

**RESOLUTION
TOWNSHIP OF ANDOVER
LAND USE BOARD
IN THE MATTER OF JOSEPH STEINWAND
DECIDED ON JUNE 20, 2023
MEMORIALIZED ON JULY 18, 2023
APPLICATION NO. A-23-5
“c” VARIANCE RELIEF TO CONSTRUCT A GARAGE
WITHIN THE FRONT YARD SETBACK AND RELATED RELIEF**

WHEREAS, Joseph Steinwand (hereinafter the “Applicant”) has filed an application with the Township of Andover Land Use Board (“Board” or “Land Use Board”) seeking “c” variance relief in regard to real property known and designated as Block 116, Lot 24.06 as designated on the Tax Assessment Map of the Township of Andover which premises are located at 40 Lawrence Road, Andover, New Jersey in the R-2 Single Family Residential District (hereinafter “R-2 Zone”); and

WHEREAS, a public hearing was held on June 20, 2023, after the Land Use Board determined it had jurisdiction; and,

WHEREAS, the Applicant was not represented by legal counsel.

NOW, THEREFORE, the Land Use Board makes the following findings of fact based on evidence presented at its public hearing, at which time a record was made.

The application before the Board is a request for “c” variance relief to permit the construction of a garage within the front yard setback and also to maintain a shed in the southern corner of the lot that does not meet the side or rear yard accessory structure setback requirements. The subject premises are known and designated as Block 116, Lot 24.06 on the Tax Assessment Map of Andover Township which premises are located at 40 Lawrence Road, Andover, New Jersey in the R-2 Zone.

Testifying on behalf of the Applicant was Jason Dunn, P.P., LLA. Mr. Dunn was qualified as an expert witness as a land use planner and a licensed landscape architect. Mr. Dunn introduced into evidence two (2) Exhibits as follows:

1. Exhibit A-1 a colorized version of the plan dated May 18, 2023;
2. Exhibit A-2 a photograph of the existing shed in the southern corner of the lot.

Mr. Dunn testified that Mr. Steinwand proposes to construct a garage with a footprint of 40 feet by 30 feet in the front yard of the lot. The height of the structure measures approximately 15.75 feet from the floor to the peak of the roof.

Mr. Steinwand testified that it is his intention to store three (3) vehicles, one (1) boat, as well as to provide workshop space for himself in the garage. Mr. Steinwand also provided testimony in support of the location of the garage in the front yard of the dwelling. Mr. Steinwand represented that due to the topography of the site, there is no other reasonable location on-site wherein the garage could be located. It was represented to the Board that the house is located in the middle of the lot and the septic field and above-ground pool are in the rear yard. On the northwest side of the house, there is a generator, electric meter and portions of the yard that are retained with railroad tie walls. Mr. Dunn further testified that the garage structure would be located a distance of 20 feet to the right-of-way line. Furthermore, Mr. Dunn represented that there is a significant grade change which measures approximately 40 feet from the road to the rear boundary.

Mr. Dunn oriented the Board to the properties that surround the Steinwand residence. To the northwest, Lot 24.07 contains a single-family dwelling. To the southwest, Lot 4.01 is developed with a single-family home and horse paddocks and a barn. In the rear of the lot on Lot 24.03 is located the Farmstead golf course. Across the street in Block 111, Lot 10 is the Buddha monastery.

The area across the street from the site is wooded, and further across the street is Lot 7 which contains a single-family dwelling.

Mr. Dunn and Mr. Steinwand addressed the issue of the rear yard and side yard encroachment of the shed in the southern corner of the lot. A corner of the shed is located 3.5 feet from the side property line and 5.2 feet from the rear property line. In regard to the Andover Township Code, the rear yard and side yard setback requirements for an accessory building is 20 feet.

Mr. Dunn provided testimony in support of the granting of “c” variance relief relative to the garage located within the front yard of the property and the shed encroaching into both the rear yard and side yard setback requirements in the R-2 Zone.

Mr. Dunn represented that variance relief can be granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) relative to the location of the garage structure in the front yard. Mr. Dunn represented that the property has steep slopes and there is no other practical place on the lot upon which to build a garage. Due to the steep slope of the driveway leading to the garage, the driveway will need to be paved. There is also sufficient vegetative buffering between the road and the garage. In addition, there is a significant grade change between the road and the area where the garage is proposed. The garage first floor will be approximately 17 feet below the elevation of the road. Mr. Dunn concluded that due to the buffering and grade change, as well as the distant proximity from its neighbor’s homes, the garage will not be prominently visible. Furthermore, he represented there would be no significant negative impact to the neighborhood or zone plan.

In regard to the encroachment of the shed, Mr. Dunn testified that the Applicant seeks variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). Mr. Dunn

stated although there are other places on the lot to locate the existing shed, leaving the shed in its current location will not have any detrimental impact on the surrounding properties. He stated this area of the lot is largely wooded and the rear of the lot backs up to the Farmstead golf course. Further, to move the shed would eliminate useable rear yard space.

