PREPARED BY THE COURT

DEREK BROADDUS and MARIA BROADDUS, Plaintiffs v. TOWN OF WESTFIELD PLANNING BOARD Defendant	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – UNION COUNTY DOCKET NO.: UNN-L-1042-17 Civil Action **ORDER**

THIS MATTER having come before the Court, the Honorable Karen M. Cassidy, A.J.S.C., by James M. Foerst, Esq. of Spector Foerst & Associates for plaintiffs Derek and Maria Broaddus, by an Action in Lieu of Prerogative Writs; and Diane U. Dabulas, Esq., appearing on behalf of the defendant, Town of Westfield Planning Board and the Court having considered the submissions of the parties, and a final hearing having been held on March 6, 2018, with counsel for plaintiff and defendant appearing; and based upon the annexed Statement of Reasons;

IT IS on this **16th** day of **April, 2018,**

ORDERED that the decision of the Town of Westfield Planning Board be affirmed; and it is further,

ORDERED, that the complaint of plaintiffs, Derek and Maria Broaddus is hereby dismissed with prejudice; and it is further

ORDERED, that a copy of this Order shall be deemed served on all parties upon upload to eCourts.

/s/ Karen M. Cassidy
KAREN M. CASSIDY, A.J.S.C.

Statement of Reasons
DEREK BROADDUS and MARIA BROADDUS v. TOWN OF WESTFIELD PLANNING BOARD
UNN-L-1042-17

Final Hearing

Argued March 6, 2018
Decided April 16, 2018

Plaintiffs, Derek and Maria Broaddus (hereinafter "plaintiffs") have filed this Action in Lieu of Prerogative Writ challenging the Town of Westfield Planning Board's (hereinafter "Planning Board") denial of their application for variance pursuant to N.J.S.A. 40:55D-70(c)(1) and (2) for the subdivision of property located at Block 4108, Lot 14.

As argued by plaintiffs' counsel and as reflected in the briefs, this matter has its genesis in the unfortunate series of events surrounding a "stalker" who has allegedly targeted the Broaddus family by sending a series of letters that are the subject of an ongoing criminal investigation and was the subject of a civil suit that has been dismissed. It is this backdrop that drives many of the arguments made by the plaintiffs and which will be addressed by this court in the decision that follows.

Facts & Procedural History:

The subject property is located in an RS-10 (referencing the minimum lot size requirement of 10,000 sq. ft.) Residential Zone and is 78% larger than the required minimum square footage. The plaintiffs sought multiple variances so that they could subdivide Block 4108, Lot 14 into two lots (Lot 14.01 and 14.02), remove the large single family home and two-car garage currently on the property and construct two smaller homes in their place. The two proposed lots would have measured a total of 150 feet wide by 200 feet deep.

Construction of these two smaller homes would require the following three variances for each lot:

A. Section 11.07.E.1 which requires maximum lot width of 70 feet whereas, the proposed lot width is 67.40 feet for Lot 14.01 and 67.60 feet for Lot 14.02.

B. Section 11.07.E.2 which requires minimum lot area of 10,000 square feet within 143 feet of the front property line, whereas proposed lot area is 9,638 square feet for Lot 14.01 and 9,667 square feet for Lot 14.02.

C. Section 11.07.E.3 which requires minimum lot frontage of 70 feet, whereas proposed is 67.40 feet for Lot 14.01 and 67.60 feet for Lot 14.02.

Public hearings on the application were held on November 7, 2016 and January 4, 2017. Two individuals testified in support of the application: Robert Gazzale, a professional engineer and surveyor; and John McDonough, a professional planner. The Planning Board also considered the testimony of objector Catherine Cronin-North and Andrew Thomas, a professional planner testifying on behalf of Ms. Cronin-North. Community members also voiced their objections.

Testimony of Robert Gazzale

Mr. Gazzale testified as to the subject property's dimensions and how the proposed smaller lots would meet the 10,000 square footage requirement and would vary from the other dimensional requirements in negligible ways. "The application proposes to subdivide the property into two lots. Each lot will exceed the required minimum zone area of 10,000 square feet." Hr'g Tr. 14:20-22, Nov. 7, 2016. He presented proposed lot schematic plans but testified that no plans for actual houses had yet been developed.

