

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT  
MEMORIALIZING RESOLUTION  
LEWIS E. ARTHUR  
8 POPLAR AVENUE  
Block 1904, Lot 7

WHEREAS, the applicant is the owner of property located at 8 Poplar Avenue, Pequannock Twp, New Jersey, Block 1904, Lot 7, located in the R-11 zone district; and

WHEREAS, the applicant initially requested the issuance of a certificate pursuant to N.J.S.A. 40:55D-68 certifying that the existing use of the property for two residential units existed before the adoption of the ordinance which rendered that use nonconforming, and thereafter amended the application to seek in the alternative a use variance to permit the continuation of the existing use of the property; and

WHEREAS, testimony was taken at a public hearings on February 3, 2011 and June 2, 2011 at which time the Board took sworn testimony and the applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

WHEREAS, the Board has reviewed and considered all of the documentary evidence and the testimony at the public hearings from which the Board makes the following factual findings:

1. All proper public notice has been given in accordance with the municipal land use law.
2. The subject property is a flat, L-shaped lot located on the north side of Poplar Avenue 200' distant from the Newark Pompton Turnpike. It is presently improved with a substantial single family dwelling with a detached, dilapidated garage and a second detached garage with an apartment above. As a result of a recent renovation project to the garage apartment building, the Township building inspector questioned the use of the property for two separate residential units.
3. The applicant submitted the following documents in addition to the standard application form:
  - 1) A survey prepared by Darmstatter, Inc., dated May 17, 2010 (signed not sealed);
  - 2) A letter from Lewis E. Arthur, the property owner, describing the history of the use of the property. (Letter is signed but not dated);
  - 3) A letter from Lewis E. Arthur property owner authorizing his daughter, Pam Banks, to act on his behalf. (Signed and dated August 27, 2010);
  - 4) A letter from Lewis E. Arthur indicating intent to apply only for Certificate of Non-conforming Use. (Signed and dated November 11, 2011);
  - 5) Letter titled Response to Permit Penalty.

- 6) Board of Health approval of the septic system reflecting two systems;
- 7) Assorted Township property record and appraisal cards;
- 8) A letter from Eric Downs, the adjacent neighbor (Letter is signed but not dated);
- 9) Selected sections of Township Zoning Ordinances 1964, 1977 & 1986.

4. It appears from the testimony at the hearing and the documentation submitted by the applicant that until 1986 the following provision was contained in the Township zones ordinance:

These provisions shall not be construed, however, as preventing the erection, alteration and maintenance of dwelling quarters upon the rear of the lot when the persons occupying such quarters are employed in domestic service upon the premises.

5. The residence and garage in question were constructed at the same time in or about 1956. At that time the owner's parents lived in the house and his mother became infirm. As a consequence, the storage space over the garage was converted to an apartment for a caretaker who cared for the present owner's mother until her death in approximately 1968. Thereafter, the garage apartment was rented as a separate unit, although not to a caretaker or in-servant for the home.

6. The owner, Lewis E. Arthur, lives at 19 Franklin Avenue. The garage apartment is rented to a third party who is no relation to or employed by Mr. Arthur. Consequently, neither unit on the property is owner occupied at the present time. It was also clear from the testimony that the occupant of the garage apartment does not provide healthcare or companion care to the occupant of the house. The property is and has been maintained as two independent residential units, since 1968. In approximately 1986 the provision relating to domestic servants was deleted from the permitted uses in this zone district.

7. Several members of the public who are neighbors in the immediate vicinity of the subject property, including immediately adjacent neighbors, testified in favor of permitting the existing use to continue.

Based upon the above factual findings, the Board has reached the following conclusions:

1. The applicant has sustained his burden under N.J.S.A. 40:55D-70d(1) to permit the use of the subject property for a primary residence and an accessory apartment above the garage as presently exists and has existed for the past 50 years at least, as described in the application, testimony at the public hearing and documents submitted to the Board. Although the proposed use is not one which inherently benefits the public good, the subject property is particularly suited to the proposed use

because the structures are already in existence and have been used for nearly 3 generations for the use which the applicant seeks. The Board has also taken into consideration the size and shape of the property and absence of any testimony or evidence regarding adverse impact upon the zone plan or the neighborhood.

