

18-007

BOROUGH OF MOUNT ARLINGTON LAND USE BOARD

**RESOLUTION IN THE MATTER OF MICHAEL F. VALENTI – USE AND BULK
VARIANCE RELIEF AS RELATED TO LOT 9 IN BLOCK 52**

Approved: November 28, 2018

Memorialized: December 19, 2018

WHEREAS, Michael F. Valenti, Jr. (“Applicant”) resides at Lot 9 in Block 52, otherwise known as 33 South Bertrand Road in the Borough of Mount Arlington (“Property”); and

WHEREAS, the Property includes a single-family home and a detached private garage; and

WHEREAS, the Applicant began renovating the detached garage before being advised by officials in the Borough of Mt. Arlington (“Borough”) that he would require variance relief and permits for same; and

WHEREAS, in response the Applicant filed an Application for Development with the Borough of Mount Arlington Land Use Board (“Board”) on or about September 28, 2018, initially seeking only bulk variance relief to authorize the renovation and reconstruction of the subject garage; and

WHEREAS, the Applicant specifically requested bulk variance relief from the Borough’s regulations in the RA-7.5 zone related to minimum total side-yard setback; maximum height for accessory buildings; maximum square footage for accessory structure; and accessory structure located in front yard as set forth in Ordinance § 17-29; and

WHEREAS, the Applicant included with his application an engineering plan entitled “Lot Re-Development Plan/Variance Plan/Valenti Residence” prepared by Thomas F. Graham, P.E. from Dykstra Walker Design Group P.E. dated September 26, 2018, last revised November 2, 2018, consisting of one (1) sheet and architectural plans entitled “Garage Addition and Alteration to the Valenti Residence” prepared by Stephen N. Bias, A.I.A., dated September 5, 2018, last revised November 2, 2018; and

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

WHEREAS, in the course of reviewing the application, the Board Engineer noted that the Applicant would also require a use variance in accordance with N.J.S.A.40:55D-70(d)(4) since the reconstruction of the garage would increase the already-existing non-

conforming floor area ratio on the property from .34 to .38 where the maximum permitted FAR is only .30; and

WHEREAS, the Applicant subsequently amended his application to include a request for the use variance, whereupon the application was deemed complete and a public hearing was scheduled for November 28, 2018; and

WHEREAS, the public hearing was held on the aforesaid date, 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 November 5, 2018; and

WHEREAS, the Board Planner, Jessica C. Caldwell, P.P. also issued a report dated November 21, 2018; and

WHEREAS, the Applicant appeared at the hearing, being represented by Bernd Hefele, Esq.; and

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

Mr. Valenti testified that he was the owner of the Property and resided in the dwelling with his wife, children, and mother. He stated that he had previously renovated the single-family residence on the Property and had begun doing likewise to the detached garage located to the south of the home.

In the course of the construction, he was informed by Borough officials to stop working after it was discovered that he had not applied for the necessary permits. He did as instructed and filed the within application.

Mr. Valenti told the Board he was looking to reconstruct the garage to provide additional storage for two classic cars he owned, as well as other household and personal items. He testified that there would be no plumbing installed in the structure so that it could not be converted into a residential dwelling. He further said that he would agree to a condition to any approval from the Board to record a deed restriction against the Property barring any residential use of the detached garage.

After Mr. Valenti concluded, Thomas F. Graham, P.E. from Dykstra Walker Design Group, P.E. testified. Mr. Graham indicated that he had prepared the Lot Re-Development Plan in support of the application. He noted that the Property was .45 acres and irregularly shaped. He presented a colored version of his Plan which was marked as Exhibit A-1 that confirmed that the Property's frontage along south Bertrand Road was approximately 58 feet and extended approximately 150 feet from the road to Lake Hopatcong.

