

RESOLUTION NO. BOA-2019-009

GRANTING BULK VARIANCE RELIEF

APPLICATION NO. BOA-023-18

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF WAYNE
COUNTY OF PASSAIC, STATE OF NEW JERSEY**

WHEREAS, Jim McCulloch (hereinafter "Applicant") has made application to the Wayne Township Zoning Board of Adjustment (hereinafter "Board") for bulk variance relief pursuant to N.J.S.A. 40:55D-70c, requesting approval for the expansion of a garage on property known as Block 1722, Lot 14, as shown on the Tax Map of the Township of Wayne, commonly known as 100 Chestnut Drive in the "R-15" (Residential Zone) District (hereinafter "Subject Property"); and

WHEREAS, the Board determined it had jurisdiction and a public hearing was conducted on February 19, 2019; and

WHEREAS, the public was given the opportunity to speak; and

WHEREAS, the necessary agencies have reviewed this application. The reports from said agencies are incorporated herein and made a part hereof by reference in conjunction with this application as if set forth verbatim.

NOW, THEREFORE, the Board makes the following findings of fact based on evidence presented at the public hearings.

1. The Administrative Officer deemed the application complete prior to February 19, 2019 meeting.
2. In support of the application, the Applicant submitted:
 - Application form;
 - Floor Area Ratio and Impervious Lot Coverage Calculation Sheets Part I and Part II;
 - Plans for the garage addition signed and sealed by Albert Martorano, RA, dated November 3, 2018;
 - Survey signed and sealed by David J. Von Steenburg of Morgan Engineering & Surveying, dated October 22, 2018; and
 - Site Plan signed by Albert Martorano, RA, dated November 3, 2018.
3. The Subject Property is located on Chestnut Drive between Evergreen Place and Hickory Place. It is located within the Packanack Lake neighborhood, which includes many single-family homes on undersized lots.
4. The Subject Property is located within the R-15 Zone (minimum lot size of 15,000 SF required), yet contains just 12,610 SF.
5. The Subject Property is improved with a two-story wood-framed principal structure that is located on the front half of the property, closer to the north side of the property. An asphalt driveway runs along the northern property line and extends 0.8 FT onto the adjacent property. The driveway connects to a single stall garage incorporated into the principal structure, and to a concrete pad located between the principal structure and the side lot line.
6. Applicant wishes to expand the garage with 9 FT x 20 FT addition to accommodate a second car and, accordingly, bulk variance relief to permit the expanded garage to encroach into the side yard setback. With the addition, Applicant's proposed garage will be 3 FT from the side property line.

7. Currently, the separation between the Applicant's home and the home on the side of the house where the variance is requested is 23 FT. If Applicant's request is granted, the separation between those homes will be 14 FT.
8. As noted above, Applicant's driveway current extends 0.8 FT onto the neighboring property. That conflicts with Section 134-62.1 of the Township Code which requires driveways be a minimum of 3 FT off the property line. Applicant will remove all sections of the driveway that are within 3 feet of the side lot line, and all sections that encroach on the neighboring property, so that the driveway is in conformance with the Township Code.
9. There appears to be an existing stand of bamboo trees between 100 and 102 Chestnut Drive. Bamboo is considered a noxious plant and is not permitted in the Township. The Township's Landscape Architect will visit the site, and if there is indeed bamboo on the site, it will have to be removed.
10. Applicant currently parks 4 cars in his driveway.
11. Applicant confirms that his neighbor on the side of the house where he needs the variance has no objection to him constructing the addition to the garage.
12. Applicant has lived in the house since 1998, and it has always had just one garage.

NOW, THEREFORE, the Board hereby makes the following conclusions of law, based upon the foregoing findings of fact.

The application before the Board is a request for bulk relief pursuant to N.J.S.A. 40:55D-70c.

The Application before the Board requests a c or bulk variance for a side yard setback. N.J.S.A. 40:55D-70c provides the Board with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain proofs which are enunciated in the statute. Specifically, the applicant may be entitled to c(1) relief if this specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may also show that exceptional topographic or physical features exist that uniquely affect a specific piece of property. Further, the applicant may supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Those categories specifically enumerated above constitute the positive proofs necessary in order to obtain "bulk" or c variance relief.

