

19-007

**RESOLUTION OF MEMORILIZATION GRANTING USE AND BULK VARIANCE
RELIEF TO MARK CHARNET TO PERMIT THE CONSTRUCTION OF AN
ADDITION TO AN EXISTING SINGLE-FAMILY RESIDENCE, THE
CONSTRUCTION OF A DETACHED GARAGED AND RELATED IMPROVEMENTS
TO LOT 3 IN BLOCK 38**

**Approved: December 18, 2019
Memorialized: January 22, 2020**

WHEREAS, the Applicant, Mark Charnet (“Applicant”) is the owner of Lot 3 in Block 38 (“Property”) as noted on the tax map for the Borough of Mt. Arlington and having an address of 497 Windemere Avenue; and

WHEREAS, the Applicant submitted an Application for Development with the Borough of Mt. Arlington Land Use Board (“Board”) on or about August 19, 2019, seeking use and bulk variance relief to construct an addition to the rear of his single-family dwelling, the reconstruction of a detached garage, the installation of paver pathways, and other improvements on the Property; and

WHEREAS, the Applicant had previously applied to Board in 2018 seeking approval to, among other things, reconstruct the existing paved driveway, rebuild a detached garage and install retaining walls and a paver pathway on the Property; and

WHEREAS, the Applicant was granted at that time the requisite land use approvals by way of a resolution memorialized on May 23, 2018. The approval also allowed improvements to an existing boat house provided there was a restriction against the rental or conversion of the boat house to permanent residential structure; and

WHEREAS, the Applicant proceeded with a portion of the work approved in 2018, specifically demolition of the detached garage and the construction of retaining walls for 2 sections of the driveway. The Applicant then ceased work and re-applied to the Board; and

WHEREAS, in connection with its current application, the Applicant requires bulk variance relief from the zoning standards in RA-30 single-family zone for having an accessory structure (garage) in the front yard; for insufficient front yard setback for accessory structure (garage) whereas 40 feet is required and only 32.2 feet is proposed; insufficient side yard setback for an accessory structure whereas 12 feet is required and only 4.5 feet is proposed; exceeding the maximum impervious coverage whereas 25% is permitted and 39.6% is proposed; exceeding the maximum number of stories whereas 2.5 stories are permitted and 4 stories are proposed; and exceeding the allowable driveway slope whereas 15% is permitted and 16.89% is proposed. In addition, the Applicant will require a use variance approval since the proposed development will exceed the maximum Floor Area Ratio which is 18% with 32% being proposed and a use variance for the height of the dwelling where 35 feet is permitted and 41.9 feet is proposed; and

WHEREAS, the Applicant submitted with his Application engineering plans entitled “Variance Plan, Charnet Residence, Block 38, Lot 3, #497 Windemere Avenue, Borough of Mt. Arlington, Morris County, New Jersey,” prepared by Dykstra Walker Design Group, P.A. dated March 13, 2019, last revised November 29, 2019 consisting of 6 sheets; architectural plan entitled “Charnet Residence, Block 38, Lot 3, #497 Windemere Avenue,” prepared by Michael Bengis, A.I.A. dated June 3, 2019, last revised December 12, 2019, consisting of 3 sheets; architectural plan entitled “Proposed Charnet Garage,” prepared by Michael Bengis, A.I.A. dated March 25, 2019, consisting of 2 sheets; and “Boundary and Topographic Survey, Block 38, Lot 3, #497 Windemere Avenue, Borough of Mt. Arlington, Morris County, New Jersey,” prepared by Dykstra Walker Design Group, P.A. dated February 22, 2019; and

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

WHEREAS, the Application was deemed administratively complete by the Board’s engineer on or about October 11, 2019; and

WHEREAS, public hearings were subsequently scheduled and held on November 20 and December 18, 2019, notice being required lawfully provided; and

WHEREAS, the Board’s engineer, David A. Clark, P.E. issued Technical Review Reports on November 20 and December 18, 2019 and the Board’s planner, Jessica Caldwell, P.P. issued reports dated November 8 and December 17, 2019; and

WHEREAS, the Applicant was represented by Joseph E. O’Neill, Esq.; and

WHEREAS, at the conclusion of the public hearing on December 18, 2019, the Board rendered a decision of the Application in accordance with the requirements set forth 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:

The Applicant, Mark Charnet, testified that he and his wife purchased the Property at an auction and have since intended to renovate the home for several years. They currently live in Wayne, New Jersey. Although he acknowledged the earlier approval, he indicated that the relief now being sought was necessary to accommodate both he and his wife’s medical conditions which had changed since the earlier application. Both Mr. Charnet and his wife suffer from serious conditions that limit mobility.