The Board members questioned Gazzale about the potential size of new homes versus what was currently existing. He testified that each house could have a "2,000 square foot footprint" and a maximum size of "3,200 square foot FAR." Later in his testimony, he advised that the existing lot could accommodate up to a 5,000 square foot home under the same FAR standard. Gazzale responded to questions about the trees bordering the property in the municipal right-of-way and how the construction of two homes would impact those trees. He noted that while some trees would likely have to be removed in order to build front-facing garages, it might be possible to meander the drives around the trees. Gazzale acknowledged that the property was not exceptionally narrow, shallow or unique in any way warranting an N.J.S.A. 40:55D-70(c)(1) variance.

The objector's attorney, Robert Simon, questioned Gazzale about the lot size, style and size of the homes to be built and the location and size of the trees on the lot. He also questioned the witness about some minor discrepancies between the size of the lot and the metes and bounds description.

Testimony of John McDonough

Mr. McDonough's testimony focused primarily on how the proposed subdivision would more closely reflect the character of the area than the current lot. First, McDonough presented a review of the neighborhood. He included an overhead shot of the lot in order to illustrate how much larger it is than the surrounding lots. He noted how two smaller lots on that lot would more closely conform to the surrounding lot sizes.

> [The lot] is substantially oversized in the context of the neighborhood. As we look at that 200-foot ring this is the second largest lot in the entire neighborhood. So it is certainly substantially oversized in the context of both the neighborhood, which has average lot sizes of approximately 10,000 square feet. This is a 20,000 square foot lot plus or minus, I'll say. And also, again, a zone requirement of 10,000 square feet. So this is not only double the zoning requirement, this is also double the buildout of the area, as well.
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> [Hr'g Tr. 64:14 – 65:3, Nov. 7, 2016]

Next, he testified concerning the variances sought and the degree to which the proposed lots would differ from the requirements. He testified that each lot requires variances on lot width and frontage pursuant to Sections 11.07.E 1 and 3. He testified that the lots would be 96.6% compliant with the frontage and width requirements and would have a deviation "worst case, of only 2.6 linear feet. At best case it is 2.4 linear feet." Hr'g Tr. 67:13-21, Nov. 7, 2016. The lots were 96% compliant with Section 11.07 E.2 minimum lot area of 10,000 square feet within 143 feet of the front property line requirement. The application satisfied the overall requirement for lot area.

Thereafter, he reviewed the (c)(2) or "flexible c" standard of N.J.S.A. 40:55D-2 and how the proposed variances complied with all five parts of that standard. As to the first element, "that the application as a whole promotes several fundamental purposes of Municipal Land Use Law", he testified that element is satisfied through the promotion of public welfare by improving neighborhood harmony through better balance and scale of homes within the neighborhood; through improved visual environment, by building attractive new homes and improved planning goals by efficient use of land. As to the second element, "that the variance could be granted without substantial detriment to the public good", he testified that he looked to the surrounding neighborhood and determined that there is no negative effect as there will be homes built out in a

safe, efficient manner with no unhealthy impact. In addition, he testified as to the third element, that "the benefits of the deviation would substantially outweigh any detriment" by stating he was satisfied because visually the build out would blend with the established pattern of the neighborhood without bringing the neighborhood out of scale. He testified that other lots in the neighborhood were not compliant. As to the fourth element, "relief can be granted without substantial impairment to the zone plan and zoning ordinance", he testified that the relief required is de minimus and marginally insufficient. He discussed the non-compliant lots in the immediate area. He asserted that the neighborhood is not fully compliant in terms of lot width and frontage, and thus the new lots would be more in conformity with the neighborhood. As to the final element, "relief relates to specific piece of property", he testified that this subdivision and variance relief would not set precedent as this lot is oversized. He asserted that in the neighborhood, there are eight lots which do not meet lot area.

The Board asked numerous questions regarding the sizes of the lots in the neighborhood. McDonough again testified that as to lots between Park and Washington Streets on Boulevard, six (6) lots do not comply with lot width, five (5) lots do not comply with lot frontage and lot area all of which are located on the opposite of the block. The Board asked additional questions about the position of the garages on the proposed lots. McDonough testified that while most of the homes built prior to WWII did not have front-facing garages, there were some homes on Boulevard that did have them.

Lastly, neighborhood residents asked McDonough questions which mostly dealt with the historical nature of the neighborhood, the preservation of trees, and how surrounding lots were sized in a substantial excess of the 10,000 square foot minimum.

