

**RESOLUTION OF THE JOINT LAND USE BOARD OF THE BOROUGH OF BELLMAWR
MEMORIALIZING LOT WIDTH VARIANCE APPROVAL FOR CHARLES INSALACO FOR
BLOCK 99, LOT 3, APPLICATION 2024-05,**

WHEREAS on March 4, 2024 at the regular meeting of the Bellmawr Joint Land Use Board consideration was given to an application filed by Charles Insalaco for property located at Block 99, Lot 3, 128 Grafton Street in the Borough of Bellmawr.

WHEREAS, the applicant appeared and testified on behalf of the application and Brian S. Peterman, applicant's engineer, testified on behalf of the application, and the Board heard testimony from Stephen Bach and Nicholas Bishop, Board engineers and no public appeared and testified and the Board having reviewed documentation submitted with the application and during the hearing;

Now therefore the Board makes the following factual findings in conditionally approving the subject application for lot width variance.

1. The application has been properly noticed and applied for and all conditions precedent to the Board's jurisdiction have been satisfied.

2. The Board had before it the following items:

- Borough of Bellmawr Land Development Application.
- Copy of recorded deed for Block 99 Lot 3 dated 5-03-56.
- Copy of recorded deed for Block 99 Lot 3 dated 2-23-56.
- Agreement of sale for 124 Grafton Avenue, dated 1-27-2024 with addenda dated 1-23-14.
- Agreement of sale for 128 Grafton Avenue, dated 1-27-2024 with addenda dated 1-23-14.
- Drawing entitled "Plot Plan, Block 99 - Lot 3, 128 Grafton Ave. Bellmawr Borough, Camden County, New Jersey" prepared by Peterman Maxcy Associates, LLC, dated 1-11-24, no revision.
- Photograph of home to be constructed (A-1)
- Copy of a survey by Joseph W. Maxcy dated March 4, 2024 (A-2)

3. The applicant began with the presentation by Charles Insalaco that demonstrated what the plot plan filed with the application identified above clearly confirmed, namely that the lot is presently vacant and could accommodate the proposed dwelling with the footprint shown on the plot plan without deviation from any of the bulk requirements in the Borough zoning ordinance except the lot width deficiency of 10 feet; 60 feet being required and 50 feet being the present status of the lot.

4. During his testimony, Mr. Insalaco candidly acknowledged that he also had the existing adjacent dwelling under contract in addition to the vacant lot. The two lots are owned by the estate of Jane Flood who took title from the Borough of Bellmawr by deed dated May 3, 1956.

5. Upon receiving that testimony from Mr. Insalaco, the Board Solicitor discussed with the applicant and the Board the doctrine of merger which would preclude any relief based upon hardship under NJSA 40:55(d)-70(c)(1) because of joint ownership of an undersized lot with a contiguous property. However,

in accordance with the Board's Solicitor's opinion, NJSA 40:55(d)-70(c)(2), the so-called C2 variance, was available for satisfaction of the applicant's burden of proof and consideration by the Board.

6. The applicant presented substantial credible testimony, both expert and by opinions from Mr. Insalaco, which was augmented by neighborhood familiarity of various Board members and the report of Stephen Bach dated March 1, 2024 and comments of Mr. Bach at the hearing.

7. Specifically, Mr. Peterman, a licensed engineer, testified as to the ready satisfaction of the positive and negative criteria. He noted that except for lot width the property meets all area and bulk requirements and in fact substantially exceeds the lot size. With respect to lot width, he indicated that there was no adjacent available and suitable for acquisition. He demonstrated the two contiguous lots to the west of the property, Lot 2.01 and Lot 2, are rear yards of an adjacent fully developed property. More importantly and consistent with the Board engineer's report and testimony, the property substantially falls off at the boundaries of Lot 3 and goes well downhill into Lots 2.01 and 2 and hence such sloped ground would be unsuitable for subdivision and/or realistic use by the subject property. The ground to the left is the fully developed Flood homestead.

8. Mr. Peterman also submitted as an additional Exhibit A-3 which is the highlighted Borough tax map that demonstrates and confirms Mr. Peterman's testimony that 50-foot lots represent a consistent pattern of development throughout the community. This goes to both the positive and negative criteria. The highlighted tax map clearly demonstrates this pattern of development with some 30 lots fully developed identified on the exhibit together with other miscellaneous lots spread throughout the community.

9. The tax map was augmented by Mr. Peterman's testimony that he had personally compared the tax map which does not demonstrate structures with recent aerial photographs and that only those fully developed lots were highlighted. This rebuts any inference that the 50-foot lots are undeveloped and hence do not in fact represent the patterns of the development in the surrounding community.

