

23-007

**RESOLUTION OF MEMORIALIZATION GRANTING AMENDED
PRELIMINARY AND FINAL SITE PLAN APPROVAL TO GEORGE
MARKOU TO PERMIT THE CONSTRUCTION OF A ROOF-COVERED
OUTDOOR DINING AREA TO THE REAR OF AN EXISTING BUILDING
AND OTHER RELATED IMPROVMENTS ON LOT 16 IN BLOCK 61**

**Approved: October 25, 2023
Memorialized: November 15, 2023**

WHEREAS, George Markou is the owner of Lot 16 in Block 61 as noted on the Tax Map of Borough of Mt. Arlington, having a street address of 199 Howard Boulevard;

WHEREAS, Mr. Markou operates an existing restaurant on the Property known as “Pub 199”; and

WHEREAS, Mr. Markou submitted an Application for Development with the Borough of Mt. Arlington Land Use Board (“Board”) on or about May 21, 2021, requesting preliminary and final site plan approvals on the Property; and

WHEREAS, Mr. Markou on September 22, 2021 received from the Board preliminary and final site plan approvals to construct an addition to the restaurant, reconfigure and expand the parking lot, remove an existing storage shed, and install a new dumpster area and storage shed. The memorializing resolution was later adopted by the Board on October 27, 2021; and

WHEREAS, thereafter Mr. Markou submitted an Application for Development with the Board requesting amended preliminary and final site plan approvals to replace the previously approved addition with a roof covered open air dining area. The Board granted the relief at its meeting on December 14, 2022 and the memorializing resolution was later adopted on February 22, 2023; and

WHEREAS, after receiving the aforesaid approvals, Mr. Markou proceeded with the approved improvements but deviated from the approved plans; and

WHEREAS, upon these deviations being discovered, Mr. Markou was advised to file an application with the Board to further amend his site plan approvals;

WHEREAS, Mr. Markou submitted an Application for Development with the Board on or about September 14, 2023, requesting amended preliminary and final site plan approvals to propose an outdoor bar area within the open air dining area, the addition of a landscaped area near the southwest corner of the open-air dining area, the addition of grassed areas between the western retaining wall and pavement, a larger

shed, an altered pavement layout, the elimination of 2 drywells and an altered parking layout; and

WHEREAS, Mr. Markou submitted with his Application a plan entitled: “Revised Amended Site Plan for Pub 199, 199 Howard Boulevard, Block 61, Lot 16, Borough of Mount Arlington, County of Morris” prepared by Fox Architectural Design, PC, signed and sealed by Kenneth J. Fox, AIA, PP, dated May 21, 2021, last revised September 21, 2023, consisting of four sheets; and

WHEREAS, Mr. Markou submitted with his application the appropriate fees and escrow deposits; and

WHEREAS, the Application was deemed administratively complete by the Board’s Engineer on September 26, 2023, and a public hearing was subsequently scheduled and held on October 25, 2023, notice being required and lawfully provided; and

WHEREAS, the Board Engineer David A. Clark, P.E., issued a completeness and technical report regarding the Application prior to the public hearing, both dated September 26, 2023; and

WHEREAS, the Board’s Planner, Jessica P. Caldwell, P.P., also issued a report dated October 19, 2023; and

WHEREAS, the conclusion of the public hearing on October 25, 2023, the Board rendered a decision on the Application in accordance with the requirements set forth in N.J.S.A. 40:55D-10(g);

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

Mr. Markou briefly testified that he is still the owner of the Property and operates Pub 199. He informed the Board that when he bought the prefabricated shed, he decided that the slightly larger building offered him more utility and would allow him to store more equipment rather than leaving it outside. Similarly, he said that the parking area was slightly enlarged to provide adequate parking. He also explained that the outside bar made to easier for staff to serve patrons sitting outside. Finally, he asked that he be relieved from installing the drywells because of the cost and that they were unnecessary in his opinion.

Mr. Markou had his architect Ken Fox, R.A. testify. Mr. Fox was accepted by the Board as an expert in both architecture and professional planning. He described the property and the existing structures noting the use was permitted in the B-1 Business Zone. Mr. Fox described the previously approved shed as being 30 feet by 40 feet with a height of 13 feet. He indicated that the proposed shed was 30 feet by 50 feet 2 inches

with a height of 17 feet. The height of the shed according to Mr. fox was 4 feet higher than thirteen foot height originally approved and 2 feet higher than what the Borough ordinances allow for accessory structures.

Mr. Fox testified that the height of the shed was justified under the C-2 analysis. He stated that the proposed shed would afford Mr. Markou more storage that would enable him to better maintain the property and to house equipment inside rather than having it stored outside. In addition, he said that the shed was not visible from the street and would not have a negative visual impact. He also observed that having a more attractive restaurant was good for the neighborhood and consistent with the Master Plan.