Testimony of Objector Expert Andrew Thomas

During the hearing on January 4, 2017 Robert Simon, attorney for objector Cronin-North, called professional planner Andrew Thomas to testify concerning the proposed variances. Mr. Thomas began by reviewing the history behind the zoning ordinances and how historically, the homes on Boulevard were built to promote "upper middle class elegance." Hr'g Tr. 10:8-9, Jan. 4, 2017. This standard was maintained as the neighborhood developed by adhering to generous setbacks and side yards. So, while street is not designated as a historic district, the zoning ordinances were written with the intent to promote the preexisting style of the area.

Thereafter, Thomas testified that while a few of the lots were deficient in size, the vast majority exceeded the 10,000 sq. ft. minimum by at least 1,000 sq. ft. As such, the proposed lots would be 27% smaller than the area's average lot size of 13,682 sq. ft. Furthermore, of the ten (10) lots on the north side of Boulevard, the two proposed lots would be the smallest. Therefore, while the minimum lot requirement is 10,000 sq. ft., the character of the neighborhood lends itself to larger lot sizes.

Next, Thomas testified that the zoning ordinance made the 70 ft. width and 143 ft. depth two separate requirements. In his opinion, the town must have been so concerned about the 10,000 sq. ft. lot requirement that they put these additional requirements in place as safeguards.

Thomas also testified as to the detrimental effects the subdivision would cause neighborhood: 1) noticeable increase in building and surface coverage; 2) increase in impervious coverage by driveways which would increase runoff; 3) increased development would result in less open space which would detract from neighborhood, and 4) the removal of mature trees. He reviewed the Town of Westfield's historical zoning maps of the area which demonstrated the intentional effort to increase the lot size of the properties. For example, in 1980 the minimum lot size was increased from 8,400 sq. ft. to 10,000 sq. ft. Furthermore, there was only one (1) subdivision on the block, Lot 19 and 20 at the corner of Park and the Boulevard, which occurred because there was a house which largely occupied one side of the property, thus providing significant area on the other side of the property for an additional home. No home was demolished to effectuate that subdivision pursuant to the comment of the Planning Board Chairman.

Thomas then reviewed the five (c)(2) criteria and articulated reasons why the criteria were not satisfied in this case. He testified that the purposes of the MLUL would not be promoted because the proposed subdivision will not promote a desirable visual environment due to its failure to meet lot requirements; large trees would have to be removed; the properties would likely require front facing garages and the driveways would not be consistent with those in the neighborhood; and, the existing house, which is consistent with the neighborhood's style, would be removed. Thomas submitted that the application would not promote public health, safety, and general welfare. Further, the improvements would cause more detriment to the zoning ordinances than they would promote the general welfare because the removal of trees and the removal of the home would be antithetical to the clear intent of the zoning plan—to preserve larger lots and the overall

character of the neighborhood. Thomas testified that the negative criteria had not been met as the variances would create a detriment to the neighborhood and its historic character.

On cross examination Thomas conceded that the houses closest to the subject property were the most relevant to the consideration of what fit with the character of the neighborhood. He also acknowledged that the Town of Westfield has designated neither the property nor the block as historic and that if the property owners wished, they could file a demolition permit and knock down the house.

Robert Gazzale's Rebuttal Testimony

The plaintiffs' expert was recalled to provide testimony about the potential houses that could be constructed on the subdivided property. He concluded that a "nearly 5,500" sq. ft. home could be built on the subject lot with a detached garage. Gazzale advised that the plan contemplated the retention of five (5) of the six (6) mature street trees. The objector opposed the introduction of this new plan into evidence as it was not provided with a copy within ten (10) days of the hearing. The Board admitted the plan as a hypothetical example.

Resident Questions & Comments

During the comment portion of the hearings, numerous residents testified against the grant of the Application. The comments included, concern about the detrimental effect on the neighborhood, including the effect of smaller lot sizes, removal of trees, demolition of an existing historic home, the increase of impervious coverage, storm water run-off, ability to include rear garages and other matters. There were a few residents who supported the application and posited that the owners of the home will not benefit financially from the subdivision. The plaintiffs' attorney opposed comments regarding the health of the surrounding trees as improper testimony.