2. The requested variance can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 7th day of July, 2011 that it now ratifies, memorializes and adopts the action taken at its meeting on June 2, 2011 granting the application of Lewis E. Arthur to permit the continuation of the use of the property for a primary single family residence and an accessory apartment in the existing second floor of the existing garage, subject to the following conditions:

1. There shall be no enlargement to either structure on the property without further approval from this Board.

2. The residential use of the garage shall not be extended beyond the existing second floor.

3. The action taken by this Board as memorialized in this resolution does not qualify the subject property for two family residential use. In that regard, if at any time in the future the existing garage with the apartment above is removed or destroyed, the property will revert to standard single family residential use.

4. In accordance with the applicant's intent as expressed at the public hearings, the garage structure shall be brought into conformity with all existing building codes as soon as is reasonable under the circumstances.

5. No permits and/or certificate of occupancy shall be issued for the construction permitted by this resolution, unless and until all fees, costs and escrows required in connection with this application have been paid in full.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its regular meeting on July 7, 2011.

  
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Linda Zacharenko, Secretary

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT  
MEMORIALIZING RESOLUTION  
POMPTON PLAINS REAL ESTATE, LLC  
d/b/a/ ALL SERVICE CONTRACTORS EQUIPMENT  
770 RT. 23, PEQUANNOCK, NEW JERSEY  
Block 902, Lot 5

WHEREAS, the applicants are the owners of property located at 770 Rt. 23, Pequannock Twp, New Jersey, Block 902, Lot 5, located in the C-3 regional commercial district; and

WHEREAS, the applicant has requested the following relief:

- A. A use variance pursuant to N.J.S.A. 40:55D-70d(1) to permit outdoor storage of equipment which is specifically prohibited in this zone district; and
- B. A use variance pursuant to N.J.S.A. 40:55D-70d(3) to permit outdoor display which does not meet the conditional use standards of the ordinance; and
- C. Preliminary site plan approval; and
- D. Final site plan approval; and
- E. Issuance of a flood plain development permit; and
- F. Waiver of the following checklist requirements:
  - 1. Surface Water Management Plan; and
  - 2. Soil Erosion and Sediment Control Plan; and
  - 3. Morris County Soil Conservation approval; and
  - 4. Traffic Impact Study, and
  - 5. Environmental Impact Statement; and

WHEREAS, testimony was taken at a public hearing on June 2, 2011 at which time the Board took sworn testimony and the applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

WHEREAS, the Board has reviewed and considered all of the evidence and the testimony at the public hearing from which the Board makes the following factual findings:

- 1. All proper public notice has been given in accordance with the municipal land use law.
- 2. In addition to the application forms filed by the applicant, the Board has taken into consideration the following documentary evidence:

1. 1 page Land Development Review from the Township Environmental Department dated 5/11/11.
2. 1 page Land Development Review from the Township Health Department dated 5/11/11.
3. 1 page Land Development Review from the Township Police Department dated 5/13/11.
4. 1 page Land Development Review from the Township Fire Department dated 5/24/11.
5. 1 page Engineering Department report dated 6/2/11.
6. 5 page report from the Board consulting planner, Eileen F. Banyra, PP, AICP, dated 5/26/11.
7. 9 page Planning and Variance Report prepared by Kenneth Ochab Associates, LLC dated 12/20/10.
8. 1 page letter from State of New Jersey Department of Transportation dated 4/1/11.
9. Deed marked Exhibit A-1 at the 6/2/11 public hearing which is dated 7/27/01 from Rt. 23 Pequannock LLC to Pompton Plains Real Estate LLC recorded in the Morris County Clerk's Office on 7/31/01 in deed book 5425 at page 280.
10. 2 page rider attached to the variance application.
11. Sketch of land acquired by the State of New Jersey for widening of Rt. 23.
12. Extract of minutes from Pequannock Township Planning Board consisting of page 2 for the meeting of October 3, 1983 and pages 7,8 and 9 of the meeting on 11/21/83.
13. 1 page map showing existing site conditions on the subject property prepared by Paul P. Darmofalski dated 9/14/10 and most recently revised 12/22/10.

3. The subject property is a 2.49 acre lot, generally rectangular with 351' of road frontage on the east side of state highway Rt. 23 and a depth varying from 293' on the south side to 316' on the north side. The adjacent lot to the south and east is an 8.95 acre lot of vacant land. The adjacent property to the north is a vacant lot owned by the Township of Pequannock. The nearest developed property is an industrial lot across Rt. 23 and the nearest developed lot on the same side of Rt. 23 is an automobile dealership. Much of the surrounding land is vacant and located in the flood hazard area of the Pequannock River.

