

**BOROUGH OF EAST RUTHERFORD
ZONING BOARD OF ADJUSTMENT**

RESOLUTION NO. 22-06

**IN RE THE APPLICATION OF
JOHN SCANGARELLA AND HELEN BONGIOVANNI
FOR A SITE PLAN APPROVAL, USE VARIANCE AND
BULK VARIANCES
PQ: 50-52 LOCUST LANE
BLOCK 12, LOTS 23 AND 24**

WHEREAS, JOHN SCANGARELLA AND HELEN BONGIOVANNI, have applied to the Board of Adjustment of the Borough of East Rutherford, Bergen County, New Jersey, for permission to modify the existing lot lines and construct two-family dwellings, duplex style, on each of the new proposed lots which requires a use variance and certain bulk variances upon the premises located on 50-52 Locust Lane; and

WHEREAS, the Board has determined that the Applicant also requires a use variance pursuant to N.J.S.A. 40:55D-70(d) and certain bulk variances pursuant to N.J.S.A. 40:55D-70(c); and

WHEREAS, the Board held public hearings, pursuant to public notice, at the Municipal Building, East Rutherford, New Jersey, at which time it heard testimony and considered the subject application; and

WHEREAS, the Applicant was represented by John Molinelli, Esq.; and

WHEREAS, at the February 3, 2022 and March 3, 2022 meetings, the Zoning Board of Adjustment, after hearing the testimony and evidence presented by the Applicant, and after due consideration and deliberation has made the following findings of fact and conclusions:

NOW, THEREFORE, BE IT RESOLVED that:

A. Findings of Fact. The Board makes the following findings of fact on this application:

1. Jurisdiction.

- 1.1 That the application for the variance was duly made to Zoning Board of Adjustment and that all owners of property situated within 200 feet of the premises to be affected were duly notified in accordance with law.
- 1.2 The Applicant has presented satisfactory proof to the Zoning Board of Adjustment that a notice of said hearing was duly published.

2. The Site & Application.

- 2.1 Anthony Kurys, P.E., P.P. of Neglia Engineering Associates, LLC on behalf of the Applicant.
- 2.2 Mr. Kurys provided the Board with his credentials. The Board accepted Mr. Kurys's credentials and accepted his testimony as professional engineer and professional planner of the State of New Jersey.
- 2.3 The current lot is a single-family dwelling with two detached garages in a residential zone (R-2).
- 2.4 The applicant intends to modify the existing lot lines, demolish the existing structures, and construct two two-family dwellings on each of the new proposed lots.
- 2.5 The applicant will create two nonconforming lots and construct two duplex dwellings which are nonconforming uses.
- 2.6 The applicant's proposal will make the two lots much more conforming to the required 6,000 square feet lot area required in the R-2 zone.
- 2.7 Block 12, Lot 23.01 is currently slightly smaller than the required 6,000 square feet. The proposed new lot will be further reduced to approximately 5,533 square feet.
- 2.8 Proposed Block 12, Lot 24.01 is currently is only 5,000 square feet. The proposal will increase this lot to approximately 5,430 square feet. It is 100 square feet undersized.
- 2.9 The total combined lot area of both parcels is 10,963 square feet or 0.25 acres.

- 2.10 The property is located in the R-2 medium- density residential zoning district which has the following bulk requirements: The R-2 zone permits two-family dwellings. The requirement for minimum lot size is 6,000 square feet. The required lot width is 60 feet.
- 2.11 The footprint size is approximately 40.3 feet by 40 feet, or approximately 1600-square- foot footprint.
- 2.12 With respect to lot coverage, which is the total impervious coverage, 60 percent is the maximum allowable.
- 2.13 The property is located in a flood zone which requires the applicant to obtain a DEP permit. It provides a hardship and requires the applicant to elevate the living areas.
- 2.14 The living area will be above the parking. Several of the variances are caused by the fact that the property is in a flood zone.
- 2.15 The applicant is proposing buildings which are three stories in height. The zoning ordinance only permits two and a half story buildings. The three-story building was necessary to elevate the living area due to the flooding issues. The buildings will not appear any higher than adjacent buildings in the area.
- 2.16 The applicant also needs a variance for maximum building height. The applicant is proposing a building height of 32.9 feet. The zoning ordinance calls for a maximum building height of 30 feet.
- 2.17 He testified that in his opinion, positive reasons exist for the granting of a variance. He testified that the positive reasons include that the property is particularly well suited for the proposed use. The property is zoned for a two-family use. Locust Lane contains residential uses both one and two family. The flood hazard issues caused the departure from the bulk requirements of the ordinance. A duplex use with a minimal height variance serves the general welfare with the living area above the parking. The proposal reduces the impervious area and therefore helps the flooding problem in the area. The modern design and brand-new buildings improve the available housing in East Rutherford.
- 2.18 He stated that in his opinion, with respect to the building height, I think we would satisfy the C1 hardship criteria for being in the floodplain as well as C2 criteria; in that, the benefit of elevating that first floor, it allows us to create additional parking.