Closing Arguments

At closing the parties reiterated substantially the arguments presented through testimony. The only significant addition was the applicant's attorney's arguments in favor of the (c)(1) standard due to the "reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property" or the structure lawfully existing thereon based solely on the history of the property. Hr'g Tr. 164:11-13, Nov. 7, 2016. The Board noted that there was insufficient evidence to support this assertion.

Board Member Deliberations

During deliberations the members focused on a variety of issues. Specifically:

(1) the importance and intent of the Master Plan for preserving historical properties.

(2) that hardship testimony was not provided for the (c)(1) standard.

(3) that the testimony of the objector's expert focused on the subliminal and subjective elements of the town, the ordinance, the rules, and most importantly, the Master Plan which made findings regarding the importance of the historical character of the homes and how lot size impacts the overall neighborhood.

(4) that the town has made it clear that its goal is the preservation of the character of Boulevard.

(5) the subdivision does require variances and the benefits of granting those do not outweigh the detriment to the street's character, especially the streetscape.

(6) the facts in the present matter are different from those in Kaufmann v. Planning Bd. for Warren Twp., 110 N.J. 551 (1988), as in that case there was a more even mix of newer and older homes in the community. Here, the street still consists of mostly older homes. The Board is entrusted with the discretion to decide what certain terms such as "substantial" and "neighborhood" mean when considering the propriety of granting the variance. Based on the Board's understanding of these terms, there were very few non-conforming properties within the neighborhood. Granting the variance would not advance the Municipal Land Use Law and would be a substantial impairment to the town's zone plan—especially since in 1995 the town chose to increase the minimum lot size to 10,000 sq. ft.

Thereafter a vote was taken and the application was unanimously denied as the Board ultimately concluded that rezoning would detrimentally change the character of the neighborhood.

The Resolution

On February 7, 2017 the Board submitted its Resolution denying the variance for the following reasons:

> A. Applicant failed to satisfy the burden of proof establishing the negative and positive criteria necessary to grant a variance. The criteria for a variance pursuant to N.J.S.A. 40:55D-70(c)(2) was not satisfied. The Plaintiff did not establish that the purposes of the Municipal Land Use Law would be advanced by the deviations from the zoning ordinance requirements as the Application will not promote a desirable visual environment, promote public health, safety and general welfare and does not promote the conservation of open space and historic districts due to the failure to meet lot requirements, removal of large trees, driveways not consistent with

the neighborhood or removal of the existing house, and it will negatively affect the character and charm of the neighborhood.

B. The Applicant did not establish that the subdivision with variance relief would greatly improve the neighborhood or provide a better zoning opportunity. Instead, the Application established that the subdivision would detrimentally effect the neighborhood as the subdivision would significantly impair the intent and purpose of the zone plan and zoning ordinance through the loss of trees, increase in impervious coverage, the negative effect on the character of the neighborhood and the negative effect on the size of the lots.

C. The Application is also not consistent with the Master Plan which emphasized the historic nature of the 600 Block of the Boulevard and which increased the lot sizes in this zone, and would have a substantial negative impact on the public good, specifically, the surrounding property owners.

D. The Applicant, based on the conclusions stated above, failed to satisfy the criteria set forth in Town of Westfield Land Development Code, including but not limited to, Section 8.06 G 1-13

E. On balance, the relief cannot be granted without substantial detriment to the public good and as there was no benefit to the community established, the deviation did not substantially outweigh the detriment of the application based on all the foregoing.

Legal Analysis & Application

Standard of Review

The trial court's review of a planning board's decision is limited. Smart Smr v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 327 (1998). The trial court must give deference to a planning board's decision and reverse only if its actions are so arbitrary, capricious, or unreasonable as to amount to an abuse of discretion. Jock v. Zoning Bd. of Adjustment., 184 N.J. 562, 597 (2005); see also Zilinsky v. Zoning Bd. of Adjustment, 105 N.J. 363, 367 (1987); Kramer v. Bd. of Adjustment, 45 N.J. 268, 296 (1965). Generally, the court's review is limited to the record below. Pressler & Verniero, Current N.J. Court Rules, cmt. 5.3 on R. 4:69 (2018). The trial court must recognize that the legislature has vested substantial discretion in the municipal agency concerning land use and development. Booth v. Bd. of Adjustment, 50 N.J. 302, 306 (1967). Therefore, public bodies such as a planning board must be allowed wide latitude in the exercise of their delegated discretion because of their particular knowledge of local conditions. Id. at 306

(emphasis added). The reviewing court may not substitute its judgment for that of the board. Kramer 45 N.J. at 296.