4. In 1983 the Township planning board granted site plan approval to the Schiavone Building Co. with variances for lot size, front yard setback and buffer requirements. The front yard setback was altered by the acquisition of a 7' right of way across the front of the property by the New Jersey Department of Transportation for the widening of Route 23. Variances for required buffer zones were granted because the property is surrounded by wooded areas. A variance was granted for the current number of parking spaces due to the adequacy of the parking for the use.

5. The property is presently improved with a 7,971 sq. ft., one story commercial building together with 16 regular parking spaces, one handicapped parking space, various fences and gravel parking area for equipment as shown on the Darmofalski plan referred to above. There is no record in the Township of the grant of a use variance for outdoor storage which is prohibited in the C-3 zone district. In addition, the applicant proposes us to continue to use an outdoor display area in front of the property. Although an outdoor display area is permitted, it is limited to 5% of the enclosed retail space, whereas the applicant requests an outdoor display area of 1,364 sq. ft., or 17% of the enclosed retail space.

6. There are four separate locations for the proposed outdoor display areas. Three are contiguous to the front wall of the building. The fourth area is not contiguous to the building, but is located adjacent to the north parking area. This fourth area is designated for the display of larger equipment that would not be appropriate against the wall of the building, which cannot be seen from the entrance or the parking lot or the highway until a vehicle has nearly passed the entire lot. In addition, the north wall of the building is immediately adjacent to the driveway to the equipment storage area behind the building and, therefore, any display against the north wall would interfere with access to the rear enclosed storage area. There is no outdoor display of any items other than during regular business hours. At the end of each business day all items in the display areas are moved inside the building or into the storage enclosure behind the building.

7. The existing use of the property began in 1983 and has included the outside storage such as is described in the letter from the applicant's attorney, Frank Scangarella, Esq., dated 1/31/11 as follows:

1. Portable Air Compressors;
2. Kubota Excavators;
3. Bobcat Front End Loaders;
4. Construction Trailers;
5. Genie Tow Behind Lifts;
6. Wood Chippers;
7. Ride-On Asphalt Rollers;
8. Portable Cement Mixers; and
9. Towable Generators.

The above list is intended to be non-exclusive and simply describes the general type of equipment stored on the property and rented by the applicant. The applicant owns all of the equipment which is part of the business and no equipment or vehicles are stored on site which are

not owned by the applicant. In the general flow of business, the exact nature of the equipment is in a constant state of change due to both the fact that the equipment is rented to others from time to time and the nature of the equipment changes as industry demands.

8. The principal of the applicant formerly worked for the Schiavone Building Co. and has worked at this site since 1983. His testimony was that the fundamental business remains the same today as it was in 1983 when it received planning board approval.

9. No members of the public appeared to testify at the public hearing of this application.

Based upon the above factual findings, the Board has reached the following conclusions:

1. The applicant has sustained its burden under N.J.S.A. 40:55D - 70d(1) to permit the outdoor storage of equipment in the location shown on the accompanying site plan and as described in the application and documents submitted therewith in the testimony at the public hearing. Although the proposed use is not one which inherently benefits the public good, the subject property is particularly suited to the proposed use because it fronts on State Highway Rt. 23, and a majority of the site is located in the flood hazard area of the Pequannock River. Consequently, the property is appropriate for a retail use because of its location on the highway, but the outdoor storage of equipment is better suited to the flood hazard area than the construction of a large building which would impede the flow of flood waters. Testimony indicated that none of the equipment stored outside on this property would be in jeopardy of moving offsite during flood conditions. It is essentially heavy contractors equipment which would be very stable even if flood water flow was significant. Therefore it is better for the community and the drainage basin generally to not construct a large structure to house this equipment which can conveniently and safely be stored outside.

2. The development of the site with a 6' high chain link fence with slats blocking view from the highway and the slope of the property away from the highway toward the river to the rear adequately shields the stored equipment from public view of motorists on the highway.

3. It is also important that there is no active use of adjacent property to the north, east, or south of the subject property and it is unlikely that there will be any development in the foreseeable future.

4. The applicant has also sustained its burden under N.J.S.A. 40:55D-70d(3) to permit a variance from the condition that outdoor display area not exceed 5% of the enclosed retail space. The ordinance would permit a building of approximately 32,540 sq. ft. which would permit an outdoor display area of approximately 1,627 sq. ft. This applicant is requesting an outdoor display area of 1,364 sq. ft. or less than which would be permitted if the maximum allowed building coverage were constructed on site. However, as described above, it is not the best interest of the Township or the region to increase the building coverage on this lot. Moreover the increased outdoor display area assists the motoring public in understanding the nature of the commercial activity on site and constitutes a traffic safety benefit.

