Prepared by the court

RUDOLF OOSTING, Plaintiff, v. BOROUGH OF MIDLAND PARK and BOROUGH OF MIDLAND PARK ZONING BOARD OF ADJUSTMENT, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - BERGEN COUNTY DOCKET NO.: BER-L-7555-20 Civil Action **ORDER**

FILED
MAY 23 2023
GREGG A. PADOVANO, J.S.C.

THIS MATTER having come before the court as a bench trial pursuant to R. 4:69-1 with Andrew S. Kohut, Esq. of Wells, Jaworski & Liebman, LLP appearing on behalf of plaintiff Rudolf Oosting ("Plaintiff") and Darryl W. Siss, Esq. of Teschon, Riccobene & Siss, P.A. appearing on behalf of defendants Borough of Midland Park (the "Borough") and Borough of Midland Park Zoning Board of Adjustment (the "Board"); and for the reasons set forth in the court's written opinion, a copy of which is attached to this order; and for other good cause shown

IT IS ON THIS 23rd DAY OF MAY 2023

ORDERED that judgment is entered in favor of the Plaintiff as to all counts under the complaint, as further identified herein; and it is further

ORDERED that the September 7, 2020 decision of the Zoning Board of Adjustment of the Borough of Midland Park, New Jersey as memorialized by resolution dated October 14, 2020 is vacated and invalidated in its entirety; and it is further

ORDERED that the size of Plaintiff's proposed detached garage is limited only to the Borough of Midland Park Zoning Ordinances in effect at the time of Plaintiff's application for development and to a maximum size of 30% of total yard area that it is located within, as identified under section 34-13.1(a) of the Borough's Zoning Ordinance existing at the time of the subject application; and it is further

ORDERED that Plaintiff's application for development is remanded to the Board, to the extent applicable, for review and determination in accordance with this order and the decision of the court; and it is further

ORDERED that all requests for fees and costs, or other "damages" are denied; and it is further

ORDERED that a copy of this order and attached decision of the court shall be served upon all counsel of record by eCourts.

GREGG A. PADOVANO, J.S.C.

Prepared by the court

RUDOLF OOSTING,

Plaintiff,

v.

BOROUGH OF MIDLAND PARK and BOROUGH OF MIDLAND PARK ZONING BOARD OF ADJUSTMENT

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO.: BER-L-7555-20

Civil Action
(Action in Lieu of Prerogative Writs)

DECISION OF THE COURT[1]

MAY 23, 2023

GREGG A. PADOVANO, J.S.C.

[1] Not for publication without the approval of the committee on opinions. See R. 1:36-1

This matter comes before the court upon a complaint in lieu of prerogative writs filed by plaintiff Rudolf Oosting ("Plaintiff"). Plaintiff appeals the interpretation of defendant Zoning Board of Adjustment of the Borough of Midland Park (the "Board") which determined that an accessory garage located in the residential zoning district may not exceed 864 square feet. Plaintiff specifically seeks judgment invalidating the Board's September 9, 2020 determination and interpretation of ordinances in connection with Plaintiff's application and proposed construction of a detached garage as an accessory structure to his single family residential dwelling. The Board's determination was memorialized by resolution dated October 14, 2020 (the "Resolution").

The record presented reveals that Plaintiff owns a parcel improved by a single-family home at 237 Erie Avenue, Midland Park, New Jersey which parcel is also identified as Block 15, Lot 12 on the current tax assessment map of the Borough of Midland Park (the "Property"). The Property is located within the R-1 Residential Zoning District of the Borough of Midland Park (the "Borough"). Plaintiff sought a permit to construct a detached garage comprised of 1,728 square feet on the Property. Plaintiff's request for a zoning permit was denied by the Borough Zoning Officer Mark Berninger. Mr. Berninger advised Plaintiff that the maximum size of a garage permitted in the residential zoning district is 864 square feet.

Plaintiff thereafter filed the following two applications simultaneously with the Board on or about August 5, 2020: (1) an application seeking an interpretation of the Borough's zoning ordinances pursuant to N.J.S.A. 40:55D-70(b) as it relates to

the size of a garage that is permissible in the residential district identified as the R-1 Zone; and (2) a development application to permit construction of the subject garage and other site work (the "Development Application"). Plaintiff requested that the Board carry the Development Application until there was a final resolution of the application for interpretation. Plaintiff's application for interpretation was presented before the Board during a public hearing conducted on September 9, 2020. Upon completion of the public hearing, the Board passed a motion to accept the Borough Zoning Officer Mark Berninger's interpretation of the zoning ordinances finding that the maximum size for a detached garage permitted in the R-1 Zone is 864 square feet. The Board adopted its Resolution memorializing its action and findings on October 14, 2020.