The Resolution Standard

Under the MLUL, a planning board must consider all the evidence and testimony presented when rendering a decision on an application. Pursuant to N.J.S.A. 40:55-10(g), "[t]he municipal agency shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing." Id. The written resolution of the board memorializing its decision must give specific reasons that fully explain its basis for variance grants; merely tracking statutory language is not enough. N. Bergen Action Grp. v. N. Bergen Twp. Planning Bd., 122 N.J. 567 (1991). The court in Lincoln Heights Ass'n v. Twp. of Cranford Planning Board, 314 N.J. Super. 366, 386 (Law Div. 1998), aff'd o.b. 321 N.J. Super. 355 (App. Div.), certif. denied 162 N.J. 131 (1999), stated:

> Resolutions of a municipal board should reflect the deliberative and specific findings of fact necessary to sustain the board's conclusions that the statutory requirements for relief were or were not met. [Citations omitted.] The point of such a requirement is to allow a reviewing court to determine fairly whether the board acted properly and within the limits of its authority in granting, or refusing to grant a variance.
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> [Id.]

The (c)(1) Variance

Under N.J.S.A. 40:55D-70(c)(1) a variance may be granted: where:

> (1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship.
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> [Ibid.] (emphasis added)

The "undue hardship" language of the rule does not contemplate hardship related to the individual applicant. Instead, it contemplates hardship affecting the use of the land. (See Lang v. Zoning Board of Adjustment, Borough of North Caldwell, 160 N.J. 41, 52, (1999)(holding that "undue hardship" does not relate to the personal circumstances of the applicant); See also Isko v. Planning Board of Livingston, 51 N.J. 162, 174 (1968)(finding the presence of undue hardship depends on "whether the strict enforcement of the ordinance would cause undue hardship because of the unique or exceptional conditions of the specific property").

The "essential proof" necessary for undue hardship is evidence that "the need for the variance is occasioned by the unique condition of the property." Lang, 160 N.J. at 56. The board's inquiry should thus be directed to "whether the unique property condition relied on by the applicant constitutes the primary reason why the proposed structure does not conform to the ordinance." Ibid.

Plaintiffs here argued that, while the property itself is not exceptionally unique in terms of its geographical shape and size, the facts and circumstances surrounding the negative celebrity of the property created an "extraordinary and exceptional situation" which uniquely affected the property. At the hearing, counsel for plaintiffs referenced submission of the Verified Complaint in plaintiffs' civil suit as evidence of the unique circumstances. However, the Verified Complaint was the extent of the evidence presented on the (c)(1) variance. There was no expert testimony or a report explaining how those circumstances made complying with the zoning laws untenable. As a matter of fact, their expert, Mr. McDonough stated that "In my opinion the (c)(1) standard doesn't apply here." Hr'g Tr. 31:13-16, Jan. 4, 2017. Nor was there testimony explaining how the requested variances would remedy the plaintiffs' situation. Counsel was unable to adequately address the court's concern that, even if this application were granted and two new homes were erected, the individual sending these letters would continue to target this property and the homeowners. A granting of this variance will, therefore, not necessarily remedy the situation the plaintiffs are attempting to address.

Additionally, plaintiffs' financial situation, which was never established but appears to be the most significant factor driving this application, cannot form the basis for granting the relief requested. No proofs were submitted to substantiate this argument, and in fact, counsel, though intimating this was an issue, never specifically proffered proof in support of same.

As plaintiffs' brief articulated, "(t)here is no case law specifically on point, [therefore] the applicant argues and requests that the court find that such facts exist in this matter such that the law may reasonably be extended to consider the external factors at play in this case." (Pla. Br. 41). By their own admission, the facts of their application do not lend themselves to (c)(1) variance approval under the present case law. Therefore, given the lack of factual and legal support, the Board was not arbitrary or capricious in denying the application for a (c)(1) variance.

The (c)(2) Variance

Under N.J.S.A. 40:55D-70(c)(2), a planning board may grant variances for certain dimensional requirements when the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. Kaufmann v. Planning Bd. for Warren Twp., 110 N.J. 551, 553 (1988).