Given their medical conditions, Mr. Charnet explained to the Board that they were seeking to renovate the home and the site to make it safer and improve accessibility. Improvements include an indoor swimming pool to afford them a safer environment to exercise and an elevator to make it easier to access the dwelling. He also said that they wanted to install paver pathways to provide better access throughout the Property. The Board finds that

improvements that promote handicapped accessibility for disabled persons are of paramount public interest.

Mark Gimigliano, P.E. next testified on behalf of the Applicant. He acknowledged that the Board had previously granted an approval and noted that the work actually began as per that approval. He indicated that the work ceased when the Applicant decided to proceed in a slightly different manner. Mr. Gimigliano presented Exhibit A-1 which was a plan showing existing condition. He stated that the Property was located on the north side of Windemere Avenue and was zoned RA-30. He explained that there was a 2 and ½ story stone/frame dwelling on the Property. He noted that there was a detached garage located in the front yard along Windemere Avenue and that the Property sloped from the road to Lake Hopatcong. The location of the garage was not permitted by the Borough since it was an accessory structure in the front yard. In the rear of the Property along Lake Hopatcong there was an existing boat house with a living area. He testified that the Property had slopes in excess of 15% throughout which necessitated the installation and renovation of retaining walls. He noted that there was no defined access to the boat house which was the reason why the Applicant wanted to install the paver pathways.

The engineer then presented Exhibit A-2 which was the site/grading plan from the prior application. He also introduced Exhibit A-3 which was a colored plan showing the current proposal by the Applicant. Mr. Gimigliano noted that the garage had been built, as well as the stairways to the home from the garage. He said that the driveway was to be constructed with a width of 20 feet and supported by retaining walls. Mr. Gimigliano informed the Board that the Applicant would require a bulk variance for lot coverage. The increase in the impervious coverage was caused by the proposed pathways, the addition to the dwelling, and the driveway, which combined to increase the impervious coverage from 20.9% to 36.7% exceeding of the zone district's limitation of 25%. He also highlighted for the Board the indoor pool area that would be built in the rear of the dwelling. He explained that this proposal would require variance relief from the RA-30 zone district's limitations on lot width since 125 feet was required and only 81 feet was available, as well as lot frontage whereas 100 feet is required and only 81 feet is available. He opined that the Applicant would require relief from the zone's lot coverage restriction of 25%, whereas 39.6% is proposed and from the zone districts building height restriction of 35 feet whereas 41.9 feet was proposed. Finally, he explained that the Applicant's proposed dwelling would be 4 stories where only 2.5 were allowed.

After the Applicant's engineer concluded, Michael Bengis was called to testify. Mr. Bengis has been a licensed architect for 43 years and was responsible for preparing the architectural plans in support of the Application. He presented Exhibits A-4 through A-7 which were renderings of the proposed dwelling from various locations. Exhibit A-4 showed illustrating the first floor and basement plan which showed the 35 by 16-foot pool the Applicant was hoping to install. Exhibit A-5 was a section plan showing all levels of the house, including the attic area which was proposed to be raised by approximately 8 feet. Exhibit A-6 presented side views of the proposed dwelling. In Exhibit A-7 showed views from Windemere Avenue and Lake Hopatcong. Mr. Bengis indicated that the garage was 1.5 car garage with a stairway down to the bottom of the structure that would provide easier access to a pathway to the home. Mr. Bengis indicated that a home was Stickley structure built in the 1800s. It was one of the only 2

Stickley homes in New Jersey. He stated that his design was intended to preserve the historic features of the dwelling.

The Applicant then introduced John McDonough, P.P. to justify the variance relief being sought. He opined that the application would require use variance relief as per N.J.S.A. 40:55D-70(d)(4) since the proposal would have a Floor Area Ratio of 32% and only 18% was permitted. He also advised the Board that use variance relief would be needed in accordance with N.J.S.A. 40:55D-70(d)(6) since the new height for the proposed dwelling would exceed the maximum permitted height in the zone by more 10%. Specifically, the Applicant was proposing a building height of 41.9 feet whereas only 35 feet was allowed. Mr. McDonough also testified that the Applicant would require a bulk variance for lot coverage whereas 25% was permitted and 39.6% was sought. Similarly, he said bulk variance relief would be needed for building stories whereas the zone only allowed 2.5 stories and the Applicant was proposing 4 stories. He further noted that the Applicant would need variance relief since the driveway slope was proposed to be 16.89% whereas only 15% was allowed. Similarly, the detached garage would need variance relief since it was located in the front yard. He explained that the proposed setback for the garage was 32.2 feet whereas 40 feet was required and it was located only 4.5 feet from the side yard whereas 12 feet was required. Finally, Mr. McDonough stated that the Applicant needed relief from the Borough's restriction pertaining to retaining wall height to a property line, whereas only 4 feet was allowed and 9.9 feet was requested.