Plaintiff, on or about December 4, 2020, filed the subject complaint in lieu of prerogative writs alleging that the Board misinterpreted the Borough's zoning ordinances; that the Board's action in adopting a resolution memorializing its interpretation and that the Board's actions and findings were arbitrary, capricious, and unreasonable. Plaintiff seeks judgment invalidating the Board's action and Resolution. Plaintiff also seeks judgment determining that the Borough's zoning ordinances permit the maximum size of a detached garage to be equal to 30% of the square footage of the yard it is located on as stated under section 34-13.1(a) of the Borough zoning ordinance (the "30% Requirement") existing at the time of his application. Plaintiff also seeks damages and reasonable attorneys' fees and cost of suit. See Plaintiff's Complaint.

The court held a series of case management conferences and a bench trial was conducted based upon the record before the Board, exhibits, argument of counsel, transcript of the Board's September 9, 2020 public hearing ("T1"), copies of the applicable zoning ordinances existing at the time of the application, and the Board's October 14, 2020 Resolution. The issue now presented before the court is whether the Board's interpretation of the Borough zoning ordinance, specifically sections 34-4.3, 34-13.1, 34-4.3, and 34-13.5, was arbitrary, capricious and/or unreasonable.

Section 34-3.1 of the Borough's zoning ordinance, at the time of Plaintiff's application, provided the following definition of a "private garage" as

> [a] detached accessory building or portion of the principal building used for the storage of a passenger vehicle or vehicles or commercial vehicles having no more than two (2) axles and owned or used by the occupant of the principal building.

The record reveals that, prior to Plaintiff's application, the Borough amended section 34-13.1(a)(3) of the zoning ordinance in 2002 to state that "[t]he aggregate of all such accessory buildings and structures shall not occupy more than thirty percent (30%) of the area of the side or rear yard in which said accessory building or structure is located." Section 34-4.3(a) of the zoning ordinance which governs garages and storage of commercial vehicles in residential districts provides that "[a] garage for not more than three (3) vehicles may be erected on a single lot." Section 34-13.5 of the zoning ordinance governs the storage of trailers, mobile homes, boats, campers, aircraft and other similar portable or wheel-based vehicles. Section 34-13.5 requires that all but

one of these types of vehicles be stored inside a garage. Additionally, section 34-13.5 of the ordinance requires that any vehicle in excess of 32 feet in length must be stored inside a garage.

Plaintiff was represented by counsel during the September 9, 2020 public hearing. During this hearing, the Board accepted testimony from Plaintiff's expert planner, Brigette Bogart P.P., A.I.C.P., C.G.W. of Burgis Associates, the Borough Zoning Officer, Mark Berninger, and David Novak, P.P., the Board's planner. Plaintiff's counsel initially presented a summary of the application prior to presenting Ms. Bogart during the public hearing. See T1 5:4 – 8:3. Ms. Bogart testified as an expert planner in support of Plaintiff's interpretation application. Ms. Bogart outlined her educational background and her experience as a licensed professional planner representing both municipalities and private developers. Id. at 10:8 – 11:16. Ms. Bogart opined that the Borough's zoning ordinances permit a garage which complies with the 30% Requirement and the other conditions identified in section 34-13.1(a). Id. at 12:23 – 17:15. Ms. Bogart provided a historical analysis of the Borough's zoning ordinances and the Borough's last three Master Plans in an attempt to demonstrate that the intent of the ordinances provide for a maximum sizes of garages and other accessory structures based solely upon the articulated coverage requirement. Id. at 18:2-22. Ms. Bogart also testified that a request for documents pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., revealed at least one prior situation in the Borough where a building permit was issued for a garage larger than 864 square feet without requiring variance approval. Id. at 20:23 – 21:15.

Mr. Berninger, the Borough's Zoning Official, next testified during the September 9, 2020 hearing. Mr. Berninger described his interpretation and application of the Borough's zoning ordinances with regard to permitted garage sizes. Id. at 24:13 – 26:3. Mr. Berninger was questioned during the hearing regarding his methodology for calculating and determining that the maximum garage size permitted on the Plaintiff's Property. Mr. Berninger testified that the 30% Requirement, as written in section 34-13.1(a)of the zoning ordinance at the time of the application, was clear. Id. at 33:14-16. Mr. Berninger testified

> [w]ell, it was 36-by-24, and what I -- what I looked at is, I'm thinking of commercial vehicles because most -- most passenger vehicles, you know, are – are basically maybe (inaudible) feet long.
>
> Commercial may be (inaudible) and (inaudible) up to 24 (inaudible) you go out, to say, 20 feet and you'd still have room for other equipment with three bays, 8-feet wide, 24-feet deep and you'd have room in between both bays and on the sides to store more equipment.
>
> But -- and I believe, just so the -- the board knows, the -- the committee had gotten together for a couple of years, and this should have been done by now, but with COVID it -- it was stopped (inaudible) put on hold and we're actually starting this month again to review the ordinances with the council, the part of the auxiliary vehicles in the garage would be eliminated. So there would just -- you couldn't be storing extra commercial vehicles because, basically, the council doesn't -- the committee doesn't want to see -- like to see commercial uses in a residential (inaudible).
> [Id. at 27:1-23.]

