

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT  
MEMORIALIZING RESOLUTION  
STEPHEN AND STEPHANIE CIELUSNIAK  
8 LEVERIDGE LANE  
Block 1201, Lot 15

WHEREAS, the applicants are the owners of property located at 8 Leveridge Lane, Pompton Plains, New Jersey, Block 1201, Lot 15, located in the R-22 zone district; and

WHEREAS, the applicants request a use variance under N.J.S.A.40:55D-70d(1) to permit them to continue to use the above described property as a single family residence with an accessory apartment; and

WHEREAS, testimony was taken at a public hearing on August 2, 2012 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 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. In addition to the standard application form for a use variance the Board has received and considered the following documents in connection with this application:
  1. Four page construction permit application marked Exhibit A-1 at the public hearing; and
  2. Two page building subcode technical section marked Exhibit A-2 at the public hearing; and
  3. Two page electrical subcode technical section and three page plumbing subcode technical section marked Exhibit A-3 at the public hearing; and
  4. A second plumbing subcode technical section consisting of three pages with a date on the second page of 6/25/86 marked Exhibit A-4 at the public hearing; and
  5. One page certificate of occupancy dated 7/1/86 marked Exhibit A-5 at the public hearing; and
  6. One page septic system design marked Exhibit A-6 at the public hearing; and
  7. Sanitary application dated 6/13/86 marked Exhibit A-7 at the public hearing; and

8. Construction Permit application with a certification dated 12/9/87 consisting of five pages; and
9. A one page Certificate of occupancy dated 8/21/89; and
10. Deed dated May 28, 2008 between James J. Novoshelski and Kathleen A. Novoshelski and Stephen Cielusniak and Stephanie Cielusniak, husband and wife consisting of five pages; and
11. One page location survey of property located at lot 15 block 1201 prepared by Jack L. Held dated 2-20-08; and
12. Planning report prepared by Darmofalski Engineering Associates, Inc. dated July 18, 2012 consisting of three pages together with a survey and ten pages of photographs; and
13. A planning report prepared by Eileen F. Banyra dated 8/2/12 consisting of three pages.

3. The subject property is a flat, flag lot which has a 50' wide "pole" beginning at Leveridge Lane and connecting with the main portion to the lot to the north. The main portion of the property is generally rectangular, being 200 ft. wide and approximately 140 ft. deep. The description page of the deed referred to above contains the following entry. "Being known and designated as lot 5 in block 148 on a certain map entitled 'Final Plat, Saddle Estates' filed October 5, 1983 in the Morris County Clerk's office as map no. 4209". Therefore the Board concludes that regardless of the current dimensional compliance of the lot with the current ordinance, it was lawfully created in a major subdivision in full compliance with the zoning ordinance at the time it was created.

4. Some of the dimensional requirements of the current ordinance are confounded because the long axis on the house on the property runs north and south instead of east and west. It would be in much greater compliance with the current requirements if the front of the house had been oriented toward Leveridge Lane to the south. As presently constructed, the house faces west.

5. Several years after the original certificate of occupancy was issued by the Township, the then owners of the property applied for and received all necessary permits to construct the addition of a sun room to the house. At no time prior to this application did any official of the Township question the compliance of the use of the house.

6. The property is located in the R-22 zone which, generally speaking, limits construction to "single family residences." However, the Township ordinance does not define "single family residences." The New Jersey Municipal Land Use Law N.J.S.A. 40:55D-1 *et seq.* does not define "single family residences." Another phrase used to define some ancillary apartment is "a mother/daughter house." Once again, neither the ordinance nor the State statute have any definition of that phrase, mother/daughter house.

7. There was extensive testimony regarding the interior physical construction of the house and the access to and from the main section of the house and the accessory apartment. The main house has access primarily through the front door which enters into a foyer with a stairway. That stairway leads to the second floor which leads to a second floor hallway. At the end of the second floor hallway without any physical barrier is the entrance to the accessory apartment which is constructed in the space above the three car garage. There is a second access at the rear of the house which provides access to the garage space, the main house and a second stairway to the second floor accessory apartment. The accessory apartment consists of a great room which has a sitting area, a kitchen area and a dining area as well as a separate bedroom and bathroom. In other words the accessory apartment is no more isolated from the main section of the house than a master bedroom suite would be. The only difference is that the space consisting of the accessory apartment has kitchen.

