

**RESOLUTION  
OF THE  
LAND USE BOARD OF THE BOROUGH OF NEPTUNE CITY  
GRANTING BULK VARIANCE**

**APPLICANT:           ALEXANDER SMOLENSKI  
                              BLOCK 4 LOT 23  
                              APPLICATION #23-02**

\*\*\*\*\*

**WHEREAS**, Alexander Smolenski (hereinafter referred to as “applicant”) is the owner of 54 Third Avenue also known as Block 4, Lot 23 on the Tax Map of Neptune City, in the State of New Jersey, County of Monmouth (hereinafter referred to as “premises”); and

**WHEREAS**, the premises is located in a R-1 Zone; and

**WHEREAS**, the applicant has applied to the Land Use Board of the Borough of Neptune City to renovate the home and construct a second story over the existing single story, a new rear deck, new basement and 2<sup>nd</sup> story balcony. As a result of the application, the applicant requires the following relief:

1. Variance from side yard setback requirement, which requires 8 ft. setback, where 1.9 ft. is proposed to the East (existing condition 1.9 ft.).
2. Variance from side yard setback requirement, which requires 8 ft setback, where 4.36 ft. is proposed to the West (4.7 ft. exists).
3. Variance for combined side yard setback requires 20 ft. where 6.25 ft. is proposed, where 6.7 ft exists.
4. Variance from side and rear yard setback for shed, where 5 ft. is required, where 1 ft. is proposed (existing condition 1 ft.)

**WHEREAS**, the applicant also requested a height variance of 31.8 ft. However, during the meeting, the applicant withdrew his request for the height variance and will comply with the 30 ft. height requirement of the Zone; and

**WHEREAS**, after review and notice of publication indicates that the Board has jurisdiction in reviewing this application; and

**WHEREAS**, a public hearing was held on April 11, 2023; and

**WHEREAS**, the applicant produced the sworn testimony of Alexander Smolenski and Kurt Ludwig, AIA and the following exhibits were submitted with the application, reviewed by the Board, and shall be considered marked as in evidence as follows:

A-1 One (1) sheet "Survey of Property" prepared by Marc J. Cifone, P.L.S., of Lakeland Surveying dated December 16, 2015

A-2 Four (4) sheets of Architectural drawings prepared by Kurt J. Ludwig, AIA, last revised on January 19, 2023.

A-3 Handout of pictures, survey and tax map.

A-4 Pictures of driveway off Ridge Avenue.

**WHEREAS**, the Board has reviewed testimony of its professionals; and

**WHEREAS**, no members of the public appeared on this application; and

**WHEREAS**, the Land Use Board of the Borough of Neptune City, have to consider all evidence, exhibits and testimony presented and make the following findings of fact and conclusions of law:

1. The Board has jurisdiction to hear and decide this application.
2. The taxes on said premises are paid and current.

3. The said premises are located in the R-1 Zone as established by the Land Use Ordinance of the Borough of Neptune City.
4. The Board finds that the applicant has satisfied its burden of proof pursuant to N.J.S.A. 40:55D-1 et seq., upon the meeting of certain conditions.
5. The applicant has requested the following variances:
  - A. Variance from side yard setback requirement, which requires 8 ft. setback, where 1.9 ft. is proposed to the East (existing condition 1.9 ft.).
  - B. Variance from side yard setback requirement, which requires 8 ft setback, where 4.36 ft. is proposed to the West (4.7 ft. exists).
  - C. Variance for combined side yard setback requires 20 ft. where 6.25 ft. is proposed, where 6.7 ft exists.
  - D. Variance from side and rear yard setback for shed, where 5 ft. is required, where 1 ft. is proposed (existing condition 1 ft.)

The Land Use Board finds that the proposed site plan enhances the site, environmentally, commercially, and aesthetically. As a result of the proposed plan, the following purposes of the Municipal Land Use Law are promoted:

- a. 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.

- b.** To ensure that the development of individual municipalities do not conflict with development and general welfare of neighboring municipalities, the county and state.

The subject property is approximately 3,834 ft. with a 34 ft. wide frontage off Third Avenue and a depth of 109 ft.. The property does have an approximate 9 ft. strip of land that accesses Ridge Avenue. The property also contains an existing dwelling. The subject property is substantially undersized for the zone and is substantially deficient in lot frontage where 75 ft. is required where only 34 ft. exists. As a result of the configuration, the property is unique in size and shape.

The applicant is proposing to completely renovate the home, including adding a basement, second story improvement to increase the home to a three bedroom, 2-1/2 bath and dwelling, construct a rear deck and a balcony on the second floor.