Following Mr. Berninger's testimony, Ms. Bogart presented additional testimony and stated that the previous Master Plans of the Borough do not specifically address the potential conflicting applications of the 30% Requirement

under section 34-13.1(a) and the storage of a maximum of three automobiles under section 34-4.3. Id. at 33:21 – 35:19. Mr. Berninger then further testified that he understood the intent of the section 34-4.3 of the zoning ordinance regarding storage of automobiles and commercial vehicles in residential districts. See T1 37:9-40:21.

David Novak, P.P., A.I.C.P., the Board's professional planner, next testified. Mr. Novak stated that he utilized a methodology for determining the permitted size of accessory structures. He testified that the 30% Requirement is to be calculated by adding the total size of all accessory structures, not just the garage itself. Id. at 48:4-22. When questioned by Plaintiff's counsel regarding the 30% Requirement, Mr. Novak testified as follows

> Q. Okay. And, lastly, just -- just as the borough planner, would you agree that as what you could see by code -- by code, the only limitation with regard to the size of an accessory building, besides the overall coverages that you mentioned, is the 30 percent in the whatever yard it's located in, whether it's just one accessory or the aggregate of all the accessory structures.
>
> A. That would be at least the -- the only tangible number that I would see, I'll call it.
>
> Q. Okay. And we base our zoning on tangible numbers for the most part, correct?
>
> A. Typically, yes. However, as we all know, zoning ordinances aren't always perfect, so sometimes they do rely on some levels of interpretation. But 30 percent would be the number I see in the ordinance.
>
> [Id. at 53:9 – 54:1, emphasis added.]

Following Mr. Novak's testimony, Mr. Berninger again testified and stated that he has interpreted the Borough's zoning ordinances for the past 25 years as

permitting a maximum of three automobiles and maximum size of 864 square feet. See T1 56:3-57:5. Upon the conclusion of all witness testimony, Plaintiff's counsel provided a final summation of Plaintiff's application. Id. at 70:3 – 73:15.

Without further testimony or comments, a motion was made to accept Mr. Berninger's interpretation of the Borough's Ordinances to allow for a three-car detached garage not to exceed a total of 864 square feet or 36 feet by 24 feet based on the asserted application of section 34-4.3 of the zoning ordinance. The Board voted four members in favor of Mr. Berninger's interpretation and two members against. Id. at 74:14 - 76:7.

The Board thereafter adopted its Resolution memorializing its action and findings dated October 14, 2020. The Board's Resolution included a summary of its findings and the pertinent testimony presented:

> 1. Section 34-4.3 of the Zoning Ordinance affirmatively requires that one garage is required for each dwelling in a residential district. That section provides that "A garage for not more than three vehicles may be erected on a single lot". That ordinance section also limits the size and type of vehicles that may be kept on residential property.
>
> 2. Section 34-13.1 of the Zoning Ordinance provides regulations governing the size and location of accessory buildings and structures along with height and lot line set back restrictions. That section also provides that "The aggregate of all such accessory buildings and structures shall not occupy more than 30 percent of the area of the side or rear yard in which said accessory building or structure is located." This restriction on the percentage area for accessory buildings was added to the Zoning Ordinance by amendment in 2002.

3. Mark Berninger, the Borough's Zoning Officer testified that it is his interpretation that Section 34-4.3 is intended to impose a limitation on the size of the garage based on the ordinance limitation of the garage not being for more than three vehicles. Based on that restriction he has applied a maximum size of 864 square feet as a guide which was calculated using the size of typical vehicles plus a reasonable storage area. He testified that he has consistently applied this interpretation during his time as zoning officer. Mr. Berninger further testified that the permit to construct a 30 foot by 50 foot garage (1,500 square feet) on 15 Butternut Ave., was issued at a time when he was not employed by the Borough and he would not have issued that permit.

4. The Board notes that this Board denied an Application by the owner of 319 Erie Avenue for a variance to construct a 6 car garage on the basis, stated in the resolution of denial, that it exceeded the three-car limitation permitted by the code and the garage had a proposed length 15 feet longer than standard size garages. The resolution noted that garages on the neighboring property measured 864 square feet and 1,050 square feet respectively.

5. David Novak, the Board planner, testified and noted that Section 13.1 of the Zoning Ordinance provides for a 30 percent maximum area coverage for all accessory buildings and structures and such percentage maximum is not limited to just the garage. The Ordinance permits more than one accessory structure subject to the setback and lot coverage requirements,

6. In interpreting the Zoning Ordinance, the Board must look to the fundamental purpose for which the legislation was enacted. Sections of the ordinance dealing with the same subject matter are to be construed together but specific provisions take precedence over general provisions. Cox, Section 2.3b.

