

BOROUGH OF MOUNT ARLINGTON LAND USE BOARD

**RESOLUTION OF MEMORIALIZATION IN THE MATTER OF MARK
CHARNET USE AND BULK VARIANCE RELIEF AS RELATED TO LOT
3 IN BLOCK 38**

**Approved: April 25, 2018
Memorialized: May 23, 2018**

WHEREAS, Mark Charnet (“Applicant”) had sought a zoning permit from the Zoning Officer for the Borough of Mount Arlington to reconstruct an existing driveway, garage and concrete pathway on Lot 3 in Block 38 (“Property”); and

WHEREAS, said zoning permit application was denied by the Borough’s Zoning Officer on January 17, 2018; and

WHEREAS, the Applicant subsequently submitted an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”) on or about January 19, 2018, seeking to reconstruct the existing paved driveway, garage and concrete pathway; and

WHEREAS, the Applicant requested bulk variance relief from the Borough’s limitations regulating maximum lot coverage, minimum front yard setback, side yard setbacks for accessory building and maximum height for accessory building. The Applicant also sought bulk variance approvals for certain pre-existing non-conforming conditions related to minimum lot width and minimum lot frontage; and

WHEREAS, the Applicant included with his application plans entitled “Variance Site Plan” prepared by Careaga Engineering, Inc., dated January 22, 2018, consisting of five (5) sheets; plans entitled “Garage Re-Construction” prepared by Careaga Engineering, Inc., dated November 9, 2017; boundary/topographic survey prepared by Careaga Engineering, Inc., dated June 29, 2017 and Retaining Wall Calculations prepared by Careaga Engineering, Inc., dated January 22, 2018; and

WHEREAS, the Applicant submitted with his application the appropriate fees and escrow deposits; and

WHEREAS, upon review of the application, it was further determined that the Applicant would require use variance relief pursuant to N.J.S.A.40:55D-70(d)(4) to permit development on the Property in excess of the floor area ratio set forth in the Borough’s ordinances; and

WHEREAS, the Application was deemed complete and a public hearing scheduled;

WHEREAS, the public hearing was held on April 25, 2018, notice being required and lawfully provided; and

WHEREAS, the Board Engineer Thomas P. Lemanowicz, P.E. issued several reports regarding the Application, the most recent being dated March 17, 2018; and

WHEREAS, the Board Planner Jessica P. Caldwell, P.P. issued a report regarding the Application dated April 18, 2018; and

WHEREAS, the Applicant relied upon Jeffrey J. Careaga, P.E. to present his application; and

WHEREAS, at the conclusion of the public hearing on April 25, 2018, the Board rendered a decision on the Application in accordance with the requirements of N.J.S.A.40:55D-10(g); and

WHEREAS, the Board received as part of the hearing process the following testimony and documentary evidence:

Jeffrey J. Careaga, P.E. is a professional engineer employed by Careaga Engineering, Inc. He is a licensed civil engineer in the State of New Jersey and was accepted by the Board as an expert in that field.

Mr. Careaga described the Property as a small rectangular lot fronting on Windermere Avenue and abutting Lake Hopatcong to the rear. The Property is zoned RA-30. He noted that it slopes from Windermere Avenue downward to Lake Hopatcong. He also indicated the Property was undersized, consisting of .61 acres.

The dwelling currently located on the Property was very old, having been built sometime in the 1800's. According to Mr. Careaga no changes were proposed to the dwelling. However, he stated that an existing garage was to be removed and replaced. He explained further that the driveway was to be reconstructed to provide safer access to the dwelling. In fact, Mr. Careaga revealed that the driveway was recently reinforced with retaining walls to allow a well truck to descend from Windermere Avenue to the dwelling.

Mr. Careaga stated that the Applicant sought to reconstruct the garage which was in poor condition. The dimensions of the garage were to remain unchanged, although it would be slightly higher than the prior structure and one foot higher than the maximum height allowed in the RA-30 zone district for accessory buildings was only 12 feet. Mr. Careaga further explained that the accessory building would require variance relief from the minimum front yard setback for accessory buildings which was 40 feet and only 24.8 feet was proposed. In addition, the Applicant would require relief from the minimum side yard setback which was 12 feet and only 1.3 feet was proposed. He also noted that

the Applicant would need a variance to allow the garage to be built in the front yard.

Mr. Careaga testified that reconstruction of the driveway, garage and pathway would increase the maximum lot coverage on the Property from 20.9% to 31.4% which exceed the maximum lot coverage permitted 25%. Similarly, the maximum floor area ratio was proposed to be .232 which was in excess of .18 allowed in the zone district. This particular non-conformity triggered the need for a use variance from the FAR requirements.

Mr. Careaga indicated that the driveway was to be reconstructed in a manner similar to other driveways in the neighborhood which also had steep slopes. He testified that retaining walls would be needed to support the driveway. However, he assured the Board that he had designed the driveway to properly handle any stormwater runoff so that there would be no drainage or erosion issues.

Mr. Careaga stated that the two-story boat house would remain unchanged. He assured the Board that the Applicant proposed to use the boat house solely for his personal use and would agree to a restriction against its rental or conversion to a permanent residential structure.

Mr. Careaga testified that the bulk variance relief needed by the Applicant was dictated largely by the irregular shape of the lot, its unique topographic conditions, and the unavailability of land from the adjacent property owners. According to Mr. Careaga, these conditions imposed a hardship. However, the proposed design of the garage and driveway was not inconsistent with other garages and driveways in the immediate area.