The applicant is proposing to make all improvements over the existing footprint, other than the rear deck and second floor balcony. The property requires variances for side yard setback and combined side yard setback. The applicant is only increasing the side yard setback on the Westside by 4 inches due to the deck and more importantly, because the Westside property is angled in. If the property line was straight, there would be no decrease in the existing setback.

Based on the unique size and shape of the property, the Board finds that the applicant has satisfied the positive criteria for the side yard setback variances.

With respect to the negative criteria, the Board finds the side yard setback variances are not being exacerbated by this application, other than 4 inches due to the angle of the property line. The new improvements will provide a substantial benefit to the subject property as well as

to the adjoining properties. The improvements will bring an improvement to the area rather than a detriment. The Board finds that the deviation will have no negative impact on the adjoining property owners or master plan. As such, the Board finds that the applicant has satisfied the negative criteria for the granting of the side yard variances.

The applicant also requires a variance for the existing shed which is setback 1 ft. from the side and rear yard. The ordinance requires a 5-yard rear and side yard setback. The shed is existing and is approximately 7 x 7-1/2 ft.

The Board finds that the applicant has satisfied the positive and negative criteria for the setback variance for the shed as the property is unique and no negative impact results from the small shed in the corner of the property. As a result, the Board hereby grants the variance for the existing side yard and rear year setbacks for the shed.

Additionally, the Board finds that the improvements to the home proposed by the applicant provides a substantial aesthetic improvement to the property and has substantial benefit to the surrounding neighborhood. As a result, the Board hereby grants the variance subject to the conditions contained in this Resolution.

One of the objectives of Zoning is to improve properties if it can be done without detriment to the adjoining property owners. In this case, there will be an improvement to the property with no detriment to the adjoining property owners.

The Board further concludes that the variance can be granted under N.J.S.A. 40:55d-70(c) 1. The Zoning Board further concludes that the requested variance can be granted without substantial detriment to the public good and will not impair the intended purpose of the Zoning Ordinance.

With respect to all of the requested variances, the Board finds that the applicant has met his burden with respect to the variances requested because they relate to this specific property, the purposes of the Municipal Land Use Law would be advanced by the deviation from the zone requirements, the deviations can be granted without substantial detriment to the public good, the benefits of the deviations substantially outweigh any detriment; and the granting of the variances will not substantially impair the intent and purpose of the planning and zoning ordinances.

**NOW, THEREFORE, BE IT RESOLVED** that this Resolution serves as a memorialization of the Board's decision to grant Bulk Variance on April 11, 2023, subject to the conditions as follows:

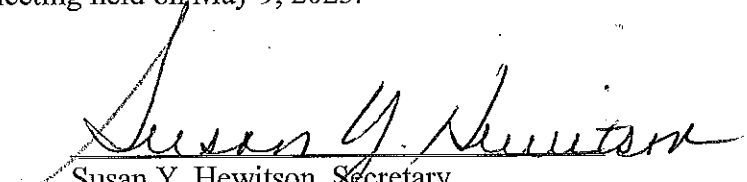
1. The Applicant shall obtain all state, county and local government approvals as required by law.
2. The Applicant shall pay all professional fees, including attorney, engineering, and planning fees, incurred by the Land Use Board of the Borough of Neptune City in connection with the applicant and no further improvements shall be granted by the Land Use Board and no permits, including building permits and certificates of occupancy shall be issued to the applicant until such payment is made.
3. This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated by reference and specifically relied upon the Board in granting this approval. The condition which shall be deemed satisfied unless and until the Board determines (on Notice to the applicant) that a breach hereof has occurred.

4. No taxes or assessments for local improvements shall be due or delinquent on the subject property.
5. Applicant shall obtain all necessary approvals from the construction department.
6. Applicant shall revise the plans to provide for a maximum height of 30 ft.
7. Applicant is prohibited from having a kitchen in the basement.

**BE IT FURTHER RESOLVED**, that the Board Secretary is hereby authorized and directed to send a certified copy of this Resolution to the applicant, the Borough Clerk, Engineer and Assessor and shall make same available to all other interested parties; and that the Board Secretary and/or the Applicant is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the applicant's expense.

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of the resolution adopted by the Borough of Neptune City Land Use Board at a meeting held on May 9, 2023.

  
 Susan Y. Hewitson, Secretary  
 Land Use Board of the Borough of Neptune City

The vote on the Motion  
To approve this application:

YES; Patricia Gerand, Randy Reynolds,  
Andrew Wardell, Robert Reynolds, Jr,  
Larry Cross

NO: None

ABSTAIN: None:

The Vote on the Resolution of  
memorialization was as follows:

YES: Patricia Gerand, Randy  
Reynolds

NO: None

ABSTAIN: None