7. Where an administrative officer has interpreted an ordinance in a certain way over a long period of time, great weight should be given to such interpretation. Cox, Sec. 26-2.3b, citing Trust Company of NJ v. Planning Bd., 244 NJ Super. 553 (App. Div. 1990).

8. Sections 4.3 and 13.1 both contain provisions regarding requirements and restrictions on accessory structures. Section 13.1 allow accessory structures to occupy up to 30% of the side or rear yard. It is relevant that this section applies to allow a number of accessory structures on a property and is not specifically limited or applied to restrictions on the size of a garage. The Board notes that the provisions concerning the percentage limitation on the accessory structure coverage was added when the zoning ordinance was amended in 2002. The prior ordinance section concerning accessory structures contained provisions for setbacks of such structures but did not contain a coverage limitation. The ordinance as amended applies to accessory buildings and structures and does not mention garages specifically.

9. Section 4.3 provides specific limitations on garages in residential districts and limits the garage to not more than three vehicles and limits the size of vehicles permitted on the property. The limitation on the garage being for no more than three vehicles clearly is intended to limit the size of the garage. The Board recognizes that the Section could be more clearly drafted but to interpret the Ordinance to allow a garage of a size limited to 30% of the part of the lot area (side or rear yard), which, depending on the size of the property could be significantly larger than a structure for three vehicles, would render the size limitation of no more than three vehicles meaningless. The more specific provisions of Section 4.3 aimed specifically at garages controls over the more general provisions of Section 13.1 which is applicable to a number of accessory buildings.

> 10. Mark Berninger has been the Zoning Officer since 1989, except for a period from 2007 through 2012. He has interpreted and consistently applied the Ordinance sections to limit the size of the garage as provided in Section 4.3 with a calculation based on the size of three vehicles and a reasonable area for storage. This interpretation has been applied by the Zoning Officer consistently and for a significant period of time and is to be accorded great weight. That interpretation is consistent with the Board's interpretation of the specific provisions as set forth above. The fact that a building permit was issued for a larger garage during a time when the Zoning Officer was not in that position does not affect the history and plain language of the Ordinance.

The Board's Resolution also included the following pertinent conclusion:

> [B]ased upon the above findings of fact and conclusions of law, the Board finds that Section 4.3 of the Zoning Ordinance limits the size of a garage on a residential property, which size is to be based on the size of three normal vehicles plus a reasonable storage area. The Zoning Officer has the authority to establish a reasonable size based on those factors in accordance with the guidelines in Section 4.3

Plaintiff argued before the Board, and now argues before this court, that section 34-13.1 of the zoning ordinance provides the only clear and unambiguous restriction on the size of an accessory garage in a residential zoning district. Plaintiff contends that an accessory garage in the R-1 Residential Zone can have any dimensions and total size, so long as it does not surpass the 30% Requirement. Plaintiff argues that the Borough's Ordinances, at the time of the application, clearly state that the size and use of a garage is compliant if it meets the criteria of section 34-13.1(a)of the zoning ordinance. Plaintiff's Trial Brief at 9. Plaintiff argues that the

Board, in its Resolution, is attempting to insert an "additional qualification" in direct conflict with the Appellate Division's holding in Mountain Hill L.L.C. v. Zoning Board of Adjustment of the Township of Middletown, 403 N.J. Super. 210, 235 (App. Div. 2008). Id. at 10. Plaintiff acknowledges that section 34-4.3 of the zoning ordinance limits the use of a garage to parking for three vehicles. Id. However, Plaintiff asserts that the Board incorrectly relies on section 34-4.3 of the Borough's Ordinances to justify its implementation of an arbitrary limitation on the size of garages. Id.

Plaintiff contends that reading section 34-4.3 in context with the other applicable sections of the ordinance, such as section 34-13.5, contradicts the Board's interpretation of the Borough's Ordinances. Id. Plaintiff further argues that when reading section 34-4.3 and section 34-13.5 together it is clear that a property owner is permitted to store any combination of three vehicles not just "passenger vehicles" in a garage. Id. at 11. Plaintiff also contends that garages are commonly utilized for other uses such as the storage of household items and a property owner's workshop which results in a total area greater than area only occupied by the storage of vehicles. Plaintiff argues that it is clear that the Borough sought to permit a garage that meets the 30% Requirement while limiting it to parking for only three vehicles but that the two calculations are not mutually restrictive as to the total size permitted. Id. at 11-12.

Plaintiff also notes that a garage which exceeded 864 square feet was administratively approved by the Borough during Mark Berninger's tenure as Zoning Officer in 2014. Id. at 9. Plaintiff asserts that a building permit for this garage,

without documentation of a variance approval, was issued and allowed for the construction of a detached garage 30 feet by 50 feet comprised of 1,500 square feet at 15 Butternut Avenue (Block 27.01, Lot 11.04) in the Borough. Id.