- 2.19 If the Board should approve this application, the applicant will have to apply for a permit from the New Jersey Department of Environmental Protection for construction within the flood hazard area.
- 2.20 The net impervious calculation from existing to proposed will be an overall reduction with respect to impervious coverage by creating what's shown as open lawn areas to the back of the dwelling as well as to the sides.
- 2.21 In his opinion, the application does not cause any substantial detriment to the public good. The proposed use is a conforming use. The duplex design provides for unit separation and provides additional safety with respect to fire loss and other issues.
- 2.22 Edwin Sherman, Architect, testified on behalf of the applicant. He presented his credentials and was accepted as an expert.
- 2.23 He testified that during heavy rains the existing basement floods all of the time. The property is designed so all of the livable space is elevated.
- 2.24 With respect to the lighting, it will be typical residential lighting. Mostly down lights in the front and rear. Nothing on the side. There will not be any spillage with respect to adjacent properties.
- 2.25 The exterior will be a brick or stone veneer with vinyl siding.
- 2.26 The flood vents which are typical of properties located at the shore will be installed.
- 2.27 The trash and recycling storage will be inside.
- 2.28 At the conclusion of the Applicant's case, Mr. Polifornio made a motion to deny the application. The motion was seconded by Mr. Sorbera. The motion only received two affirmative votes to deny the application and three votes against the motion to deny the application. Therefore, the motion failed to carry.
- 2.29 The attorney for the applicant requested the opportunity to have the application carried to the next public meeting to permit the applicant the opportunity to address some of the concerns of the board members. The Board granted the request of the applicant and agreed to carry the application to the meeting scheduled for Thursday, March 3, 2022.

2.30 At the March 3, 2022, the applicant provided additional testimony in support of the application.

2.31 The Applicant provided the information requested by the Board engineer with respect to the sight triangles. The Applicant also adequately addressed the Board's inquiry as to why the lot line could not be moved to make the two lots identical or closer in size. The Board is satisfied that the proposed lot lines further good zoning and planning.

3. Nature of Application.

3.1 The property is located within the R-2 Zone. The applicant proposes to modify existing lot lines and to construct two- family dwellings in a duplex style. The Borough ordinance does not permit duplex uses and a duplex does not fit within the definition of a two-family dwelling located in section 389-6 of the Borough Code.

4. Use Variance.

4.1 The proposed use of a duplex style two family is not a permitted principal use under the RC Zone. The Board finds that the Applicant must meet the statutory criteria required for the granting of a use variance. The Board finds that the applicant provided sufficient proofs to justify the granting of a use variance.

5. The Zoning Ordinance and Municipal Land Use Law.

5.1 The subject Board finds that the application furthers both the purposes of the Master Plan and the Municipal Land Use Law.

5.2 Goals of the Borough's Master Plan include the following which are relevant here:

(a) To provide for economic development that will provide a fully diverse economic base.

(b) To create and maintain an optimum community scale through proper guidance of development densities.

5.3 The Board finds that the proposed variances from the use and bulk requirements are not inconsistent with the Master Plan and with the Zoning Ordinance. The Board finds that a permitted two-family home and a duplex are the same type of use. The difference lies in the configuration of the

buildings and not the use. The Board further accepts the testimony of the applicant's expert that a duplex provides more safety than a two family with respect to fire containment.

- 5.4 The application furthers the purposes of N.J.S.A. 40:55D-2a which provides that it is the intent of the act to encourage municipal action to guide the appropriate use or development of all lands in this State in a manner which will promote the public health, safety, morals, and general welfare. There is an improvement in the visual aspect of the property for the adjacent residences.

The application furthers his purpose of subsection "G" which provides that it is the intent of the act "to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens".

The application furthers the subsection of "I which provides that is the intent "to provide a desirable visual environment through creative development techniques and good civic design and arrangement".

- 5.5 The Board accepts the testimony of the applicant's planner that the use is particularly suited for the proposed use.
- 5.6 The Board accepts the testimony of the applicant's witness that a duplex provides more fire containment than a two-family dwelling in the case of fire. This promotes the safety and welfare of the public and provides a special reason to grant the application.
- 5.7 The Board finds that decreasing the impervious area and mitigating water runoff provides a special reason to grant the application. The Board finds that many areas of East Rutherford are prone to flooding.
- 5.8 The Board finds that adding to the housing stock with dwellings specifically designed to minimize or eliminate damage to the dwelling during flooding provides a special reason to grant the application.