Mr. Careaga explained that the variance for the FAR violation was not a new condition; in fact, he noted that the floor area ratio was not proposed to change from the current condition on the Property. He noted that the FAR violation was triggered due to the inclusion of the basement as living area. However, given the age of the dwelling it was obvious that the condition pre-existed the Borough's adoption of the FAR ordinance.

After Mr. Careaga concluded his testimony, the matter was open to the public. Joseph Spattaro, the owner of 499 Windermere Avenue, the adjacent property spoke in favor of the application, as did Robert Van Den Hende, another neighbor. Thereafter the Board closed the public portion of the meeting.

WHEREAS, the Board after reviewing the testimony evidence submitted by the Applicant, made the following findings of fact and conclusions of law:

1. The Applicant is seeking a use variance pursuant to N.J.S.A.40:55D-70(d)(4) to authorize a deviation from the Borough's FAR requirements as well as bulk variance relief pursuant to N.J.S.A.40:55D-70(c) from several of the bulk requirements in the Borough's RA-30 zone district. The relief is sought in connection with the Applicant's proposal to reconstruct an existing paved driveway, garage and concrete walkway on Lot 3 in Block 38. The Applicant's

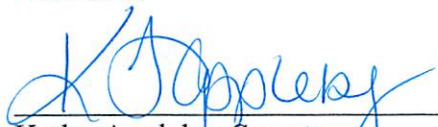
- proposal will enable the Property to continue to be used for residential purposes as permitted in the RA-30 zone district.
2. The Board agrees that the Applicant will require use variance relief because the Borough's FAR requirement is .18 and the Applicant proposes an FAR of .232. The Board finds that the Applicant's request for use variance relief is acceptable and has been a pre-existing condition on the Property for many years. The Board finds that the proposal to provide a more stable and safe driveway will promote the public health and general welfare while also providing security from fire and other disasters. These two objectives are consistent with purposes a and b. In addition, the proposed improvements will aid in the continued residential use of the dwelling which has historic value. This promotes purpose j of the MLUL. The Board finds that these goals should not be frustrated merely because of a pre-existing, non-conforming FAR feature on the Property.
 3. The Board also find that the Applicant will require bulk variance relief from the area and bulk requirements set forth in the RA-30 zone. Specifically, the Board finds that the Applicant will require relief from the maximum lot coverage requirement whereas 25% is permitted and 31.4% is proposed. In addition, the proposed garage will require relief since no accessory structure is permitted in a front yard. Additionally, the location of the proposed garage is also only 24.8 feet from Windermere Avenue whereas 40 feet is required. Further, the proposed garage will be only 1.3 feet from the side yard property line whereas 12 feet is required. Finally, the proposed garage will be 13 feet high whereas 12 feet is required. The Board agrees that bulk variance relief should also be granted with respect to the pre-existing non-conforming minimum lot width of 81 feet whereas 125 feet is required and minimum lot frontage which is 81 feet whereas 100 feet is required. The Board has determined that the bulk variance relief is warranted as per N.J.S.A.40:55D-70(c)(1). It finds that the lot is undersized and extremely narrow with severe slopes extending from the front of the Property to the rear that abuts Lake Hopatcong. The slope, shape, and size of the lot, along with Lake Hopatcong abutting the Property to the rear, impose significant hardships and preclude any effort to develop the Property in a conforming manner. The Board agrees with the Applicant that there is no available property that he could acquire to help remedy this circumstance.
 4. The Board believes that the Applicant has satisfied the negative criteria analysis associated with both the use and bulk variances. The proposed variance relief will enable the Property to remain as a residential use as permitted in the RA-30 zone district. Moreover, the proposed garage, its location, and size are consistent with other accessory buildings in the neighborhood along Windermere Avenue. The driveway improvements offer safe access and are consistent with the configuration of the other driveways in the area. Further, the Borough's Master Plan seeks to encourage the redevelopment or rehabilitation of lake front homes, which this application intends to achieve. For these reasons, the Board finds that the Applicant has satisfied the negative criteria and is entitled to the use and bulk variance relief requested.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey does hereby approve the grant of the use and bulk variance relief to the Applicant, Mark Charnet, as more

particularly described on the "Variance Site Plan", prepared by Careaga Engineering, Inc. dated January 22, 2018 last revised April 3, 2018 and as illustrated in the Garage Re-Construction drawing prepared by Careaga Engineering, Inc., dated November 9, 2017, subject to the following terms and conditions:

1. The Applicant shall revise the plans in accordance with the recommendations from the Board engineer, Thomas R. Lemanowicz, P.E.
2. Prior to the issuance of a Certificate of Occupancy, the Applicant shall record with the Morris County Clerk's Office a deed restriction prohibiting the rental of the boat house on the Property as a residence and limiting it to the personal use of the owners of the Property. The proposed deed restriction shall first be presented and approved by the Board's attorney prior to recording.
3. The Applicant shall submit proof that all real estate taxes and assessments due on the Property have been paid in full prior to the issuance of both the building permit and Certificate of Occupancy.
4. The Applicant shall comply with and adhere to all rules, regulations and ordinances of the Borough of Mount Arlington applicable to his proposed development.
5. This approval is conditional upon approvals required by the Applicant from all outside governmental agencies exercising jurisdiction over the development of the Property.
6. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be necessary and appropriate.

ATTEST:


Kathy Appleby, Secretary

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD


By:  04/25/18
Chairman

DATED:

THE VOTE:

IN FAVOR: 7
OPPOSED: 0
ABSTENTIONS: 1

I hereby certify that the above is a true copy of the Resolution adopted by the Borough of Mount Arlington Land Use Board at its meeting on May 23, 2018.


Kathy Appleby, Board Secretary