8. The applicants closed title on the purchase of the property on May 28, 2008 and received a owners title insurance policy on the property. As part of the purchase the applicants obtained a mortgage from a commercial lender. In 2012 the applicants sought to recast the mortgage on their home to take advantage of lower interest rates being offered. The bank appraisal questioned the legal status of the accessory apartment. The current Township construction code official refused to certify or approve status as conforming to the zoning ordinance. Based upon the construction official's opinion the intended refinance lender substantially reduced its appraisal value of the house and based upon that reduction in value they refused to extend the requested credit.

9. The applicants presented a professional engineer and planner, Paul P. Darmofalski, who presented a packet of photographs consisting of ten pages showing various views of the interior and exterior of the house in question. The exterior looks like a single family house with a three car attached garage. There is no evidence in the photographs or from the testimony that there is any division between the main section of the house and the accessory apartment other than a door similar to the standard door on a bedroom in any modern residence.

10. Township records confirm that all appropriate permits were issued by the Township for construction of the house in or about 1986 and also in connection with a sunroom addition to the house in the summer of 1989. From the photographs presented and the testimony on the record, it appears that there has been no internal or external construction on this property other than that which was allowed by those permits.

11. Three members of the public appeared to testify that they are close neighbors of the applicants and are strongly in favor of granting this application. In fact, until receipt of the application, they were unaware that there was an accessory apartment even though all three members of the public had lived in the neighborhood since before the applicants moved in. All three members of the public confirmed that the previous owners had parents living with them in the house. Based upon that testimony it appears that since the property was built it has continuously used as a single family residence with an older family member or couple living in the accessory apartment over the garage.

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

1. The applicants have sustained their burden under N.J.S.A. 40:55D(1) to permit the use of the residence on the subject property for a single family residence with an accessory apartment as described in the application and the documents submitted therewith as testified at the public hearing. Although the proposed use is not one which inherently benefits the public good, the subject property is particularly suited for the proposed use, especially in view of the existence of the structure as permitted by the Township construction officials. The proposed use contributes to a variety of housing types, which is especially important in view of the large numbers of senior citizens now living with their children and the equally large number of adult children moving back in to live with their parents.

2. The approval granted in this case is limited solely to this property because of the nature and construction of the house and accessory apartment, the issuance of all required permits and the fact that the house has not been altered since the original building permit was issued. The exterior gives no hint that the property is used as anything but a single family residence and there are no internal divisions which would allow the accessory apartment to be used as a completely independent living unit. Both the main house and the accessory apartment are accessed from the outside by the same doorways and are separated only by standard interior hallway doors.

3. The property has been used as a single family residence together with an accessory apartment for more than twenty years and several neighbors testified that they did not even know the accessory apartment existed. Obviously, the presence of the accessory apartment has no negative impact on the zone plan or the neighborhood.

4. The applicant has produced the enhanced quality of proof required by the opinion in *Medici v. BPR Co.*, case that the grant of this variance is not inconsistent with the intent and purpose of the master plan or the municipal zoning ordinance. The applicant has satisfactorily reconciled the grant of this variance with the omission of this particular use from the ordinance. As presented at the meeting, this proposed use is virtually identical to the uses permitted in the zone and the fact that the accessory apartment has a kitchen does not, by itself, make this particular unit a stand alone separate living unit.

5. 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 6th day of September, 2012 that the application of Stephen and Stephanie Cielusniak to continue to use the property at 8 Leveridge Lane, Pompton Plains for a single family residence with an accessory apartment is granted subject to the following conditions:

1. The approval granted in this resolution does not authorize use of the subject property as a two family home.

2. There is to be no change in the size, floor area or number of rooms specifically related to the accessory apartment without approval from this Board.

3. There are to be no structural changes to the house specifically relating to the accessory apartment, internal or external, that would in any way change its appearance as a single family home or create any additional restriction which would reduce the internal access between the accessory apartment and the main area of the house, without further approval of this Board.

4. No permits and/or certificate of occupancy shall be issued 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 September 6, 2012.

  
Linda Zacharenko, Secretary  
10/4/12