Mr. McDonough testified that the use variance relief for the building height and Floor Area Ratio was justified. In support of the positive criteria, he indicated the proposed improvements to the Property would help preserve the historic character of the Stickley residence. Further, the Applicant's willingness to install reasonable stormwater management features would help protect Lake Hopatcong and promote environmental protection. These benefits, in his estimation, promoted the general welfare, a desirable visual impact through creative development techniques, the conservation of historic sites, and a more efficient use of the Property. These benefits advanced purposes a, i, j, and m, respectively, of the Municipal Land Use Law ("MLUL").

Mr. McDonough opined that there would be no substantial detriment to the public good or substantial impairment to the intent or purpose of the Borough's master plan. He believed that neither the height of the structure or the increase in the FAR would substantially impair the public good. In his view, the Property already exceeds the Borough's limitations on FAR. The additional increase would not make the Property appear to be over developed. Additionally, he believed that the additional 8 feet in height of the dwelling would not block open space, air, or light of surrounding neighbors. Since the Property sloped downward from Windemere Avenue, the additional height would not even be noticed in his estimation. Mr. McDonough also asserted that the development was consistent with the Borough's stated goal of redevelopment of the lake front properties.

Mr. McDonough stated that the bulk variance relief sought was similarly justified by the purposes of zoning implicated with the use variance relief. Specifically, he believed that the general welfare, a desirable visual impact, the conservation historic sites, and a more efficient use of the land warranted the Applicant's proposed deviations from the Borough's bulk

requirements. This would warrant relief in accordance with N.J.S.A. 40:55D-70(c)(2). Further, Mr. McDonough felt that the narrowness of the Property and its topography imposed a peculiar and exceptional hardship, which also supported the issuance of the bulk variance pursuant to N.J.S.A. 40:55D-70(c)(1).

Mr. McDonough explained that the Applicant satisfied the negative criteria for the bulk variance relief in a manner consistent with the arguments he made with respect to the use variance relief.

After Mr. McDonough concluded his testimony, Board members questioned the intensity of the proposed development, inquiring whether all of the proposed pathways were needed, why the Applicant configured the driveway as he did, and the massing of the proposed addition to the dwelling. When the public was invited to testify, Colleen Lyons, executive director of Lake Hopatcong Commission, appeared. She made referenced to a letter dated November 20, 2019 in which the Commission offered comments regarding the Applicant's development proposal. In it, she noted that the Applicant proposed to install drywells. She urged the Board to require a maintenance plan be adopted to ensure the proper functioning of the drywells in the future. She also recommended the planting of trees and other plant species which could act as a buffer to reduce the flow of stormwater, as well as an agreement from the Applicant to not use fertilizer to establish new vegetation on site. The Applicant indicated that he would agree to those recommendations.

In addition, Robert Vanden Hende, resident at 505 Windemere Avenue, also addressed the matter. Mr. Vanden Hende expressed concerns about the scale of the development and its visual impact on the neighborhood. The Applicant and its professionals heard the comments and indicated that they might consider revisions to the proposed plans.

Upon hearing the various comments and concerns, the Applicant agreed to reconsider some aspects of the proposal. Thereafter, on or about December 5, 2019, he submitted revised plans which were intended to address those concerns. At the Board's December 18, 2019 meeting, Mr. Gimigliano appeared to offer testimony regarding the revisions. Specifically, he advised that the driveway had been reduced to a width of only 18 feet and the proposed paver walkway at the southwest side of the basement addition had been eliminated. In addition, he informed the Board that the patio area adjacent to the shoreline and been changed to permeable pavers which would allow for additional stormwater filtration. In addition, the Applicant proposed the creation of a swale at the lower portion of the paver walkway which would also preclude stormwater from flowing into Lake Hopatcong. He concluded by informing the Board that the floor elevation of the basement addition had been lowered by 3 feet. This modification would lower the roof line thereby reducing the visibility of the addition.

Following his testimony, the Board's planner Jessica Caldwell, P.P. noted that while the changes did not necessarily eliminate any variances, she believed that they represented an improvement to the original proposal by enhancing stormwater management and reducing the height of the dwelling. She said that the use variance relief was justified and the Property could accommodate the development without any negative impacts.

WHEREAS, the Board after hearing the testimony and viewing the documentary evidence submitted made the following findings of fact and conclusions of law:

1. The Applicant is proposing an addition to the rear of the existing dwelling at the basement first floor level that will include an indoor pool, as well as other site improvements, including the reconfiguration of the driveway, reconstruction of an existing detached garage, the construction of retaining walls and a paver pathway to Lake Hopatcong. A portion of the work has been completed, namely the demolition of the garage and the construction of the retaining walls for 2 sections of the driveway that are closer and parallel to Windemere Avenue. This work was done pursuant to a prior resolution granted by the Board to the Applicant.