6. The Positive Criteria.

- 6.1 The Board finds that the applicant proved the statutory requirements which justify granting this application.

- 6.2 The Board also finds that an improvement in aesthetics and the improvement in storm water management satisfies the positive criteria of the statute.
- 6.3 The Board finds that the purposes of the Municipal Land Use Law would be advanced from a deviation of the zoning ordinance requirements and the benefits of the application out way any detriment to the public good. In fact, as set forth below, the Board finds that subject application furthers the public good.
- 6.4 The application furthers several purposes of the Municipal Land Use Law.

The Board finds that the application furthers the purposes of N.J.S.A. 40:55D-2(a) which provides that it is the intent of the act to encourage municipal action to guide the appropriate use or development of all lands in this State in a manner which will promote the public health, safety, morals, and general welfare. There is a significant reduction in truck traffic. There is also an improvement in the visual aspect of the property for the adjacent residences.

- 6.5 The Board finds that the application furthers the purpose of subsection (g) which provides that it is the intent of the act “to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens”.
- 6.6 The Board finds that the application furthers the purpose set forth in subsection (I) which provides that is the intent “to provide a desirable visual environment through creative development techniques and good civic design and arrangement”.
- 6.7 The Board finds that the application furthers the purposes of zoning by improving the property in create two lots which are closer to conforming with the zoning requirements than the existing lots.

7. The Negative Criteria.

- 7.1 The Board finds that the Applicant also satisfies the negative criteria. The negative criteria establishes that the variance can be granted without substantial detriment to the public good; that the benefits of the deviation would outweigh any detriment and that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

- 7.2 The board finds that a two-family use and a duplex are the same use. The difference is only with respect to the configuration of the buildings.
- 7.3 The board also finds that there was nothing in the testimony which would indicate that the proposed buildings will interfere with the light, air, or space of any contiguous property.

BE IT FURTHER RESOLVED by the Zoning Board of the Borough of East Rutherford that the application for permission to construct two “duplex” style buildings which requires a use variance, certain bulk variances and waivers, and a subdivision as set forth in the application materials and plans submitted to the Board is hereby approved subject to the following conditions of approval:

1. Approvals of all other government agencies and utilities having jurisdiction over any aspect of the construction.
2. Satisfaction by Applicant of the representations and commitments made in the submissions testimony and in the record made available by Applicant before the Board, if any.
3. Deposit of the appropriate amounts into escrow and payment of requisite application fees pursuant to ordinance and reasonable requirements of applicable Borough Professionals.
4. The Applicant shall comply with the requirements of structural, fire and sanitary safety as provided for in the current edition of the New Jersey Uniform Construction Code.
5. The Applicant will pay any developmental fees which may be required under the Ordinances of the Borough of East Rutherford.
6. All approvals hereunder are subject to the Applicant receiving approval from the Bergen County Planning Board, if it has jurisdiction.
7. The Applicant shall comply with all of the requirements of Beckmeyer Engineering set forth in its review letters and any future requirements.
8. The Applicant shall comply with all Local, State and Federal rules, regulations, ordinances and laws which apply to the development approved even if not specifically enumerated in this resolution.
9. The applicant must post a maintenance guarantee with the Borough of East Rutherford not to exceed two years after final acceptance of the

improvements, in an amount not to exceed 15% of the cost of the improvements.

10. The applicant shall comply with the Residential Site Improvement Standards in the construction of the new building.
11. The applicant shall comply with the requirements of Bergen County Soil Conservation.
12. The minor subdivision shall expire within the time frame provided for by N.J.S.A 40:55D-47 unless within such time, a plat in conformity with such approval and the provisions of the Recordation Act or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the municipal engineer, and the municipal tax assessor.
13. Any subdivision deed describing the approved minor subdivision is subject to the approval of the zoning board attorney and it shall be signed by the chairman and the secretary of the zoning board.
14. As a condition precedent to the commencement of any work, the applicant shall furnish such written guarantees in the form of a Bond or Letter of Credit as required by the Board in the amounts specified by the Borough and Borough or Board Engineer, which shall be equal to one hundred twenty (120%) percent of the construction costs estimates, as prepared by Borough or Board Engineer.

MOTION TO APPROVE

Introduced by:	Sorbera
Seconded by:	Sands
In favor of granting:	Sorbera Sands Cavallo Zoller Martin
Oppositions:	Polifronio Alberta
Abstentions:	None

MOTION APPROVED

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of East Rutherford at the meeting of April 7, 2022.

A handwritten signature in black ink, appearing to read 'Bill Justis', with a large, stylized flourish at the end.

Bill Justis, Secretary