Applicants seeking bulk variance relief must also satisfy the negative criteria, which consists of two parts. First, the applicant must demonstrate that the variance can be granted "without substantial detriment to the public good." Second, the applicant must show that the variance will not "substantially impair the intent and purpose of the zone plan and zoning ordinance."

Here, the Board finds that Applicant is entitled to the requested variance pursuant to N.J.S.A. 40:55D-70c(1) because the Subject Property is limited by exceptional narrowness and shallowness. The Subject Property is just 12,610 SF where 15,000 SF is required. This unique circumstance creates a hardship sufficient to grant the requested variance relief. Thus, Applicant satisfies the positive criteria for a c(1) bulk variance.

Additionally, Applicant satisfies the negative criteria as the requested variance can be granted without substantial detriment to the public good, and the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Given all of this, the Board finds it appropriate to grant the c variance for rear and side yard setbacks pursuant to N.J.S.A. 40:55D-70c(1).

The Board concludes that the proposal meets the minimum requirements of the Municipal Land Use Law, case law and Township ordinances to a sufficient degree so as to enable the Board to grant the relief being requested.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment that the application of Jim McCulloch, for Block 1722, Lot 14 as shown on the Tax Map of the Township of Wayne is **granted** bulk variance relief pursuant to N.J.S.A. 40:55D-70c to permit a garage expansion on the Subject Property subject to the following terms and conditions:

1. Compliance with testimony presented at the February 19, 2019.
2. Applicant shall remove any part of the driveway that encroaches on the neighboring property and, further, shall ensure that the entire driveway is at least 3 FT off the side property line in accordance with Township Code.
3. The Township Landscape Architect shall inspect the property for bamboo and make recommendations to the Applicant regarding same. If the Township's Landscape Architect finds bamboo on the property, the Applicant will be required to remove it.
4. Said approval is granted for the time period as set forth in Chapter 134 of the Code of the Township of Wayne and statutory protections will expire, unless implemented, in accordance with the provisions of the Municipal Land Use Law.
5. The Applicant shall comply with all applicable ordinances of the Township of Wayne and all applicable federal, state and county requirements.

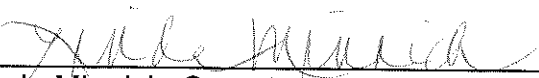
Roll Call as to the motion to approve:

YES

NO

John Cappelletti, Jr.
Christian Sees
Mark Kirk
Steven Toth
Matthew Rosenthal
William Van Gieson

The undersigned, Secretary of the Township of Wayne Zoning Board of Adjustment, hereby certifies that the above is a true copy of a resolution duly memorialized by said Board on March 18, 2019.



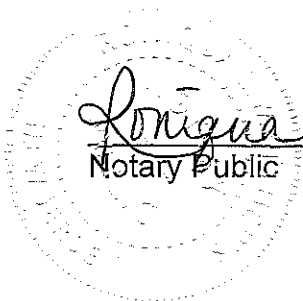
Linda Minnich, Secretary
Wayne Township Zoning Board of Adjustment

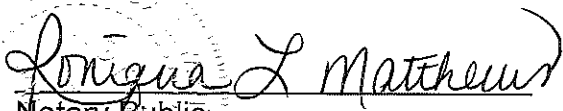
STATE OF NEW JERSEY, COUNTY OF PASSAIC:

I CERTIFY that on March 18th, 2019, Linda Minnich came before me to acknowledge under oath that she,

- a. is the Secretary of the Wayne Township Zoning Board of Adjustment;
- b. personally signed the attached document; and
- c. signed and delivered this document as her act and deed as Secretary to the Wayne Township Zoning Board of Adjustment.

On this day of MARCH 18th, 2019 before me personally appeared:
Linda Minnich to me known and known to be the person described herein and who executed the foregoing instrument and she thereupon duly acknowledged to me that she executed the same.





Notary Public

RONIQUA L. MATTHEWS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 5/17/2021