Mr. Graham noted that there were several non-conforming conditions impacting the Property, including a maximum floor area ratio of .34 which exceeded the Borough's restriction of .30. In addition, the detached garage was only 6.1 feet from the side yard which was less than the 10 feet required. He also noted that the garage was located in the front yard of the Property which was also contrary to the Borough's ordinances. Finally, Mr. Graham indicated that the height of the proposed detached garage as well as its maximum square footage allowed will both exceed the criteria set forth in the Borough's Schedule of Restrictions. He noted that the rear of the Property was within a riparian zone although the proposed development was permitted by right.

Mr. Graham indicated that the detached garage would be approximately 24.12 feet high when completed. It would have an internal stairwell to the second floor which was to be dedicated for storage. The roof style had been changed so that it was consistent with the roof of the existing dwelling. Although Mr. Graham acknowledged that the garage was larger than permitted, he stated that the Applicant could have permissibly added other structures to provide more storage which would have been less aesthetically pleasing for the neighboring property owners.

Mr. Valenti also introduced John McDonough, P.P. to testify in support of the variance relief he was requesting. In support of his testimony, Mr. McDonough introduced an exhibit marked A-2 which consisted of 5 documents, including maps and photographs.

Mr. McDonough stated that any variance relief sought is always related solely to the specific piece of property and its unique characteristics. He observed that the Property was much larger than the zoning scheme permitted and much larger than the other lots in the neighborhood. He also stated that the Property was uniquely shaped and located along the curvature of South Bertrand Road. The existing dwelling was located along the northerly side of the Property leaving a larger section of the southerly side of the lot available for the garage.

After offering his general observations about the Property and the structures thereon, Mr. McDonough testified in support of the d(4) variance needed for the increased FAR. He opined that the Applicant's proposal would satisfy the positive criteria because it would improve the Property from an aesthetic standpoint. He maintained that the proposed garage would look more compatible with the existing home than the original garage. By increasing the amount of storage space, Mr. McDonough also observed that there would be less outside storage of other personal property which would reduce the amount of visual clutter.

Mr. McDonough further believed that the Applicant's proposal would advance purpose a of the New Jersey Municipal Land Use Law ("MLUL") by promoting the general welfare by an aesthetic improvement to the Property. Similarly, he felt that the Applicant's proposal would foster purpose i by creating a desirable visual environment through creative development techniques. He contended that the garage would actually benefit the community once finished by enhancing the look of the Property. Finally, Mr. McDonough suggested that purpose m was also advanced by the Applicant's proposal.

Mr. McDonough testified that in his professional opinion he saw no substantial detriment to the public good nor any substantial impairment to the intent and purpose of the Borough's master plan and zoning ordinances. He observed that the reconstruction of the detached garage would promote the public good by creating a more visually desirable structure in the neighborhood. He also indicated that the Borough's ordinances allowed garages to exist as accessory structures, so the renovation of the previously existing garage could not be deemed a substantial impairment to the Borough's zoning ordinances or master plan.

Based upon his analysis of both the positive and negative criteria, Mr. McDonough concluded that the Applicant's proposal was deserving of the use variance relief. He stated that while the FAR for the Property exceeded the maximum permitted by the Borough's ordinances, the larger lot could certainly accommodate the increase. He noted that FAR restrictions were intended to control the overall mass of structures on a specific lot and here the proposal would not result in the overdevelopment of the Property.

Mr. McDonough then offered justification of the bulk variances required. He noted that the Applicant required bulk variance relief from the Borough's requirements for minimum total side yard; maximum height of accessory structure; location of accessory structure in the front yard; and the maximum square footage of an accessory structure. He maintained that the bulk variance relief was justified by the flexible (c)(2) standard. This statutory provision allows for the deviation from zoning ordinance requirements when the benefits from any deviation would substantially outweigh any detriment.

In his opinion, Mr. McDonough stated that the proposed improvements to the detached garage would offer aesthetic benefits to both the Property and surrounding neighborhood. He felt that the Applicant's proposal would be a visual "betterment" to the community at large.