The record also reveals that on or about June 10, 2021, the Borough adopted an ordinance which revised section 34-4.5 to specifically limit the size of "accessory buildings, garages and sheds" in the R-1 Zone to the lesser of 75% of the footprint of the principle building or 840 square feet. Plaintiff argues that his Development Application and interpretation application are entitled to a review based on the version of the ordinances in effect at the time the application was submitted. Id. at 12-14. Plaintiff asserts that his application should be reviewed under the ordinances which preceded the 2021 amendment which was adopted after the filing of the filing of the application. Id., citing to N.J.S.A. 40:55D-10.5.

The Board argues that an analysis of Borough's zoning ordinances leads to the conclusion that garages are considered separate and apart from the broad definition of "accessory structures" and "accessory buildings" under the zoning ordinance. Board's Brief at 2. The Board also argues that section 34-3.1 and section 34-4.3 of the Borough's zoning ordinances, when read together, provide specific limitations and reveal an intent to limit the use and size of a detached garage. Id. at 3. The Board asserts that a garage is only permitted to be used as the storage of a maximum of three vehicles that do not exceed 20 feet in length. Ibid. The Board relies on Mr. Berninger's testimony in his capacity as the Borough Zoning Officer where he stated that he has consistently interpreted the Borough's zoning ordinances to limit the size

of a garage by its permitted use and permitted storage of a limited number of vehicles. Id. at 4-5 (citation omitted).

Referencing the testimony of the Board's Planner, Mr. Nowak, the Board also asserts that the 30% Requirement applies to the aggregate of all accessory buildings and structures not just a single detached garage. Id. at 5 (citation omitted). The Board further argues that Plaintiff's planner, Ms. Bogart, incorrectly based her conclusion on her personal opinion that garages are typically used for storage and other activities. Id. The Board further argues that Plaintiff's reliance on the 30% Requirement is misplaced and does not consider that the 30% Requirement applies to the aggregate of all accessory structures. Id. at 6.

The Board argues that the specific provisions related to garages under section 34-3.1 and section 34-4.3 of the zoning ordinance supersedes the general provisions relied upon by Plaintiff under section 34-13.1(a). Id., citing to Kingsley v. Wes Outdoor Advertising Co., 55 N.J. 336 (1970). The Board argues, in pertinent part, that

> [a] reasonable interpretation is that the Ordinance treats garages separate and apart from the broad category of Accessory Buildings and Accessory Structures and the provisions of Ordinance Sections 3.1, 4.3 and 13.1 are consistent in that garages are permitted within the scope of the Ordinances restrictions of Section 3.1 and 4.3 and all Accessory Buildings and Accessory Structures, inclusive of a garage, are permitted within the broader limitation of Section 13.1. A property owner is permitted to have a garage subject to the limitations contained in Sections 3.1 and 4.3 related to use and size and may have Accessory Uses and Accessory Structures, including a garage, subject to the provisions of Section 13.1.
> [Id. at 7.]

The Board asserts that its interpretation must be given great weight and deference. Id. at 7-8, citing to Wyzykowski v. Rivas, 254 N.J. Super. 28 (App. Div. 1992); Last Chance Development Partnership v. Kean, 119 N.J. 425 (1990); and Twp. of Pennsauken v. Schad, 160 N.J. 156 (1999). See Borough's Brief at 8.

In reply, Plaintiff argues that the Board has attempted to exclude certain provisions of the zoning ordinances which it deems inapplicable even though the plain language of the ordinances, specifically sections 34-3.1, 34-13.1(a), 34-4.3, and 34-13.5, do not restrict a private garage to a maximum size of 864 square feet. Plaintiff's Reply Brief at 2. Plaintiff asserts that all applicable provisions of the Borough's zoning ordinances must be read together and construed as one legislative enactment. Id. at 3, citing to Clifton v. Passaic County Board of Taxation, 28 N.J. 41 (1958); Key Agency v. Continental Casualty Co., 31 N.J. 98 (1959); Greggio v. Orange, 69 N.J. Super. 453 (Law Div. 1961). Plaintiff reiterates that in following strict construction of the zoning ordinances as asserted by the Board, only one interpretation that is possible is that a detached garage's size is limited in size solely by its use to store no more than three vehicles. Ibid. Plaintiff contends that the plain language of the Borough's zoning ordinances at the time of the application restricts the use of a detached garage but not its size. Id. at 4-5. Plaintiff further argues that the Board and Mr. Berninger, as its agent, is not permitted to establish a policy which is more restrictive than the plain language of the Borough's zoning ordinances. Id. at 5-6, citing to Trust Co. of N.J. v. Planning Bd. of Boro. of Freehold, 244 N.J. Super. 553 (App. Div. 1990); DePetro v. Township of Wayne Planning Bd., 367 N.J. Super. 161

(App. Div. 2004); Bubis v. Kassin, 184 N.J. 612 (2005); and Atlantic Container v. Twp. Of Eagleswood Planning Bd., 312 N.J. Super. 213 (Law Div. 1997).

