BOROUGH OF NEPTUNE CITY
LAND USE BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
BULK VARIANCE RELIEF

Approved: May 20, 2025
Memorialized: June 17, 2025

MATTER OF: PAUL HENAR

APPLICATION NO.: 25-04

WHEREAS, Paul Henar (the "Applicant") has applied to the Borough of Neptune City Land Use Board (the "Board") for bulk variance relief pursuant to N.J.S.A. 40:55D-70c for lands designated as Block 7 Lot 4 on the official tax map of the Borough of Neptune City, more commonly known as 45 Third Avenue, Neptune City, NJ 07753 (the "Property") and located within the R-1 (Residential District) Zone; and

WHEREAS, a complete application has been filed, the fees as required by Borough ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order and it otherwise appears that the jurisdiction and powers for the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was held on May 20, 2025, in the Municipal Building, at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties were provided an opportunity to be heard.

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

1. The Applicant is seeking bulk variance relief to construct a second floor onto an existing one (1) story single-family dwelling. The second floor would contain two (2) bedrooms and one (1) bathroom.

2. The Applicant requires the following variance relief:

a. The Ordinance requires a minimum of eight (8) foot side yard setback. The existing and proposed side yard setbacks are 2.75 feet and 7.67 feet for the second floor.

b. The Ordinance requires a minimum of 20 feet for combined side yard setback. The existing first floor and proposed second floor will have a 10.42 foot combined setback.

c. The Ordinance permits a maximum lot coverage of 60%. The Proposed lot coverage if 62.3%.

d. The Ordinance permits a 6 foot by 10 foot covered front porch encroaching on the front yard setback with a 19-foot minimum setback. The existing and proposed covered front porch is 20 feet wide with an 18.08-foot front yard setback.

e. The Property also has three additional pre-existing variance conditions:

Minimum Lot Area	Required 7,500 s.f.	Existing 4,999 s.f.
Minimum Front Yard Width	Required 50’	Existing 33‘ 4”s
Minimum Frontage	Required 75’	Existing 33‘ 4”s

3. The first witness was the Applicant, Mr. Paul Henar. He described the existing home and proposed expansion of the second floor to add two (2) bedrooms and a bathroom, as well as other renovations. The Applicant has owned the Property for over 18 years. They are also looking to remodel the kitchen and the front porch of the home. Exhibit A-1 consisted of a picture of the area and property in question, Exhibit A-2 is the tax certification, Exhibit A-3 is a series of seven (7) photographs of the subject Property, including adjacent homes, and Exhibit A-4 with a series of fire code requests in photographs. The Applicant testified that he would adhere to and meet the conditions set forth in the May 2, 2025 letter from the Board Planner. The Applicant also plans to upgrade the deck in the rear. There will also be a new roof in the dwelling.

4. The next witness on behalf of the application was Mr. Andrew Blumetti, Professional Architect, who was sworn in and qualified. He submitted eight (8) sets of plans, and eight (8) sheets of plans last revised March 4, 2025. Mr. Blumetti proceeded to describe the proposed renovations to the ground floor level of the home and the proposed 2nd floor addition with two (2) new bedrooms in a new bathroom. He went through the variances that would be needed for the Applicant to perform the proposed improvements to the existing house. He saw that the proposed improvements to the home would benefit the upgrade, such as the fire rated wall where the stairs are currently located. Mr. Blumetti testified that all the current building and other subcodes would be met throughout the renovation of the home. He knew that the side yard was 2.75 feet and not 2.9 feet.

5. There were no members of the public expressing an interest in this application.

NOW, THEREFORE, the Board makes the following conclusions of law based upon the foregoing findings of fact:

1. The Applicant has requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c) permitting the construction of an addition of the second floor with associated improvements and remodeling to an existing single-family dwelling.

2. The Municipal Land Use Law (MLUL), 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 an applicant satisfies certain specific proofs which are enunciated in the statute. Specifically, under the "c(1)" criteria, an 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, an applicant may also supply evidence that exceptional or extraordinary circumstances exists 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, an applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the MLUL 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.

3. 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 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 an applicant has satisfied both these tests that a Board, acting pursuant to the MLUL and case law, can grant relief. The burden of proof is upon an applicant to establish these criteria.

4. The Board has examined the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). In Kaufman v. Planning Board for Warren Township, 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."

5. The Board finds that the Applicant has satisfied the positive criteria to permit flexible bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2).

6. The Board specifically finds that the proposed additions to the existing single-family dwelling would be aesthetically preferable and create a more visually desirable environment. The Board also finds that the proposed expanded dwelling would still provide adequate light, air, and open space.

This would benefit the entire community. The Board also found that the proposed expansion to single-family dwelling promotes the establishment of appropriate population density. The goals of planning as enumerated in N.J.S.A. 40:55D-2 have therefore been advanced. The Board concludes that the Applicant has satisfied the c(2) positive criteria.

7. Turning to the negative criteria, the Board finds that the proposed variance relief will not result in increased traffic, noise or permitted population density not contemplated by the zone or master plan. The Board, therefore, concludes that granting the requested bulk variance relief would not substantially impair the purpose and intent of the Zoning Ordinance or Zone Plan or be substantially detrimental to the public good. The Board concludes, therefore, that the Applicant has satisfied the negative criteria.

8. The Board concludes that the positive criteria substantially outweighs the negative criteria and bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) may be granted.

NOW, THEREFORE, BE IT RESOLVED on this 17th day of June 2025, by the Borough of Neptune City Land Use Board, that the Board memorializes the action taken by it on May 20, 2025, approving the bulk variance relief sought by the Applicant, Paul Henar in application no. 25-04, subject to the following conditions:

1. Applicant shall comply with standard Board conditions as set forth in attached Schedule A.

2. The development of this site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this Application, as revised by the terms herein.

3. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with the recommendations contained in the Reports of the Board's Professionals.

4. All grading, drainage and landscaping on the Property shall comply with all Municipal Ordinances and regulations and will be subject to the approval of the Board Engineer.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicants and to the City Clerk, Engineer, Attorney, Planner, and Tax Assessor, and shall make same available to all other interested parties.

ON MOTION OF:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAINED:

ABSENT:

DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Neptune City Land Use Board, Monmouth County, New Jersey, at a public meeting held on June 17, 2025.

Susan Y. Hewitson, Secretary
Neptune City Land Use Board

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