The Board and the Applicant also reviewed an encroachment for the existing split rail fence a portion of which is located on the subject Property and a portion of which is located on Lot 24.03, the Farmstead golf course. The Board and the Applicant discussed this matter and the Applicant agreed to make a good faith effort to enter into an agreement with the owners of the Farmstead golf course to permit the fence to remain in its present location or in the alternative, the fence could be removed if both parties agree.

The meeting was opened up to members of the public and there were no members of the public present expressing an interest in this application.

NOW, THEREFORE, the Land Use Board makes the following conclusions of law based upon the foregoing findings of fact.

The application before the Board is a request for “c” variance relief for property known and designated as Block 116, Lot 24.06 as designated on the Tax Assessment Map of Andover Township and located at 40 Lawrence Road, Andover, New Jersey 07821 which premises are located in the R-2 Zone.

The Applicant seeks approval in order to construct a garage structure with a footprint of 40 feet by 30 feet within the front yard setback. The Applicant also seeks approval in order to permit the shed that is located along the southern corner of the lot to remain in its present location. The Applicant stipulated that the driveway will be paved as requested by the Board Engineer.

The Applicant requires the following “c” variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2):

1. Section 190-13 of the Andover Township Code provides that no accessory building shall encroach upon the front yard setback for the principal structure. Here the proposed garage is located within the front yard setback; and
2. Andover Township Code Section 190-34 provides that the minimum setbacks for an accessory structure in the R-2 Zone is 20 feet for both the rear yard and side yard setback, and the existing setbacks for the shed are 3.5 feet for the side yard setback and 5.2 feet for the rear yard setback.

“c” Variance Relief

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c 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. 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 be substantially detrimental to the public good and, further, it 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.

The Board reviewed the request for “c” variance relief for the garage under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that under the MLUL pursuant to N.J.S.A. 40:55D-70c(1)(b) that by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property and pursuant to N.J.S.A. 40:55D-70c(1)(c) that by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of the zone requirements would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the Applicant.

The Board notes that the existing lot has the appearance of a trapezoid shape. The Board accepts the representations of the Applicant that the required minimum front yard setback of the principal building is 50 feet and the front yard of the existing principal dwelling is 100.6 feet. The proposed garage will be located 20 feet from the right-of-way line and approximately 39 feet from the garage to the edge of road pavement. The Board finds that the property has steep slopes and there is no other practical place to build a garage on this site. The Board further finds that there is sufficient vegetative buffering between the road and the garage. The difference in elevation between the road and the area where the garage is proposed is significant. The first floor of the

garage will be located approximately 17 feet below the road. The Board further notes that there is a significant decrease in elevation which measures approximately 40 feet from the road to the rear boundary of the property.

The Board also accepts the representations of the Applicant that due to the buffering and grade change as well as the distant proximity from its neighbors' homes the garage will not be prominently visible. The Board finds that it would constitute an undue hardship to require the Applicant to relocate the garage to another section of the lot. Thus, the Board finds that the Applicant has satisfied the positive criteria under the Municipal Land Use Law. Further, the Board finds that the Applicant has satisfied the negative criteria for the reasons stated herein and that variance relief can be granted under "c(1)" without substantial detriment to the public good and without substantial impairment of the zone plan and zoning ordinance.

The Zoning Board has also reviewed the request for ancillary c or bulk variance relief under the c(2) criteria. In Kaufman v. Zoning Board for Twp of Warren, 110 N.J. 551, 563 (1988) the New Jersey Supreme Court held:

"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 be not 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."

The Board has reviewed the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2) in regard to the existing shed in the southern corner of the lot which does not conform with the side or rear yard setbacks for an accessory structure. The Board notes that the existing shed maintains a side yard setback of 3.5 feet and a rear yard setback of 5.2

feet. The Board also notes that under the Andover Ordinance Section 190-34, the rear and side yard setbacks for an accessory structure are 20 feet respectively. The Board finds that based upon Exhibit A-2 the shed has been in existence for many years and is currently in an area of the lot that is relatively flat. The Board notes that the surrounding properties are largely wooded which diminishes any substantial negative impact on the surrounding properties. The Board finds that granting relief for the setback variances for the rear yard and side yard can be granted without substantial detriment to the public good and without substantial impairment of the zone plan and zoning ordinance. The Board notes that there are no structures located on the adjoining lots in close proximity to where the shed is located that would be substantially detrimental to the adjoining property owners.

The Board finds that the Applicant has satisfied the positive criteria. The Board finds that the Applicant has satisfied the purposes of the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2a because the approval of this application guides the appropriate use or development of land in this State in a manner which promotes the public health, safety, morals and general welfare. Secondly, N.J.S.A. 40:55D-2(e) is satisfied because the approval will promote the establishment of appropriate population densities and will contribute to the well-being of persons and neighborhoods. Thirdly, N.J.S.A. 40:55D-2(g) is satisfied because the approval of this application provides sufficient space in appropriate locations for residential uses and continues to provide open space. Fourthly, N.J.S.A. 40:55D-2(m) is satisfied because the approval of this application results in more efficient use of land.