Plaintiff asserts that the Board's interpretation of the Borough's zoning ordinances actually precludes compliance because typical commercial and recreational vehicles required to be stored in a garage would far exceed the Zoning Officer's maximum size calculation of 864 square feet. Id. at 6-7. Plaintiff further contends that both the Borough's zoning ordinances and case law support the argument that storage is an incidental and customary accessory use of a garage in the residential zone. Id. at 7-9. Plaintiff asserts that the Board's affirmation of the Zoning Officer's interpretation and argument is contradictory as it acknowledges that the 864 square feet threshold allows for incidental storage but also mandates that storage is not a permitted use of a garage under the Borough's zoning ordinances. Id. at 7.

The court here recognizes that when reviewing challenges to decisions of municipal land use boards, as presented here, the court is guided by a wealth of precedential case law. It has long been held that a court should limit its review to the validity of the board's actions. People's Trust Co. v. Bd. of Adjustment of Hasbrouck Heights, 60 N.J. Super. 569, 573 (App. Div. 1959). Review of the decision of a planning board or board of adjustment ordinarily is limited. "A board's decision 'is presumptively valid, and is reversible only if arbitrary, capricious, and unreasonable.'" New Brunswick Cellular Tel. Co. v. Bor. of S. Plainfield Bd. of Adj., 160 N.J. 1, 14 (1999) (quoting Smart SMR of N.Y., Inc. v. Bor. of Fair Lawn Bd. of

Adj., 152 N.J. 309, 327 (1998)). The party challenging the municipal board's decision bears the burden of overcoming the presumption of validity and demonstrating the unreasonableness of the board's action. Toll Bros., Inc. v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223, 256 (2008).

Zoning boards of adjustment are independent administrative bodies which derive their powers through statute. See Duffcon Concrete Products, Inc. v. Cresskill, 1 N.J. 509, 515-16 (1949). As such these boards act in a quasi-judicial manner. Dolan v. De Capua, 16 N.J. 599, 612 (1954). Courts should give deference to the board's determinations where the board has procedurally and substantively complied with the statute. Ward v. Scott, 16 N.J. 16, 23 (1954). In other words, when reviewing board determinations, a court should presume those determinations were correct. Rexon v. Bd. of Adjustment of Haddonfield, 10 N.J. 1, 7 (1952). It has been held that

> when a party challenges a zoning board's decision through an action in lieu of prerogative writs, the zoning board's decision is entitled to deference. Its factual determinations are presumed to be valid and its decision to grant or deny relief is only overturned if it is arbitrary, capricious or unreasonable.
> [Kane Properties, LLC v. City of Hoboken, 214 N.J. 199, 229 (2013); See also, Cell South v. Board of Adjustment of West Windsor Township, 172 N.J. 75, 81 (2002).]

The court here also recognizes that all land use boards are presumed to act fairly and with proper intentions and for valid reasons. Macedonian Orthodox Church v. Planning Bd. of Randolph, 269 N.J. Super. 562, 572 (App. Div. 1994). Therefore, deference is given to a land use board's decision and "the exercise of its discretionary

authority based on such determinations will not be overturned unless arbitrary, capricious, or unreasonable." Klug v. Bridgewater Tp. Planning Bd., 407 N.J. Super. 1, 12 (App. Div. 2009) (citing Burbridge v. Mine Hill Twp., 117 N.J. 376, 385 (1990)); See also Bressman v. Gash, 113 N.J. 517, 529 (1993); D. Lobi Enters., Inc. v. Plan./Zoning Bd. of Sea Bright, 408 N.J. Super. 345, 360 (App. Div. 2009). A court's scope of review "is not to suggest a decision that may be better than the one made by the board, but to determine whether the board could reasonably have reached its decision on the record." Jock v. Zoning Bd. of Adj. Twp. of Wall, 184 N.J. 562, 597 (2005) (emphasis added).

Factual findings made by a municipal body are entitled to substantial deference "if supported by sufficient credible evidence in the record." Urban v. Planning Bd., 238 N.J. Super. 105, 111 (App. Div. 1990), aff'd as modified, 124 N.J. 651 (1991) (citing Rowatti v. Gonchar, 101 N.J. 46, 51 (1985)). However, it is generally accepted that "interpretation of an ordinance is a purely legal matter as to which the administrative agency has no peculiar skill superior to the courts." Jantausch v. Verona, 41 N.J. Super. 89, 96 (Law Div. 1956). Thus, a reviewing court is not obliged to show deference to a decision made by a municipality concerning a purely legal issue. Urban, 238 N.J. Super. at 111-12; DePetro, 367 N.J. Super. at 174. A reviewing court analyzes decisions made by the municipality concerning the construction and interpretation of an ordinance de novo. Bubis v. Kassin, 184 N.J. 612, 627 (2005); United Prop. Owners Ass'n of Belmar v. Borough of Belmar, 343 N.J. Super. 1, 14 (App. Div.), certif. denied, 170 N.J. 390

(2001); Jantausch, 41 N.J. Super. at 96. Nevertheless, a reviewing court must "give deference to a municipality's informal interpretation of its ordinances." Fallone Props., L.L.C. v. Bethlehem Twp. Planning Bd., 369 N.J. Super. 552, 561(App. Div. 2004).

The Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163, grants a zoning board of adjustment the power to decide requests for interpretation of a zoning ordinance. N.J.S.A. 40:55D-70(b). The interpretation of zoning ordinance is purely a legal determination, and the determination of a zoning board on the question is not entitled to a presumption of validity. Fallone Props., 369 N.J. Super. at 561 (quoting DePetro, supra). Deference, however, is limited and the meaning of an ordinance's language is a question of law that the court will review de novo. Bubis, 184 N.J. at 627. In construing ordinances, determining municipal intent is no different from interpreting and construing statutes. Atl. Container, Inc. v. Twp. of Eagleswood Plan. Bd., 321 N.J. Super. 261, 269 (App. Div. 1999). Thus, a zoning ordinance should be interpreted to effectuate the intent of the adopting body, considering the language used and the objective sought to be achieved. See Twp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999). The first step is to examine the language of the ordinance. Ibid. If the language is clear and unambiguous, its meaning controls; if, however, the language is susceptible to different interpretations, then extrinsic factors, such as the ordinance's purpose, legislative history and context must be considered. Ibid. "The general principle is that ordinances should be liberally construed in favor of the municipality." Atl. Container, Inc., 321 N.J. Super. at

280. However, as noted previously, where a board is interpreting a statute, "the court applies a de novo standard of review on such legal issues." Darst v. Blairstown Tp. Zoning Bd. of Adjustment, 410 N.J. Super. 314, 325 (App. Div. 2009); see Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); Cherney v. Matawan Borough Zoning Bd. of Adj., 221 N.J. Super. 141, 144-45 (App. Div. 1987) (invoking the "traditional rule that the interpretation of legislative enactments is a judicial function, and not a matter of administrative expertise").

"In construing the language of an ordinance, it is well established that courts apply the same rules of judicial construction as they apply when construing statutes." AMN, Inc. of N.J. v. S. Brunswick Rent Leveling Bd., 93 N.J. 518, 524-25 (1983). "[An ordinance] should be interpreted in accordance with its plain meaning if it is 'clear and unambiguous on its face and admits of only one interpretation.'" State v. Butler, 89 N.J. 220, 226 (1982) (quoting Bd of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996)). "Zoning ordinances generally are liberally construed in favor of the municipality. . . however, the wording in such ordinances must be 'clear and unambiguous so that [persons] of ordinary intellect need not guess at [its] meaning.'" Twp. of Pennsauken, 160 N.J. at 171 (quoting Town of Kearny v. Modern Transp. Co., 116 N.J. Super. 526, 529 (App. Div. 1971). "Although a municipality's informal interpretation of an ordinance is entitled to deference . . . that deference is not limitless." Bubis, 184 N.J. at 627. "[A] citizen who seeks in good faith to utilize his property . . . should not [be required to] depend upon the outcome of litigation after the event in which a provision, which he apparently fully meets, assumes a new and

different significance by a process of refined interpretation." Jantausch, 41 N.J. Super. at 101. "Restrictions in zoning ordinances must be clearly expressed and doubts are resolved in favor of the property owner." Graves v. Bloomfield Planning Bd., 97 N.J. Super. 306, 312 (Law Div. 1967).

In the matter before this court, Plaintiff sought an interpretation of the Borough's zoning ordinance pursuant to N.J.S.A. 40:55D-70(b)which provides "[t]he board of adjustment shall have the power to: . . . (b) Hear and decide requests for interpretation of the zoning map or ordinance." Based upon the record presented and applying the de novo standard of review, the court finds that the Board incorrectly and unreasonably interpreted the Borough's zoning ordinances and improperly affirmed the Zoning Officer's interpretation of the ordinances. There is nothing ambiguous about the 30% Requirement as identified in Section 34-13.1(a) of the zoning ordinance. This portion of the ordinance existing at the time of Plaintiff's application states, in pertinent part,

> Accessory building and structures in all residential zoning may be erected in any side or rear yard provided that:
>
> A. Accessory buildings and structures in all residential zoning districts which are not attached to a principal building or structure may be erected in any side yard or rear yard provided that:
>
> 1. No such accessory building or struct shall exceed 16 feet in height.
>
> 2. No such accessory building or structure shall be shall be closer to any lot line than 5 feet.

> 3. The aggregate of all accessory buildings and structures shall not occupy more than 30 percent of the area of the side or rear yard in which said accessory building or structure is located. . . .

