

**A RESOLUTION OF THE BOROUGH OF
BARRINGTON PLANNING BOARD**

GRANTING BULK VARIANCE RELIEF

TO ERIC APPEL

**303 AUSTIN AVENUE
BLOCK 43, LOTS 3**

RESOLUTION NO. 2024-04

WHEREAS, Eric Appel (the “Applicant”) has made an application to the Planning Board of the Borough of Barrington (the “Board”) seeking bulk variance relief to permit the construction of a 240 square feet (12’x20’) by twelve feet (12’) high metal shed, situated in the front yard area at 303 Austin Avenue, referenced on the Borough of Barrington (the “Borough”) Tax Map as Block 43, Lots 3 (the “Subject Property”), located within the Borough’s Residential-3 Zoning District (“R-3 Zone”), in accordance with Chapter 128 “Zoning” of the Code of the Borough of Barrington (“Borough Code”); and

WHEREAS, prior to the Applicant’s public hearing, the Applicant submitted to the Board various plans and documents with the Application, including but not limited to the following: ““Survey of Premises”, prepared by Donovan Surveyors, dated January 23, 2020; “Site Plan and Section,” prepared by Remus Architecture, including not-to-scale pencil sketch of proposed improvements; and “Topography and Grading Plan”, 1 Sheet, prepared by Kenneth J. Moninghoff, PE, dated 2/13/24 (collectively, the “Applicant’s Plans”); and

WHEREAS, at the March 25, 2024 regular Board meeting, the Applicant appeared on his own behalf, was placed under oath and sworn-in to provide testimony and evidence in support of the Application; the Applicant further introduced and summarized the Application for the Board, provided a description of the Subject Property and an initial explanation of the requested relief, the reasons for the requested relief, including the benefits of the Application to the Township and the Applicant and the hardship imposed upon the Applicant were the requested relief not granted by the Board; and

WHEREAS, the Applicant testified he seeks bulk variance relief to permit the construction of a 240 square feet (12’x20’) by twelve feet (12’) high metal shed, situated in the front yard area at the Subject Property; that the Subject Property is currently improved with a single-family dwelling, a large accessory structure to the rear of the single-family dwelling, a block shed and a two-car garage which fronts Third Avenue and various associated improvements. A bulk variance is required for the proposed shed to allow it to be situated within the required front yard setback. Additionally, several retaining walls have been constructed in the vicinity of the proposed shed without any apparent approval granted. The property is located in the R-3 (Semi-Detached Residence) Zoning District. The property is bound by residential properties on all sides, with the exception of Interstate 295 which bounds the northerly property

line. The property is a corner lot, situated on the northwesterly corner of Austin Avenue and Third Avenue and comprising 30,584 SF (0.702 Acres); and

WHEREAS, the Applicant further testified that the existing single-family dwelling is only 4.5 ft from property line; that a retaining wall was built on Third Avenue and while there is a grade drop, it is not a safety issue; that the Applicant stopped work when he received a stop work order from Borough; that all nearby properties have similar setbacks; that the Applicant secured all necessary permits, some of which are on hold pending the Board's review of the current application; that based on NJDEP mapping, it does not appear any proposed or current improvements fall within wetlands or stream encroachment areas; that the on-site stream is over 100 ft from the proposed shed; that the Applicant has satisfied the Board Engineer's requests for additional plans and information; that the area on Third Avenue side shall be no drop between the public sidewalk and the retaining wall and that a railing be added for safety; and

WHEREAS, regarding the proposed shed, the Applicant testified the shed will match the color of the house (brown/dark brown) with a roll garage door; that it will be used for garden equipment and storage of customary residential outdoor goods & equipment and will not be used for his business or any other commercial purpose; that there will be no utilities hooked up to the shed; that the Applicant requires bulk variance relief to permit a 10.5' accessory structure setback whereas 30' is required; Borough Code § 128-36-A(6); that the Board can grant the variance because the shed will match the principal residential dwelling structure in appearance and style so as to visually enhance and improve the Subject Property, Austin Avenue, and the Township; the shed will also improve appearance of the property by allowing indoor, organized storage of materials and equipment; and that there is no negative impact to the Applicant's neighbors resulting from the proposed improvement nor any substantial impairment to the Borough Code or Master Plan; and

WHEREAS, being duly sworn and accepted as the Board's Professional Engineer, G. Jeffrey Hanson, P.E., C.M.E., of Environmental Resolutions, Inc., reviewed the Application for the Board and introduced his technical review letter dated March 18, 2024 ("Engineering Review Letter"); then testified and questioned the Applicant as to various aspects of the Application and the development proposal; and

WHEREAS, the Board and Board Professionals questioned the Applicant as to various aspects of the Application, including the existing improvements on the Property and proposed changes, the Applicant's prior approvals and permits, and additional aspects of the Application and property; and

WHEREAS, the meeting was opened to the public and no members of the public appeared to testify; and

WHEREAS, the Board having considered the Application, the Applicant's Plans, and any additional evidence submitted, if any, and heard the testimony presented at the Applicant's public hearing, renders the following Findings of Fact and Conclusions of Law in addition to any of those contained in the "WHEREAS" paragraphs set forth above, which are incorporated by reference herein as further Findings of Fact and Conclusions of Law, as appropriate:

1. **Incorporation by Reference of “WHEREAS” Clauses.** In addition to the paragraphs below, the above “WHEREAS” clauses are expressly adopted and incorporated by reference herein as the Board’s Findings of Fact and Conclusions of Law, as appropriate.
2. **Applicant & Subject Property.** The Applicant is Eric Appel. The Subject Property is 303 Austin Avenue, referenced on the Borough of Barrington Tax Map as Block 43, Lots 3. The Subject Property is located in the Borough’s R-3 Zone.
3. **Development Proposal.** The Applicant proposes to construct a 240 square feet (12’x20’) by twelve feet (12’) high metal shed, situated in the front yard area at the Subject Property. The purpose of the shed is to permit the Applicant additional storage space.
4. **Required Relief.** The Applicant requires bulk variance relief to permit a 240 square feet (12’x20’) by twelve feet (12’) high metal shed, situated in the front yard area in accordance with Chapter 128 “Zoning” of the Borough Code.
5. **Notice.** Based on the representations, testimony, and evidence submitted by the Applicant, the Board determined adequate notice had been provided for the Applicant’s public hearing in accordance with Borough Code requirements and the MLUL. N.J.S.A. 40:55D-12 et seq.
6. **Proposed Use.** The Applicant’s use of the Subject Property as a residential use with an accessory garage structure is permitted in the Borough’s R-3 Zone. Borough Code § 128-17.
7. **Chapter 102, 128 & 213 Submission/Design Waivers.** Based on the representations, testimony, and evidence submitted by the Applicant, the Board determined no waivers from Borough Code requirements were required.
8. **Chapter 128 Variances.** Based on the representations, testimony, and evidence submitted by the Applicant, the Board determined the following variances from Borough Code zoning requirements were required:
 - a. permit a 10.5' accessory structure setback for the proposed shed whereas 30' is required; Borough Code § 128-36-A(6).
9. **Board Professional Review.** The Board Engineer and Board Attorney reviewed and discussed the Application with the Board, the Applicant, and the Applicant’s witnesses and professionals; and the Applicant agreed, as a condition of approval, to work with the Board Professionals and/or appropriate Borough officials to resolve any outstanding concerns with the Application through post-resolution compliance. The Applicant also agreed to comply with the Board Engineer’s

10. **Public Testimony.** The Applicant's public hearing was opened to the public for testimony in accordance with N.J.S.A. 40:55D-10. No members of the public appeared to testify.

11. **Decision on Bulk Variance.**

a. Positive Criteria. In light of the testimony and other evidence presented, the Board determined that the Applicant has sustained the burden of proof to support the requested variance(s) in accordance with the statutory requirements set forth in the MLUL, N.J.S.A. 40:55D-70c(2); that is, the Application to construct a 240 square feet (12'x20') by twelve feet (12') high metal shed, situated in the front yard area at the Subject Property with a non-conforming accessory structure setback may be granted because the Application advances several purposes of the MLUL, specifically: granting the variance(s) will allow the Applicant to improve the Subject Property with a new, modern shed that will match the existing principal residential structure in visual style and appearance, declutter the property, and permit an encouraged residential use in the R-3 Zone, thereby promoting the general welfare of the Township and its residents and promoting a desirable visual environment; N.J.S.A. 40:55D-2a; N.J.S.A. 40:55D-2i; the Applicant also proposes to make efficient use of available space in the Township for an appropriate, permitted, residential accessory structure while ensuring there is adequate space for safe access and all other improvements on the Subject Property as conditions of approval; N.J.S.A. 40:55D-2g; therefore, bulk variance relief permitting the improvement(s) as represented to the Board at the Applicant's public hearing is warranted.

b. Negative Criteria. In light of the testimony and other evidence presented, the Board further determined that the Application can be granted without substantial detriment to the public good because the Subject Property is large enough to accommodate the shed accessory structure and the non-conforming setback will have no detriment on adjacent properties or substantial negative impact on the public good. The Applicant has also agreed to comply with the Board's specific and standard conditions of approval, and to comply with all recommendations and comments of the Board Engineer, thereby mitigating any negative impact of the variance on the public or impairment to the intent and purpose of the Borough Code and Master Plan; and

c. On Balance: In light of the testimony and other evidence presented, the Board determined that, on balance, the benefits of granting the Application substantially outweigh any negatives as identified in the foregoing paragraphs, such that permitting the improvement(s) as represented to the Board at the Applicant's public hearing is warranted, subject to the submission of final plans for the review and approval of the Board's

professionals and satisfaction of all conditions of approval; N.J.S.A. 40:55D-70c; N.J.S.A. 40:55D-70.

