

RESOLUTION  
 LAND USE BOARD  
 BOROUGH OF ALLENDALE  
 BERGEN COUNTY, NJ

DATE: 12/16/2024

RESOLUTION: LUB 24-20

Land Use Board	Motion	Second	Yes	No	Abstain	Absent
<b>Bergen</b>	✓					
<b>Warzala</b>		✓				
<b>Putrino</b>						
<b>Agugliaro</b>			✓			
<b>Daloisio</b>						✓
<b>Dalo</b>			✓			
<b>Sirico</b>			✓			
<b>Wilczynski</b>			✓			
<b>Butler-Alt.#1</b>			✓			
<b>Conte-Alt. #2</b>						✓

Carried  Defeated  Tabled

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LAND USE BOARD OF THE BOROUGH OF ALLENDALE  
 RESOLUTION APPROVING  
 APPLICATION FOR VARIANCE FOR  
 SINEAD BRADY & JASON FAYLE  
 BLOCK 1705, LOT 15  
 (a/k/a 71 BROOKSIDE AVENUE)

**WHEREAS**, SINEAD BRADY and JASON FAYLE (“Applicant”), the owners of the property located at 71 Brookside Avenue, known as Block 1705, Lot 15, on the Tax Map, in the Borough of Allendale, County of Bergen and State of New Jersey (the “Property”), applied to the Land Use Board of the Borough of Allendale in an application dated October 9, 2024 seeking approvals for variance relief from the Allendale Zoning Code, to permit certain improvements and additions to an existing single family home; and

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**WHEREAS**, the proposal requires variance relief from bulk standards in the Allendale Zoning Code; and

**WHEREAS**, the application and plans specifically seek approval to extend the first floor of the dwelling, which shall include a family room as well as a new mudroom and improvements to the kitchen and existing structure; and

**WHEREAS**, the application and plans also specifically seek approval for the expansion of the existing second floor to include a new bedroom as well as other improvements to the existing structure; and

**WHEREAS**, the application seeks bulk variance relief for the minimum lot width and rear yard setback, as well as variance relief for an addition to a pre-existing non-conforming structure; and

**WHEREAS**, the Land Use Board considered the matter at its November 13, 2024 regular meeting, at which time the Applicant personally appeared and testified as to the need for the variances due to the small size of the home and the hopes of expanding their family which in turn creates the need for additional space;

**WHEREAS**, the Applicant's architect, Thomas J. Mesuk, appeared and provided testimony as to the need of the requested variances due primarily to the unique shape of the lot;

**NOW THEREFORE BE IT RESOLVED** by the Borough of Allendale Land Use Board that it hereby makes the following findings of fact and conclusions: pursuant to NJSA 40: 55D-10G:

1. Notice of the public hearing was properly given by the Applicant in accordance

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with applicable law.

2. The Property is located at 71 Brookside Avenue, known as Block 1705, Lot 15, on the Tax Map of the Borough of Allendale. The property is located in the A Residence Zone. The application is part of the record and in evidence.

3. As part of the application, the Applicant submitted a Land Use Application and associated documents; September 30, 2024 Borough of Allendale Code Enforcement Office correspondence (Anthony Hackett, Construction & Zoning Official); and Plan set entitled, "Alteration and Addition for: Brady/Fayle Residence; 71 Brookside Avenue Allendale, New Jersey 07401," which were prepared by Thomas J. Mesuk Architect, LLC with the latest revision date being September 18, 2024.

4. Variance relief is required pursuant to NJSA 40:55-70 C and 70D (2) because the Property is located in the A Residence Zone and the application proposes deviation, from the code requirements as follows:

§270-37A – Additions to Non-conforming Structures. The variances requested are for the expansion of an already existing non-conforming dwelling.

§270-57D – Rear Yard Setback. The existing dwelling encroaches ±18.25 feet into the required 50 foot rear yard. The addition is ±26.16 feet from the lot line and will further encroach into the required rear yard setback.

§270-57F – Minimum Lot Width. The existing lot width is less than the required is 115 feet. This will remain the same.

6. The Property comprises ±0.505 acres and is located within the Borough's A Residence Zone District. The Property is developed with a single-family dwelling and associated amenities. The application and plans propose an addition and renovations to the dwelling located on the Property.

7. The Applicant was sworn in and testified as to his need for the requested relief due to an expanding family and the need for more space.