Further, as he had testified previously, he did not believe that the Applicant's proposal represented a substantial detriment to the public good or a substantial impairment to the intent and purpose of the Borough's master plan and zoning ordinances. Accordingly, Mr. McDonough explained that the Applicant was deserving of the bulk variance relief needed.

Upon conclusion of testimony and questions from the Board, the matter was open to the public. Only one individual appeared to testify in connection with the application, Bernie Goodman. Mr. Goodman was an adjacent neighbor who informed the Board that the existing garage was a mess and he looked forward to its proposed reconstruction. Mr. Goodman felt that when the garage was fully renovated, it would enhance the value of the Property, as well as he and his neighbors' properties.

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

1. The Applicant requires use variance relief pursuant to N.J.S.A.40:55D-70(d)(4)

to authorize an increase in the floor area ratio of Lot 9 in Block 52 to accommodate the reconstruction of the existing garage. Since the Property in zoned RA-7.5, the maximum permitted FAR is .30. However, the Property already exceeds this standard by .04. The Board concludes that the further .04 increase stemming from the Applicant's proposal can be accommodated on the Property which is larger than most lots in the neighborhood. The Board believes that the Applicant's proposal will advance purposes a and i of the MLUL. The Board deems the proposal to advance the general welfare through an aesthetic improvement of the detached garage presently on the Property. Further, the Board finds that the proposal promotes a desirable visual environment to the surrounding community. The Board further concludes that since detached garages are permitted accessory uses, the improvement and enlargement of the existing garage on the Property does not represent a substantial detriment to the public good nor a substantial impairment of the Borough's master plan or zoning ordinances.

2. The Board also find that the Applicant is entitled to the bulk variance relief sought in accordance N.J.S.A.40:55D-(c)(2). The Board finds that the Applicant satisfied the positive and negative criteria to justify the relief sought. The Board believes that even though the proposed improvement to the garage will deviate from certain bulk standards set in the Borough's ordinances, those deviations advance the purposes of the MLUL. The Board believes that the relief needed from the minimum total side yard requirement; the maximum height restriction for accessory structures; the maximum square footage restriction for accessory structures, as well as the prohibition against accessory structures in the front yard all promote the public good by allowing an aesthetically and visually more pleasing structure than what currently exists. The Board notes that the benefits flowing from the aforesaid deviations outweigh any detriment to the public good and there is no impairment to the intent and purpose of the Borough's master plan or zoning ordinances.

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, Michael F. Valenti, Jr., as more particularly described on the plan entitled "Lot Re-Development Plan/Variance Plan/Valenti Residence" prepared by Thomas F. Graham, P.E. of Dykstra Walker Design Group, dated September 26, 2018, last revised October 24, 2018 and the architectural plans entitled "Garage Addition Alteration to the Valenti Residence" prepared by Stephen N. Bias, A.I.A. dated September 5, 2018 last revised November 2, 2018, subject to the following terms and conditions:

1. The Applicant shall revise his plans in accordance with the reports from the Board Engineer, Thomas P. Lemanowicz, P.E., dated November 5, 2018.
2. Prior to the issuance of a Certificate of Occupancy, the Applicant shall present written proof of the recording of a Quit Claim Deed which shall include a restriction against any residential use of any portion of the detached garage on the Property.
3. The Applicant shall proceed with securing the requisite construction permit and/or Certificate of Occupancy.

4. 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 the building permit and Certificate of Occupancy.
5. The Applicant shall comply with and adhere to all rules, regulations, and ordinances of the Borough of Mount Arlington applicable to her project.
6. This approval is conditional upon approvals required by the Applicant from all other outside governmental agencies exercising jurisdiction over the development of the Property.
7. Prior to the issuing of permits or certificates from Construction Department, the Applicant shall satisfy all fees and escrows related to the application.
8. The Secretary of the Board shall file a copy of this Resolution with all governmental bodies as shall be necessary and appropriate.

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ATTEST: BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

Kathy Appleby, Secretary

By: _____
Robert 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 _____, 2018.

Kathy Appleby, Board Secretary