WHEREAS, the Board Solicitor summarized the Application and hearing for the Board, including the requested relief, the evidence and testimony submitted by the Applicant, and possible conditions of approval, and directed the Board to conduct a single vote whether to grant the Application, including bulk variance relief; and

WHEREAS, upon motion duly made and seconded to approve the Application, subject to any conditions stated on the record and detailed herein, the Board voted to **GRANT** the Application, per the roll call vote duly recorded below:

MEMBERS	IN FAVOR	OPPOSED	ABSTAIN
CHAIRMAN J. RINK	X		
VICE-CHAIR CILURSO	X		
COUNCILMAN CERRITO	X		
MR. HARRELL	X		
MS. SULLIVAN	X		
MR. ORLANDO	X		
MS. LANG	X		
MR. BRENNAN	X		
MS. SCHREYER	X		

NOW, THEREFORE BE IT RESOLVED, the Board concludes that the Applicant has demonstrated that the Application will not have a deleterious effect upon the Borough, and has satisfied the standards necessary for approval, and the Application is therefore approved and granted subject to the conditions stated herein and on the record.

IT IS FURTHER RESOLVED, the entirety of the Applicant's approval is subject to the following conditions:

1. The Borough shall not issue any construction, occupancy, use, or other like permit to the Applicant necessary for the development approved herein until such time the Applicant obtains final signed compliance plans from the Planning Board.
2. The Applicant shall comply with all outstanding comments, recommendations, and conditions set forth within the Engineering Review Letter and made on the record by the Board and its professionals.
3. At the request of the Board Professionals, the Applicant shall return to the Board for a public hearing as needed for any further approvals and/or to resolve any outstanding issues, comments, and concerns of the Board Professionals that cannot be resolved between the Applicant and Board Engineer through post-resolution compliance. Any post-resolution public hearing relating to the foregoing shall be duly noticed and advertised as may be required by the MLUL, N.J.S.A. 40:55D-12 et seq.

4. The Applicant shall obtain approvals from any and all other governmental and/or public agencies as required by the Borough Code, MLUL, or other applicable law, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize the relief being granted herein, as well as any resulting construction that may be a part of said relief. The Applicant is solely responsible for determining from which governmental and/or public agencies, if any, such approvals are required. The Applicant shall submit satisfactory evidence of all required outside agency approvals and/or letters of no interest/exemption to the Board Secretary, Board Solicitor, and Board Engineer prior to finalizing, perfecting, and/or recording the relief granted herein.
5. The Applicant shall comply with all Federal, State and Borough laws and requirements, including without limitation, all provisions and requirements of the Code of the Borough of Barrington, applicable to this Application and approval.
6. That the Application, all exhibits, testimony, map, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for approval. In the event that it is determined by the Board, on non-arbitrary, non-capricious, and reasonable grounds, that the Application, exhibits, testimony, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied upon by the Board as they bear on facts which were essential to the granting of the relief sought by the Applicant, the Board may review its approval and rehear the Application, if circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.
7. Upon discovery by the Board of clear and convincing evidence of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present for the purpose of fact-finding regarding the same. Should the facts at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems appropriate at that time, consistent with the MLUL and applicable law, including but not limited to, a reconsideration of its prior approval, a rehearing, a modification of its prior approval, or such other action as appropriate.
8. At any time within forty-five (45) days after the adoption of this resolution, a party of interest may appeal to the Superior Court for an order vacating or modifying any term or condition as set forth herein.
9. The Applicant shall indemnify and hold the Borough harmless from any claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to the Applicant's representation that proper service and notice upon interested parties had been made in reliance upon the certified list of property owners and

other parties entitled to notice, said list having been provided to the Applicant by the Borough pursuant to N.J.S.A. 40:55D- 12(c), and publication of the notice of the Applicant's public hearing in this matter having been made in accordance with law.

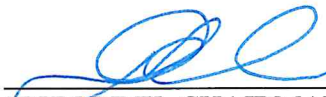
10. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.
11. The Applicant must pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Borough's land development ordinances, zone codes and any other applicable municipal codes, and the MLUL.
12. The Applicant assumes all risks should the Applicant fail to obtain any other construction or other municipal permits required with respect to the relief as granted herein during the statutory appeal period associated with the language of this resolution.
13. The Applicant must obtain any other construction or other Borough permits as required with respect to the relief as granted herein.
14. The Applicant shall comply with all of the representations and stipulations as contained in the Application and as represented through testimony in support of the Application.
15. The Applicant shall meet and otherwise comply with any and all affordable housing and/or COAH and/or Fair Share Housing Obligations req the Application, as applicable.
16. The Applicant shall make a non-residential development fee payment in an amount determined in accordance with the Borough Code and/or applicable law.
17. The Applicant shall post all applicable performance and maintenance bonds as may be required by State Law and the Borough Code.
18. The conditions of this approval may be enforced by the appropriate Borough officials as zoning violations or in any other manner as may be permitted by law.

ATTEST:

BARRINGTON BOROUGH
PLANNING BOARD:



CAROL FULTANO, SECRETARY



JOHN RINK, CHAIRMAN

CERTIFICATION

I HEREBY CERTIFY that the Planning Board of the Borough of Barrington, County of Camden, State of New Jersey, adopted the foregoing resolution at its regular meeting held at the Borough Hall, 229 Trenton Avenue, Barrington, New Jersey, on March 25, 2024, and said resolution was authorized for memorialization at a meeting held on April 22, 2024.



CAROL FULTANO, SECRETARY