To grant a variance under N.J.S.A. 40:55D-70(c)(2), the applicant must show that the application: (1) relates to a specific piece of property; (2) that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirement; (3) that the variance can be granted without substantial detriment to the public good; (4) that the benefits of the deviation would substantially outweigh any detriment; and (5) that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. See Wilson v. Brick Twp. Zoning Bd., 405 N.J. Super. 189, 198 (App. Div. 2009); Green Meadows v. Planning Bd., 329 N.J. Super. 12, 22 (App. Div. 2000); Ketcherick v. Borough of Mountain Lakes, 256 N.J. Super. 647, 657 (App. Div. 1992). The Supreme Court has held no (c)(2) variance should be granted when it merely advances the purposes of the owner; the variance must actually benefit the community in that it represents a better zoning alternative for the property. Kaufmann, 110 N.J. at 563.

Plaintiffs argue that their property and the relief requested were substantially similar to those in Kaufmann and that like the plaintiff in that case, they satisfied the five requirements. In Kaufmann, the Supreme Court considered a variance for a two-lot minor subdivision with conforming (excess) lot area but with a deviation from road frontage on the lots and a minor side-yard deviation to accommodate a garage existing on the proposed new lot. Id. at 458. Kaufmann ultimately held that the grant of a (c)(2) variance was justified because the application advanced the purposes of the MLUL as set forth in N.J.S.A. 40:55D70(c)(2). It found: (a) the use of zoning to guide use or development of lands to promote the general welfare, by creating more harmonious lot sizes; (e), to establish the appropriate population densities, by developing in an area where the

Township sought to encourage more intense use of the land; and (g), to provide sufficient space to meet public needs. Id. at 564-65. The Supreme Court found the benefits of zoning related to the application outweighed any detriment. Id. at 565.

The Supreme Court's opinion in Kaufmann discussed how "the focus of a (c)(2) case…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." (Emphasis in original) Id. at 563. The Supreme Court reasoned that a board should seek "to effectuate the goals of the community as expressed through its zoning and planning ordinances." Id. at 565.

The Resolution in this matter presented explanations as to why the criteria were not satisfied. First, the Resolution explained that plaintiffs did not establish that the purposes of the Municipal Land Use Law would be advanced by the deviations from the zoning ordinance requirements because it would not,

> promote a desirable visual environment, promote public health, safety and general welfare and does not promote the conservation of open space and historic districts due to the failure to meet lot requirements, removal of large trees, driveways not consistent with the neighborhood or removal of the existing house, and it will negatively affect the character and charm of the neighborhood.
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> [Pla. br. Exhibit B (Resolution) pg. 7]

The objector's expert testified concerning the various ways in which the variance would change the charm and character of the neighborhood. Hr'g Tr. 12:1-16:25, Jan. 4, 2017. The expert testified that detached garages contribute to the character of the neighborhood and that only one other house on the block does not have a detached garage. Hr'g Tr. 12:9-16, Jan. 4, 2017. The removal of large trees, while it was uncertain which large trees would be removed, was testified to at the hearing. Hr'g Tr. 20:25-23:12, Jan. 4, 2017. Though the removal of trees on its own was not a determining factor, this issue could have been addressed by conditions if the variance had been granted. It was a combination of these factors that led to the conclusions reached by the Board.

The Resolution explained in detail, citing facts elicited, why the variances would not improve the area and would cause substantial detriment to the public good. Specifically, it would

"impair the intent and purpose of the zone plan and zoning ordinance through the loss of trees, increase in impervious coverage, the negative effect on the character of the neighborhood and the negative effect on the size of the lots." Support for these assertions was provided by the objector's expert's testimony as to the increase in impervious coverage, less open space, and the removal of trees. Hr'g Tr. 20:25-23:12, Jan. 4, 2017.