5. Based upon the report to the Board of the Township Engineer dated 6/2/11, the applicant's request for waiver of the five checklist items referred to above should be granted. In addition, since the site is fully within the FEMA and NJDEP flood plain areas, but has been allowed as a "permit-by-rule" under N.J.A.C.7:13-7.2(e), a flood plain development permit may issue to the applicant for the plan submitted with the application.

6. The requested variance can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 7th day of July, 2011 that it now ratifies, memorializes and adopts the action taken at its meeting on June 2 , 2011 granting the application of Pompton Plains Real Estate, LLC d/b/a All Service Contractors Equipment for the following relief:

- A. A use variance pursuant to N.J.S.A. 40:55D-70d(1) to permit outdoor storage of equipment; and
- B. A use variance pursuant to N.J.S.A. 40:55D-70d(3) to permit outdoor display which does not meet the conditional use standards of the ordinance; and
- C. Preliminary site plan approval; and
- D. Final site plan approval; and
- E. Issuance of a flood plain development permit; and
- F. Waiver of the following checklist requirements:
  - 1. Surface Water Management Plan; and
  - 2. Soil Erosion and Sediment Control Plan; and
  - 3. Morris County Soil Conservation approval; and
  - 4. Traffic Impact Study, and
  - 5. Environmental Impact Statement.

The above relief is granted subject to the following conditions:

1. All construction and improvement shall be in substantial conformity with the plans filed with the application, prepared by Darmofalski Engineering Assoc., Inc., dated 9/14/10 and most recently revised 12/22/10, as those plans will be revised in accordance with the discussions at the public hearings and as set forth above in this resolution, including:

- A. The outdoor display area should be corrected in the zoning chart to read 1,364 sq. ft.; and
- B. The entire site plan shall be revised to conform with and add the improvements shown in connection with the T-Mobile Northeast, LLC, telecommunications monopole in the northwest corner of the site including the walkway and equipment

area for that facility. The area devoted to both the walkway and the equipment enclosure for the T-Mobile monopole should be deducted from the equipment storage area calculations shown on the existing plan; and

- C. If the Township Health Department determines that equipment should not be stored in the area of the septic field, that restriction should be added to the plans.
  - 2. There shall be no onsite storage of equipment owned by persons or entities other than the applicant or its successor in interest.
  - 3. No permits and/or certificate of occupancy shall be issued for the construction permitted by this resolution, unless and until all fees, costs and escrows required in connection with this application have been paid in full.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its regular meeting on July 7, 2011.

  
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Linda Zacharenko, Secretary

PEQUANNOCK TOWNSHIP - BOARD OF ADJUSTMENT  
PROCEDURAL RESOLUTION  
TO RECONSIDER PREVIOUS ACTION  
ON THE APPLICATION OF  
T-MOBILE NORTHEAST, LLC  
30 HILLVIEW ROAD, PEQUANNOCK TOWNSHIP, NJ  
Block 4201 Lots 1 & 2  
Block 3803 Lot 20

WHEREAS, this Board has heard and considered testimony and documentary evidence in connection with an application by T-Mobile Northeast LLC to construct a wireless communications monopole on property located at 30 Hillview Road Pequannock Township, being known and designated as Tax Block 4201, Lots 1 & 2 and Tax Block 3803, Lot 20 located in the I-3 zone district; and

WHEREAS, public hearings were held on this application on December 2, 2010, January 20, March 3, April 7 and May 5, 2011; and

WHEREAS, at the May public hearing the Board heard closing arguments by the attorneys for the applicant and the objectors and closed the hearing to further evidence and deliberated; and

WHEREAS, the Board directed its attorney to prepare a resolution denying the application based upon failure of the applicant to receive five affirmative votes for the use variance portion of the application, but no formal action has yet to be taken on that resolution; and

WHEREAS, the applicant has requested a reconsideration of the matter based upon the record presently before the Board;

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 7th day of July, 2011 that it now memorializes, ratifies and adopts the action taken at its meeting on June 2, 2011, denying the request of T-Mobile Northeast LLC for reconsideration.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its regular meeting on July 7, 2011.

  
Linda Zacharenko, Secretary  
7/8/11