

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

November 1, 2021

PREMISES: BLOCK 45 LOT II

51 Academy Street

CASE NO.: LUB #076

APPLICANT: Herman and Donna Zablatzky

RESOLUTION OF FINDING AND DETERMINATION

WHEREAS HERMAN AND DONNA ZABLATZKY (the “applicants” and or “applicant”) have applied to the Land Use Board of the Borough of Rockaway (the “Board”) for use variance relief (d 1) and bulk variance approval to allow the demolition of an existing two family dwelling and the replacement of that building with a new, slightly larger two family dwelling at the present location, and

WHEREAS the Board did hold a hearing on said application on October 5, 2021 upon notice to all parties requiring notice of this application, all parties being given an opportunity to be heard, and

WHEREAS the Board considered the following documents/exhibits

1. Completed Borough of Rockaway Application for the Land Use Board dated July 30, 2021 and Filed with the Board.
2. Site Inspection Authorization Form, signed and dated July 30, 2021;
3. Affidavit of Ownership, signed and dated;
4. Certificate of Paid Taxes, signed and dated;
5. Ownership Disclosure Statement
6. Administrative Checklist;
7. Schedule “C” and “D” checklist for variances;

8. Engineering plan set entitled “Variance map for 51 Academy Street, Lot 11 Block 46 Borough of Rockaway, Morris County New Jersey” prepared by Alfred A. Stewart Jr., PE, PLS of of Stewart Surveying and Engineering, LLC dated July 26, 2021 with revisions dated August 23, 2021 (three sheets);
9. Architectural plan set prepared by MBSP showing a modular building (two Sheets)
10. Architectural drawings and renderings prepared by Excel Homes, dated June 27, 2021. (Four sheets and one photograph)
11. Copy of a deed for the subject property dated October 23, 2020.
12. Land Development review Application submitted to the County of Morris.
13. Application for Soil Erosion and Sediment Control Certification submitted to the Morris County Soil Conservation District.
14. Copies of construction records for the subject property.

WHEREAS the Board has made the following factual findings:

- A. The applicant is represented in these proceedings by Ms. Alyse Landano Hubbard, Esq. of the Law Office of Larry Wiener.
- B. The property is identified as Block 46 Lot 11 located at 51 Academy Street, Rockaway, NJ.
- C. The zone is the single family (R-1) zone, which does not permit multi family dwellings.
- D. The current use is as a two family dwelling and qualifies as a pre-existing and non-conforming use.
- E. The property is oversize for the zone at 0.532 acres and fronts on a County Road (CR 664). (23,152 square feet presented whereas 15,000 square feet are required)
- F. The existing dwelling is a dilapidated two-story, two family home with associated improvements such as a gravel drive, rear deck, concrete patio and an in-ground pool.
- G. The lot abuts Fox’s Brook, a Rockaway River tributary and is further impacted by NJDEP Flood Hazard area to the rear and a 300’ Riparian Zone affecting the entire property. There is also an area of Fresh Water Wetlands on the subject property which have an associated buffer.
- H. The testimony established that the existing two family home is in poor condition, with some parts collapsing. The structure was initially built in the 1850’s with no indoor plumbing. The applicants propose a four box modular home maintaining the two family use, divided side by side as opposed to the current top and bottom split. Each unit will contain no more than three

bedrooms. Pro forma architectural plans and a photograph were submitted as part of the application to approximate what is intended.

- I. The applicant's engineer, R. Henry Huelsebusch, PE, PP, CME, Introduced A-1, a Variance Map prepared by Stewart Surveying and Engineering depicting the current pre-existing non-conforming conditions.
- J. The next exhibit was marked A-2 labeled a "Grading Plan but also containing a table of Zoning Requirements.
- K. The third exhibit marked A-3 was entered into evidence and is essentially the same as Ex A-2 except that the curb cuts have been reduced to eighteen (18') feet and the driveway reconfigured.
- L. Mr. Huelsebusch explained that the final plan would involve impervious coverage of 18.8% which is a reduction from the existing coverage of 26.4 % (25% permitted) achieved by eliminating the in ground pool.
- M. The proposed new home is generally oriented North to South along the Academy Street frontage and will have a one car garage at each end with associated parking as shown. There will be off street parking for three cars for each unit. The parking is partially proposed for the front yard, contrary to ordinance.(Sec 171-17.j.3)
- N. The parking requires variance relief in that of the required space dimensions (9'wide by 20' in length) 6' of the length will project into the County ROW.
- O. The front yard setback is improved from the "0" feet now existing to 7.5' measured to the front porch, whereas 35' is required. The home cannot be located further from the street because of the riparian buffer and associated limitations.
- P. No dry well is proposed as the applicants are proposing reduced impervious coverage.
- Q. The slopes are generally front to back however and the driveway drainage shall be to Academy Street.
- R. The application is generally otherwise conforming having 50' between curb cuts and 80' from curb cut to the nearest intersection.
- S. The plans propose no landscape buffering which will need to be addressed.
- T. The planning testimony was offered by Aaron M. Kardon, P.P., AICP. Mr. Karon summarized the relief required by the applicants.
- U. With respect to the use variance relief the testimony established special reasons supporting the variance as required by Medici v. BPR Co. as the site is particularly suitable for the proposed use thereby promoting the general welfare.
- V. Site suitability was justified based upon the fact that the site had an historical use as a two family dwelling, the adjacent zone is R-4 multifamily, and the requested relief will result in the replacement of a defunct dwelling with a modern functional dwelling with improved sight lines.