The Board finds that the approval of this application will enable the Applicant to upgrade an existing residential property which results in responsible development or smart growth which is in conformance with the Andover Township Master Plan and Zoning Ordinance. Therefore, the Board

determines that the Applicant has satisfied the positive criteria in regard to the granting of ancillary “c” variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). Then the Board next addressed the negative criteria. The Board finds that the existing shed is typical for single-family residences in the area. The Board finds that there will be no substantial detriment to the public by approving this variance.

The Board finds that the Applicant has satisfied the negative criteria and that the approval of this application can be granted without substantial detriment to the public good. Furthermore, ancillary “c” or bulk variance relief can be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Board finds that the approval of this application is consistent with the Andover Township Master Plan goals as set forth herein. The Board thus finds that the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-70c(2) would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. The Board, therefore, finds that the negative criteria has also been satisfied and that it is appropriate to grant ancillary “c” or bulk variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2).

The Board, therefore, concludes that both the positive and negative criteria were met by the Applicant as to both the garage and the shed and thus, the granting of ancillary “c” or bulk variance relief as set forth herein is appropriate to be granted under the MLUL pursuant to N.J.S.A. 40:55D-70c(1) and c(2).

Conclusion

Upon consideration of the plans, testimony and application, the Board determines that the request for “c” variance relief has met the minimum requirements of the MLUL, case law and Township Ordinances to a sufficient degree so as to enable the Board to grant the relief being

requested. The Board further finds that the granting of this application will not adversely impact or impair the use and enjoyment of adjacent properties. Thus, the Board concludes that it is appropriate to grant “c” variance relief for rear yard and side setback variances.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board that the application of Joseph Steinwand in regard to property designated as Block 116, Lot 24.06 on the Tax Assessment Map of Andover Township which premises are commonly known as 40 Lawrence Road, Andover, New Jersey in the R-2 Zone, and bearing Application No. A-23-5 requesting Land Use relief is determined as follows:

1. Ancillary “c” variance relief is granted under the MLUL pursuant to N.J.S.A. 40:55D-70c(1) to permit an accessory structure garage to be located within the front yard setback; and
2. N.J.S.A. 40:55D-70c(2) to permit the existing shed to remain in its current location with a side yard setback of 3.5 feet and a rear yard setback of 5.2 feet, where 20 feet is required.

IT IS FURTHER RESOLVED that the application is granted subject to the following terms and conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this Application.
2. The Applicant represents that all representations and stipulations made either by or on behalf of the Applicant to the Andover Township Land Use Board are true and accurate, and acknowledges that the Planning Board specifically relied upon the Applicant’s stipulations in the Board’s granting of this approval. If any representation or stipulation is false, this approval is subject to revocation.

3. This approval is granted strictly in accordance with any recommendations set forth on the record by the Land Use Board at the time of the public hearing on June 20, 2023.

4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions set forth in the review report of Cory L. Stoner, P.E., P.P., C.M.E., Land Use Board Engineer dated June 16, 2023 and as further represented on the record.

5. The granting of this application is subject to and conditioned upon the Applicant paving the driveway leading to the garage which shall be subject to the review and approval of the Board Engineer.

6. The granting of this application is subject to and conditioned upon there being no storage of commercial equipment or materials in the garage.

7. The granting of this application is subject to and conditioned upon the Applicant and the adjoining property owner for Tax Lot 24.03, Block 116 entering into an easement agreement or such other agreement to permit the split rail fence which is located on both Lot 24.06 in Block 116 and on Lot 24.03 in Block 116 to remain in its current location. In the alternative, the parties may also agree to remove the fence in order to eliminate the encroachment. The easement or such other agreement shall also be subject to the review and approval of the Board Attorney and Board Engineer.

8. The granting of this application is subject to and conditioned upon the Applicant opening and maintaining an escrow account with Andover Township and keeping the account current with sufficient funds for professional inspection and review fees.

9. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of the request by the Board's Secretary.

10. Certification that taxes are paid to date of approval.

11. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Andover, County of Sussex, State of New Jersey, or any other agency having jurisdiction hereunder.

This application was approved by the Andover Township Land Use Board at a duly constituted public meeting held on June 20, 2023, by a vote of 8 to 0 in favor of approval.

VOTE TO APPROVE APPLICATION
JUNE 20, 2023

Motion Introduced By: Skewes

Seconded By: Vice Chair Howell

In Favor: Chairman Messerschmidt, Vice-Chair Howell, Board Members Ordile, Olsen, Skewes, Gilchrist, Carafello and Deegan

Opposed: None

MEMORIALIZATION OF RESOLUTION
JULY 18, 2023

Motion Introduced By:

Motion Seconded By:

In Favor

Opposed

Andover Township Land Use Board

Stephanie Pizzulo, Board Secretary

Paul Messerschmidt, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Land Use Board on June 20, 2023 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on July 18, 2023.

Stephanie Pizzulo
Board Secretary

2756093.1 AND-098E Joseph Steinwand Resolution Granting Variance Relief For Construction of A Garage (A-23-5) 7.18.23 RB

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