8. The Applicant's Architect, Thomas J. Mesuk, appeared on behalf of the Applicant and gave testimony supporting the need for variance relief due to the nature of the lot and the size of the existing dwelling.

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9. During the Applicant's presentation, Members of the Board provided input as to the nature of the Property noting its unique configuration and inability to avoid the hardship due to the correspondence of constraints/configuration the Property and pre-existing improvements.

Additionally, the Applicant requires a variance to expand pre-existing nonconformities pursuing to section 230 of the Allendale zone code.

In this jurisdiction, the expansion or intensification of a lawfully created pre-existing nonconforming use **also** includes the expansion of a building in which a lawfully created pre-existing nonconforming use is to be constructed requires a d(2) variance pursuant to NJSA 40: 55D-70d(2). Kohl the Mayor and Council of Fair Lawn 50 N.J. 268 (1967); Burbridge the Minehill Tp 117 NJ 376 (1990). **However**, when the use is permitted, as it is in this case, but the structure is non-conforming, the expansion of the nonconformity requires a "c" variance Engleside Condo v. Land Use B.d. 301 N.J. Super 628 (law div. 1997).

Clearly, the undisputed testimony discloses that the residential use of the property is permitted and complies with the zoning code (A Residential Zone). Therefore, the structural expansion of this pre-existing nonconforming dwelling requires "C" variance relief.

As with any variance relief sought, an applicant is required to satisfy the "Positive and Negative Criteria" of the New Jersey Municipal land use law, NJSA 40: 55D-1 et. seq, (MLUL).

Although the "Positive Criteria" may differ depending upon the nature of the variance (s) sought, the "Negative" criteria remain constant and applies to all variances. Ten Stary Dom P'ship v. Mauro 216 N.J. 16 (2013).

The "Negative" Criteria requires a variance Applicant to demonstrate that the variance(s) sought can be granted without substantial detriment to the public good nor substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

The Board has carefully reviewed the testimony offered by the Applicant and their architectural expert and is satisfied that the Applicant has addressed and satisfied the "Positive and Negative Criteria" and has demonstrated hardship pursuing to Section 70 c(1) of the MLUL. In addition, the board finds and concludes that granting Applicant's variances pose no substantial detriment the to public good nor will they substantially impair the zone plan and zone ordinances of the Borough.

**BE IT FURTHER RESOLVED**, based upon the factual and legal evidence, testimony and contentions set forth herein, that the Allendale Land Use Board hereby grants the Applicant's

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request for variance relief, and to permit the addition and renovations as proposed in the application; and

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board hereby determines that the variances hereby granted constitutes a “hardship” variance under N.J.S.A. 40:55 D-70C.(1); and

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board specially adopts and accepts the testimony of the Applicant, in connection with the testimony that the Applicant is entitled to variance relief, due to the exceptionally unique nature of the property, namely the lot configuration and structure of the existing dwelling, which is deemed a hardship by the Board. In addition, the hardships associated with the present condition of the property and premises outweigh the negative criteria to the Borough zoning ordinances and the zone plan and neighborhood; and

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board hereby grants approval of the requested variance, subject to the following conditions, which shall be complied with prior to the issuance of a construction permit:

- A. All fees and assessments required by ordinances, and due and owing to the Borough of Allendale for this site for professional review and approval of the applicant’s plans, shall be paid in full to the Borough of Allendale by the applicant.

**BE IT FURTHER RESOLVED** construction shall proceed in accordance with this Resolution, the approved plans and drawings marked in evidence, the testimony of the Applicant in accordance with all applicable State, County and Municipal codes, ordinances, rules and regulations.

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**BE IT FURTHER RESOLVED** that the Land Use Board Secretary shall mail a copy of this Resolution within ten days from the date of adoption thereof to the Applicant or to their attorney, if any, without charge; and to all other persons who request the same and pay the required fee therefore. The Secretary shall also file a copy of this Resolution in the offices of the Borough Clerk, Building Inspector, Construction Code Official, Tax Assessor and the Borough Attorney and shall publish a brief notice of the decision in the official newspaper, the cost of which shall be paid for by the Applicant.

Approved:

ALLENDALE LAND USE BOARD

  
\_\_\_\_\_  
MICHAEL A. SIRICO, Chairman

Attest:

  
\_\_\_\_\_  
MELISSA BERGEN, VICE CHAIRWOMAN

Adopted: December 16, 2024