10. The Board Engineer issued a review by letter dated March 1, 2024. The applicant agreed to comply in all respects with the Board Engineer's report and comments at the public hearing as well as all representations made by the applicant at the public hearing. In further response to the Board engineer's report the applicant indicated that they would develop the lot in such a way as to accentuate the existing swale, building same up so as to achieve a betterment of off-site drainage onto lots 2.01 and 2 from the present existing situation. This representation would be implemented by a grading plan to be submitted to the Board Engineer for review and approval prior to taking on any building permits. Applicant agreed to remove the encroaching shed on the adjacent property, thus eliminating a zoning violation. These represent betterments and benefits.

11. Board members asked various questions of the applicant regarding drainage resulting in the above agreed upon conditions. Mr. Insalaco further explained that the model chosen for construction has gutters running alongside the length of the structure draining to the street, which would also improve existing conditions. This too represented a betterment and benefit.

12. The applicant also agreed as a further condition of approval that the driveway would be expanded to provide for additional parking alongside of the proposed driveway provided however that neither driveway nor apron shall interfere with the inlet shown on the plan of survey referenced above. This too would be demonstrated by a compliance plan to be submitted as a condition of approval and subject to the review and approval of the Board engineer. This would negate any detriment.

13. All proofs demonstrate fully that the nonconforming lot situation was legal pursuant to the zoning ordinances in place when the initial plan of lots governing this area was established and remained as such until such time as the Borough upgraded the zoning to require 60-foot lots. By that time the Flood residence and buildable adjacent lot were already established.

14. The Board notes when considering the negative criteria that no public appeared and testified.

NOW, THEREFORE BE IT RESOLVED, the Board concludes based upon the foregoing factual findings that the application for a lot width variance has substantial merit and should be approved subject, however, to the following conditions:

1. The shed that lies along the common property line between Lots 4 and 3 shall be removed hence achieving a resolution of an existing nonconformity which is an additional benefit to the purposes of zoning in compliance with the Engineer's report.
2. The applicant must contact the Combined Land Use Board office to settle any outstanding review escrow accounts prior to the issuance of building permits.
3. Approval of all appropriate reviewing agencies including without limitation, the MUA, County Planning Board, Traffic Commander, Fire Marshall, Soil Conservation District, Department of Transportation and Police Department, Water and Sewer Department. (If required).
4. Compliance with all Borough, County, State and Federal rules, regulations and ordinances.
5. Compliance with the Board Engineer's report and comments at the public hearing.
6. Compliance with all representations made by the applicant at all public hearings.
7. Likewise, the conditions agreed to by the applicant in factual findings #7, 10, 11 and 12 incorporated herein, all represent betterments and hence benefits to be considered under N.J.S.A. 40:55D-70(c)(2).
8. Provision of a compliance plan depicting all original improvements with subsequent amendments identified by date of approval.
9. Posting of any required additional performance and maintenance bonding.
10. Compliance with the conditions of approval set forth in this resolution.

BE IT FURTHER RESOLVED that the applicant has satisfied their burden of proof with respect to the positive and negative criteria and in particular established that the benefits of development of the subject lot significantly outweigh any detriments and indeed that there are no such detriments. See NJS A 40:55(c)-2. By way of example only see factual findings 7, 10, 11 and 12 incorporated herein. The applicant will achieve a betterment of the offsite drainage situation by virtue of the augmentation of the swale. The applicant will achieve betterment of an existing nonconformity by removing the nonconforming and encroaching shed on Lot No. 4. The applicant will construct an attractive single-family residence consistent with the zoning and all dimensional/bulk regulations except as to the pre-existing lot width. This structure will achieve a visual improvement consistent with the purposes of the municipal land use law to benefit members of the community. Several other purposes of the municipal land use law would be advanced by the development of this lot with an attractive single-family dwelling including those specifically articulated in the Municipal Land Use Law at 40:55D-2(a)(e)(g)(i).

Those Eligible to Vote

Joshua Haas
Mark DeBerardinis
John Scarborough
Ray Staszak
Emil Andrae
Harry Corcoran

Those in Favor Those Opposed

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ATTEST:

Mark DeBerardinis

Mark DeBerardinis, Secretary

JOINT LAND USE BOARD:

JH

Josh Haas, Vice Chairman

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Borough of Bellmawr Joint Land Use Board at a meeting held on the 1st day of April, 2024.

Mark DeBerardinis

Mark DeBerardinis, Secretary