Mr. Fox then spoke about the changes Mr. Markou was hoping to the outdoor dining area. He stated that the roof of the covered dining area was to be altered so that it was not connected to the main building. This would reduce the snow load and be a safer means of construction. Mr. Fox also indicated that the outdoor dining area would include a bar and a change to the stairs and ramp leading to and from the dining area. However, the overall footprint remained unchanged, and no additional impervious surface was added.

The parking lot was also to be reconfigured according to Mr. Fox. He noted that 3 additional spaces were provided. While acknowledging that the increased area added to the amount of impervious surface by approximately 1651 square feet, Mr. Fox believed that the enlargement was warranted as it provided the required number of parking spaces and improved traffic circulation. Moreover, he testified that the maximum impervious coverage was still only 26.0% whereas the B-1 Zone allowed 60%.

Finally, Mr. Fox reiterated that Mr. Markou wanted to eliminate the 2 drywells previously required. Mr. Markou again informed the Board that they were not needed and presented Exhibit A-1 which were photographs of the adjacent property owner's land. Mr. Markou alleged that the adjacent owner was allowed to build structures on its property without having to install drywells. Mr. Markou claimed that the cost of the drywells would be \$30,000. He also maintained that they were not needed because the runoff from the buildings would cross over the southerly portion of his property that was vacant open space.

Board members openly questioned the Applicant about his request to eliminate the drywells. They informed Mr. Markou that the Borough had ordinances requiring stormwater management and the Board has consistently required other applicants to do so over the past several years. Eventually, Mr. Markou agreed that he would work with the Board engineer to design and install a system that would provide adequate storm water management.

After Mr. Fox concluded his testimony, the matter was opened to the public. Wayne Cornelius spoke and alleged that that the Applicant's operations were flooding a pond on his property and were also increasing the algae growth. He presented Exhibit O-1 to demonstrate his point. However, he could offer no credible evidence that connected the

Applicant's operations to the issues he was complaining about.

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

1. The Board finds that the Applicant is seeking amended preliminary and final site plan approval to build an outdoor bar area within the open air dining area, add a grassed areas between the western retaining wall and pavement, erect a larger shed, alter the pavement and parking layout. The Board finds that the proposal is in compliance with all of the bulk requirements set forth in the B-1 Business Zone except for the height of the proposed shed.
2. The Board finds that the Applicant is entitled to bulk variance relief for the taller shed as per N.J.S.A. 40:55D-70(c)(2). The Board agrees that the larger shed with a height of 17 feet rather than the maximum permitted height of 15 feet is justified because the building will allow the Applicant to store more equipment needed for his operations inside. Having the equipment on the property and readily available to the Applicant will allow him to maintain the property and improve his efficiency. In the Board's opinion, this is a better planning approach. Moreover, the Board finds that the Applicant's proposal does not offend the negative criteria as the public good is preserved since the building is not readily visible from the street or adjacent properties. Further, the building allows for a more efficient operation of a permitted business.
3. The Board finds that Mr. Markou's proposal is consistent with the relevant site plan requirements for the zone and is thus entitled to amended preliminary and final site plan approval provided that he works with the Board Engineer to design and install a satisfactory stormwater management system.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey that the Application filed by George Markou seeking amended preliminary and final site plan approval for the Property known as Lot 16 Block 61, in the Borough of Mt. Arlington as more particularly described in the plans entitled "Revised Amended Site Plan for Pub 199, 199 Howard Boulevard, Block 61, Lot 16, Borough of Mount Arlington, County of Morris" prepared by Fox Architectural Design, PC, signed and sealed by Kenneth J. Fox, AIA, PP, dated May 21, 2021, last revised September 21, 2023, consisting of four sheets is hereby approved subject to the following terms and conditions:

1. The prior resolution approved and adopted by the Board on October 27, 2021, are hereby amended, and superseded by the within Resolution. If the Applicant wishes to deviate from any of the improvements approved and described in the aforesaid resolutions, he must return to the Board and request a further amendment.
2. The Applicant shall further amend its plans as per the representations made at the public hearings and the comments from the Board Planner, Board Secretary, Board Engineer and Board Members.

3. Prior to the issuance of a Certificate of Occupancy, the Applicant shall design and install a system that will provide for adequate stormwater detention that shall first be reviewed and approved by the Borough Engineer.
4. The approval from all other State, County, and Municipal regulatory agencies exercising jurisdiction over the Property.
5. No construction permits of any type shall be issued by the Construction Code Official of the Borough of Mt. Arlington until all Board escrow fees have been paid, a Resolution of Approval has been memorialized and appropriately signed by the Board, and the Construction Code Official has received final plans appropriately signed by the Board Chairman, Board Secretary, and Board Engineer.
6. Pursuant to the provisions of N.J.S.A. 40:55D-39 and 55D-65, the Applicant shall provide proof that no taxes or assessments for local improvements are due on the Property.
7. 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: _____
Rober Van den Hende, Chairman

DATED:

THE VOTE:

IN FAVOR: 8

OPPOSED: 0

ABSTENTIONS: 0

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 November 15, 2023.

Kathy Appleby, Board Secretary