- W. The home is in a “walkable neighborhood” with minimal impact on DEP regulations and the riparian buffer.
- X. The home is appropriate for siting on a County roadway with a mix of housing options.
- Y. The non-conformities will be reduced as will impervious coverage. Traffic site lines will be improved.
- Z. The testimony additionally established for the above reasons that the following Purposes of Zoning will be advanced:
 - Purpose a. encourage appropriate uses to promote the public health, safety and welfare.
 - Purpose b. to secure safety from fire, flood and other natural and man-made disasters.
 - Purpose e. to establish appropriate population densities to contribute to the well-being of persons, neighborhoods and communities.
 - Purpose g. to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, industrial and open space uses.
 - Purpose h. to encourage location and design of transportation routes to promote the free flow of traffic.
- AA. Regarding Master Plan consistency: The proposed dwelling, while not permitted, will fit the scale and scope of the existing neighborhood, will promote a variety of housing options, enhances gateway areas to the Borough, and will allow infill development compatible with the existing character of the Borough.
- BB. The bulk or c-1 variances are supported based upon the uniqueness of the property having slopes and riparian buffers driving the layout and location of replacement dwelling.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined that the reasons submitted by the Applicant support a finding that variances can be granted pursuant to NJSA 40:55D- 70 (d) (1) for the` following reasons:

1. The purposes of zoning are advanced.
2. The site is unique with frontages on a County road.
3. Special reasons support the relief.
4. The site is a suitable location for the use as evidenced by more than 100 years of multifamily use.
5. In that the site is particularly suitable for the use the public welfare will be advanced. The site will be organized and cleaned up, impervious coverage will be reduced.
6. A new dwelling will replace the dilapidated 100 year old structure which is unsafe and collapsing.

7. The existing building is currently vacant and noncontributing economically to the community.
8. Traffic sight lines will be improved and the general aesthetic condition of the site will be improved; and

WHEREAS, the Land Use Board has determined the relief can be granted without detriment to the public good and without impairment to the intent and purpose of the zone plan for the following reasons:

1. The use is consistent with and promotes several goals of the Master Plan and is therefore not detrimental to the zone plan.
2. The public welfare will be positively impacted as the use is one that has existed for over 100 years and the application is primarily one to clean up and freshen the site and its appearance.
3. The public welfare will be enhanced through aesthetic improvement of the site.
4. New landscaping will be installed.
5. Although not zoned for multifamily the R-4 multifamily zone is in close proximity.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that the variance relief requested by the Applicant is granted subject to the following conditions:

1. The Board grants a (d)(1) use variance to allow the applicant to demolish and reconstruct the existing dwelling in accordance with the plans as presented and as modified herein.
2. The applicant shall obtain any and all approvals required by the construction official.
3. A landscape and buffering plan shall be presented to the engineer and planner for approval prior to construction and shall be implemented during the construction. (To include side yard buffering)

4. Applicants shall pay all residential developer fees in accordance with Ordinance 169-64 D. The development fee is 1% of the equalized assessed value.
5. The applicants shall obtain any Morris County approvals that may be required including but not limited to a Road Opening Permit for work in/on Academy Street (CR 664) and shall comply with those conditions set forth in Morris County Department of Public Works letter to Alfred Stewart dated September 23, 2021.
6. The applicants must demonstrate compliance with all New Jersey Department of Environmental Protection (NJDEP) Flood Hazard Area and Fresh Water Wetlands regulations, or obtain a permit from the NJDEP as required.
7. The applicants shall obtain a Soil Erosion & Sediment Control (SESC) permit from the Morris County Soil Conservation District (SCD) prior to construction.
8. Floor plans shall be provided prior to construction demonstrating that the proposed units will contain no more than three (3) bedrooms each.
9. The elevation presented by the applicant prepared by Custom Building Systems, LLC, with a sketch of the front porch shall be representative of the final design.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Board of Adjustment held on November 1, 2021.

Colleen Reardon, Secretary