The Borough's zoning ordinances should be interpreted in accordance with their plain meaning. Section 34-13.1(a)(3) of the zoning ordinance provides a clear size restriction of the aggregate size of accessory structures and permits only one interpretation. See Butler, 89 N.J. at 226. Applying the Borough's zoning ordinances, the court finds that a private garage is permitted in the residential zoning district (in this instance the R-1 Zone) in the Borough, as of right if it complies with the dimensional requirements of section 34-13.1(a) and complies with the use requirements under section 34-4.3 and section 34-13.5.

The court further finds that the "commonsense of the situation" does not allow for the arbitrary limit of 864 square feet applied here. See AMN, Inc. of N.J., 93 N.J. at 525. In arguing that section 34-4.3(a) provides an 864 square feet maximum, the Board relies, in part, on the testimony of Mr. Berninger. The record does not appear that the Board qualified Mr. Berninger as a zoning or planning expert, but rather relies upon his years of service and personal interpretation of the zoning ordinance. Plaintiff's expert witness, Ms. Bogart, however, detailed her extensive background in municipal planning representing both municipalities and private developers. See T1 10:8 – 11:16. The court acknowledges that Mr. Berninger has a wealth of experience and has interpreted the Borough's zoning ordinances as permitting a maximum of three cars and 864 square feet for many years. See Id. at 57:2-5. However, the plain

and clear language of the Borough's zoning ordinances in no way restricts the size of a private garage to 864 square feet. Furthermore, Mr. Berninger acknowledged that the "30% Requirement" as written in the zoning ordinance was clear. See Id. at 33:14-16. Mr. Novak, the Board's professional planner, also acknowledged that the 30% Requirement was the only tangible size limitation for private garage. See Id. at 53:9 – 54:1. Mr. Berninger's interpretation of section 34-4.3(a) created the scenario where residents of the Borough were, in essence, left to "guess at [its] meaning." See Twp. of Pennsauken, 160 N.J. at 171. Section 34-4.3, as applicable here, merely limits the use of aspect of a garage by permitting only three vehicles. Section 34-4.3 does not dictate the size of a garage.

Although the court acknowledges that the Board's informal interpretation of its zoning ordinances are entitled to certain deference, the court finds that the Board here engaged in "refined interpretation" in direct contradiction with sections 34-13.1(a); 34-4.3; and 34-13.5 of the zoning ordinance. See Bubis, 184 N.J. at 627; Jantausch, 41 N.J. Super. at 101. The court further finds that the Board's reliance on Mr. Berninger's "consistent" application of section 34-4.3 to provide an 864 square feet restriction is misplaced and untenable. See Resolution at ¶10.

Effecting legislative intent in interpreting the Borough's zoning ordinances, the court finds that the Borough's amendment of section 34-13.1(a) in 2002 to state "[t]he aggregate of all such accessory buildings and structures shall not occupy more than 30% of the area of the side or rear yard in which said accessory building or structure is located," clearly establishes the Borough's intention to set forth an

accessory building size limit. The prior ordinance from 1978 identified in the record limited the size of accessory buildings by requiring the structures to satisfy all minimum setback requirements applicable to the subject parcel. The Board's reliance on section 34-4.3 effectively creates an additional restriction that was not codified at the time of the subject application. Interpreting section 34-13.1(a)(3) consonant with the probable intent of the drafters, the court finds that the 30% Requirement provides the only tangible size restriction on private garages. Additionally, the court notes that Plaintiff's expert planner, Ms. Bogart, provided testimony during the proceeding regarding the previous Master Plans' failure to address the potential conflicting applications of the 30% Requirement under section 34-13.1(a) and the "three-car maximum" under section 34-4.3. See T1 33:21 – 35:19.

Based upon the record presented, the court finds that the Board's acceptance of the zoning Officer's interpretation unreasonably interpreted the Borough's zoning ordinances to provide an arbitrary limit of 864 square feet for private garages in the R-1 Residential Zone. For all of the reasons set forth herein, the court invalidates and vacates the September 7, 2020 decision of the zoning Board of Adjustment of the Borough of Midland Park, New Jersey as memorialized by resolution dated October 14, 2020. The Borough's zoning ordinances in effect at the time of Plaintiff's development application permit the maximum size of accessory structures, which includes garages, in the aggregate to be equal to 30% percent of the square footage of the yard it is located, as clearly stated under section 34-13.1(a) of the zoning ordinance existing at the time of the application. The court recognizes that N.J.S.A.

40:55D-10.5 commonly referred to as the time of application rule provides

> [n]otwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.
> [N.J.S.A. 40:55D-10.5.]

Accordingly, judgment is entered in favor of Plaintiff. Plaintiff's Development Application, which was stayed pending the appeal of the interpretation, is remanded to the Board for further review applying section 34-13.1(a) of the Borough's zoning ordinances in effect at the time of application in accordance with N.J.S.A. 40:55D-10.5. The court finds no basis to award attorney's fees or costs of suit at this time.