The Resolution also found that granting the variances would be contrary to the Master Plan's goal of increasing lot sizes. This was supported by the objector's expert testimony explaining the historical development of the Master Plan as it increased the minimum lot sizes and put in place additional size requirements such as the 70 ft. frontage and 143 ft. depth requirements. Hr'g Tr. 23:17-24:17, Jan. 4, 2017. The issue of the Town of Westfield's determination to increase lot size in this neighborhood differentiates this case from Kaufmann. Testimony was presented that the town had intentionally increased the lot sizes in this area and that the homes on the northern side of this particular block (where the subject property is located), consisted of homes that are "much larger than the minimum lot area requirements" (10,000 square feet) Hr'g Tr. 13:19-14:16, Jan. 4, 2017. This expert also explained that the Board must consider the Master Plan for this area:

> Just to finish up my summary, going back, then, to the 1992 Master Plan, another reason cited in the Master Plan for the increase in minimum lot sizes was to establish zone standards that are more consistent with the existing development pattern in the neighborhood. I think that really drives home the point. The application, in my opinion, doesn't advance any of the applicable purposes of the MLUL, therefore it doesn't satisfy the positive criteria. It doesn't satisfy the negative criteria since it's detrimental to the zone plan and the neighborhood character.
>
> Again, if you look at the zoning requirements in the Master Plan, neighborhood character is a prime consideration. The applicant is proposing a reduction to the site without consideration of the character of the neighborhood, especially the lot sizes, the lot width, and the historic charm. And again, we have no idea whether the house will be designed and will compensate for that deficient lot area, lot width and lot frontage. There have been no subdivision applications on the north side of the Boulevard for at least 50 years. And again, the deficient lot area based on the metes and bounds and the deed was never correct. That seems that a lot area variance may be required.
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> So it's for all these planning reasons, it's my opinion in weighing both the positive and negative criteria, the general welfare is not advanced and the Board should not approve the application as submitted.
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> [Hr'g Tr. 41:24-43:3, Jan. 4, 2017]

Ultimately, the Resolution concluded that the relief could not be granted without substantial detriment to the public good and that the proofs did not establish a benefit to the community. As the record shows, there was evidentiary and testimonial support for that conclusion so that the Board's findings could not reasonably be deemed arbitrary or capricious. Therefore, the Board properly denied the (c)(2) variance application.

Evidentiary and Procedural Arguments

Plaintiffs assert two additional arguments as to why the Board's decision was arbitrary and capricious and should thus be overturned.

First, plaintiffs argue that the Board considered improper testimonial evidence. Specifically, plaintiffs object to what they perceive as improper testimonial evidence given by a resident, Doug Miller, as well as other residents about the impact of the granting of these variances on the trees that line the streets.

Furthermore, they argue that the Board failed to maintain a proper level of decorum by allowing audience members to interject in the discussion. (See Shim v. Washington Township Planning Board, 298 N.J. Super. 395 (1997)(holding that while objectors have the right to be heard, their comments should be controlled and limited by the Board).

While this colloquy does appear more free-wheeling than would otherwise be expected, the Board members made it clear that the comments of the residents and the discussions were simply hypothetical and that there was no expert report or testimony from a tree expert for the Board to consider. While the record shows that the Board had many questions about the trees and that statements and allegations from residents may have prompted the discussion, there is no evidence that the Board relied on that hypothetical discussion in making a substantive decision on the application. In addition, the Board did not let the conduct of the crowd influence their decision in an improper manner. Though the transcript recounts a spirited discussion, the comments by the members and subsequent resolution illustrate that the Board considered audience comments in an appropriate fashion.

Second, plaintiffs argue that the Board failed to consider the Verified Complaint submitted in support of the (c)(1) variance request. As noted previously, the only evidence submitted in support of the (c)(1) variance was a copy of the Verified Complaint (referred to as exhibit A-1) from the plaintiffs' civil suit. That Complaint outlined the notable history of the house which

plaintiffs contend has resulted in an "extraordinary and exceptional situation" and substantial hardship in their attempts to sell the property.

The record reflects that there was no testimony about the (c)(1) variance. Mr. Foerst argued that the Verified Complaint should be considered. However, it appears from the record that there was such a lack of evidence and testimony that the Board was confused as to whether it was even being argued. Hr'g Tr. 172:6-23, Jan. 4, 2017. A review of the record in its entirety shows that the Verified Complaint was considered but that there was a lack of support or testimony in support of this request. Therefore the Board's determination can be upheld.

Conclusion

For the reasons explained above, this court finds that the decision of the Planning Board to deny variances under N.J.S.A. 40:55D-70(c)(1) and (2) was proper and warranted based on the record below. This court finds plaintiffs have not demonstrated that the decisions of the Planning Board were arbitrary, capricious, or unreasonable, and thus this court defers to the decision making of the Planning Board.