2. The Applicant's proposal exceeds the zone district's FAR requirement of 18%, whereas 32% is proposed. The Property currently has a FAR of 20.3%. Thus, the Applicant will require relief pursuant to N.J.S.A. 40:55D-70(d)(4). The Board also finds that the Applicant's proposal will require use variance relief in accordance with N.J.S.A. 40:55D-70(d)(6) because the height of the structure will exceed by more than 10% the maximum height allowed in the zone of 35 feet. The Board finds that the use variance relief is justified, because the Property is particularly situated to accommodate the additional development. The Board agrees with the Applicant that the larger home will be compatible with other dwellings in the surrounding neighborhood. Moreover, the Board agrees that the Applicant's proposal will advance the general welfare, which is purpose a of the MLUL; promote a desirable visual environment which is purpose i; promote the conservation of historic sites which is purpose j; and represents a more efficient use of the land which is purpose m of the MLUL. The Board agrees with its planner that the scale of the structure fits in with the surrounding residences and will not appear to be "crowding" the Property.

3. The Applicant is seeking 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. These include deviations from the zone district's standards prohibiting accessory structures in the front yard; deviations for front and side yard setbacks for accessory structures; maximum impervious coverage; the maximum number of stories for a proposed dwelling; slope of the driveway; and the limitation on the height of retaining walls in relation to the distance from the property line. The Board agrees that these bulk variances are justified under both C-1 and C-2 analysis. The Board finds that the Property is narrow with exceptional topographic conditions, namely, the severe slope from the front yard to the rear yard. These conditions present an undue hardship for the Applicant to achieve a compliant development. In addition, under the C-2 analysis, the Board finds that the Applicant's proposal will promote the same purposes of zoning as established in support of the use variance relief.

4. The Board believes that the Applicant has satisfied the negative criteria associated with both the use and bulk variance relief sought. The relief will enable the Property to be maintained as an attractive historical site in a manner that is consistent with the neighborhood. The inclusion of stormwater management will help improve the condition of Lake Hopatcong. The proposal is also consistent with the Borough's master plan goal regarding lake front development. For these reasons, the Board finds that the Applicant has satisfied the negative criteria and is entitled to both the use and bulk variance relief sought. The Board finds that the

Applicant's willingness to revise its original proposal represents a better planning alternative for the Property than the design originally introduced.

NOW, THEREFORE, BE IT RESOLVED, that 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 sought by the Applicant, Mark Charnet, more particularly described in the engineering plans entitled "Variance Plan, Charnet Residence, Block 38, Lot 3, #497 Windemere Avenue, Borough of Mt. Arlington, Morris County, New Jersey," prepared by Dykstra Walker Design Group, P.A. dated March 13, 2019, last revised November 29, 2019 consisting of 6 sheets; architectural plan entitled "Charnet Residence, Block 38, Lot 3, #497 Windemere Avenue," prepared by Michael Bengis, A.I.A. dated June 3, 2019, last revised December 12, 2019, consisting of 3 sheets; architectural plan entitled "Proposed Charnet Garage," prepared by Michael Bengis, A.I.A. dated March 25, 2019, consisting of 2 sheets; and "Boundary and Topographic Survey, Block 38, Lot 3, #497 Windemere Avenue, Borough of Mt. Arlington, Morris County, New Jersey," prepared by Dykstra Walker Design Group, P.A. dated February 22, 2019, subject to the following conditions:

1. The Applicant shall comply with the technical comments set forth in the Technical Review Reports prepared by Board engineer, David A. Clark, P.E., dated November 20 and December 18, 2019.

2. The Applicant shall comply with the recommendations set forth in the November 20, 2019 report from the Lake Hopatcong Commission.

3. 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.

4. Prior to the issuance of a building permit, the Applicant shall record a deed restriction that shall first be reviewed and approved by the Board's attorney and engineer regarding the use and maintenance of any rain gardens, drywells or other stormwater management techniques to be constructed on the Property.

5. The Applicant shall secure the appropriate permits from the New Jersey Department of Environmental Protection allowing the construction of the proposed boat house.

6. The Applicant shall submit proof that all fees, escrow amounts, real estate taxes and assessments have been paid prior to the issuance of both the Building Permit and Certificate of Occupancy.

7. The Applicant shall comply with and adhere to rules, regulations ordinances of the Borough of Mt Arlington applicable to the proposed development.

8. The Board's approval is conditional upon approvals required by the Application from all outside Governmental Agencies, exercising jurisdiction over the development of the property.

9. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be deemed necessary and appropriate.

ATTEST:

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

Kathy Appleby, Secretary

By: _____
Rob Van den Hende, Chairman

DATED:

THE VOTE:

IN FAVOR:

OPPOSED:

ABSTENTIONS:

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 _____, 2020.

Kathy Appleby, Board Secretary