that the new construction will have off street parking, the footprint is reduced from the size of the original building and the residence will be centered on the lot. Ms. Higgins introduced exhibits A-1 and A-2, which were photos taken of the original lot, home and surrounding neighborhood. The Applicant described the location of the residences pictured. The Applicant testified that there is no property to the right or left available. The Applicant further testified that, based on the images, the home that he was proposing was similar to the other properties. The Applicant contended that the proposed house was further set back than the prior home in order to add off street parking which does not currently exist. He stated

that the prior home did not have parking and the new home provides one off street parking space where there was none previously leaving open green space in the rear. The Applicant further testified that he was not building to the extent that he could build and therefore was not maximizing the original footprint and instead was reducing it. The Applicant proposed a house that is 17.5' in width. He stated that he discussed this with the Zoning Officer who approved it. He testified that the width of the house as proposed needed additional footage for the flow of the home and the size of the bedrooms. He emphasized that he was not trying to overdevelop the property as evidenced by the modest size of the bedrooms.

Mr. Dallas, the second witness on behalf of the Applicant, testified that only a three-bedroom home was required in order to conform. Mr. Dallas also stated that there was no additional land that could be acquired to reduce or eliminate any of the bulk variances needed.

A Board Member inquired about the proximity of the proposed homes to neighboring homes to which Mr. Dallas replied that it was not that close. Another Board Member asked if the Applicant had considered moving the proposed home back five more feet. Mr. Dallas replied that the Applicant wanted more play area and additional green space in the back to accommodate a small deck. There were no members of the public or residents wishing to speak for or against the subject application.

NOW THEREFORE, the Planning Board makes the following conclusions of law, based upon the findings of fact. The Applicant before the Board seeks approval for bulk variance relief to construct a new single-family home on 710 Morningside Avenue in the R-8 Zone. The use is permitted in the zone. There is the need for the bulk variance relief 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 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; 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, 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 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 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 clearly outweigh any detriments. The use is one that is permitted in the R-8 Zone. As noted in the report of the zoning official, all six bulk variances that are being sought are pre-existing conditions in nature. The Board finds that the bulk variances requested are for pre-existing conditions which are not being significantly exacerbated. The benefits of the redevelopment of the property and the construction of a new single family home outweigh any minimal detriments from granting this relief. Furthermore, the evidence before this Board indicates there will be no substantial detriment to the public good and no substantial impairment to the intent and purpose of the zoning ordinance or Master Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Union Beach that the application of Ted Koch for property located at 710 Morningside Avenue, known as Block 176, Lot 9 on the Tax Map of the Borough is determined as follows:

1. The requested 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 plan shall be implemented strictly in accordance with the plans submitted and approved by the Board.
2. The Applicant 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 Applicant shall file with the Board and Construction Official, an affidavit verifying that the Applicant 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 Applicant 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 Applicant shall take all appropriate measures to control any dust, dirt and any vermin during construction of the building in question.

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 September 26, 2018 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on October 31, 2018.

Madeline Russo, Planning Board

FOR: 8

AGAINST: 0

ABSTAIN: 0

Board Member(s) Eligible to Vote:

Steiner Wells Devino Andreuzzi Cavallo
 Wade Connors Hoadley

